Health and Social Care Act 2012

2012 CHAPTER 7

An Act to establish and make provision about a National Health Service Commissioning Board and clinical commissioning groups and to make other provision about the National Health Service in England; to make provision about public health in the United Kingdom; to make provision about regulating health and adult social care services; to make provision about public involvement in health and social care matters, scrutiny of health matters by local authorities and co-operation between local authorities and commissioners of health care services; to make provision about regulating health and social care workers; to establish and make provision about a National Institute for Health and Care Excellence; to establish and make provision about a Health and Social Care Information Centre and to make other provision about information relating to health or social care matters; to abolish certain public bodies involved in health or social care; to make other provision about health care; and for connected purposes. [27th March 2012]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

THE HEALTH SERVICE IN ENGLAND

The health service: overview

1 Secretary of State's duty to promote comprehensive health service

For section 1 of the National Health Service Act 2006 (Secretary of State's duty to promote health service) substitute—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"**1 Secretary of State's duty to promote comprehensive health service**

(1) The Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement—

(a) in the physical and mental health of the people of England, and

(b) in the prevention, diagnosis and treatment of physical and mental illness.

(2) For that purpose, the Secretary of State must exercise the functions conferred by this Act so as to secure that services are provided in accordance with this Act.

(3) The Secretary of State retains ministerial responsibility to Parliament for the provision of the health service in England.

(4) The services provided as part of the health service in England must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed."

Commencement Information

I1 S. 1 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I2 S. 1 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

2 The Secretary of State's duty as to improvement in quality of services

After section 1 of the National Health Service Act 2006 insert—

"**1A Duty as to improvement in quality of services**

(1) The Secretary of State must exercise the functions of the Secretary of State in relation to the health service with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—

(a) the prevention, diagnosis or treatment of illness, or

(b) the protection or improvement of public health.

(2) In discharging the duty under subsection (1) the Secretary of State must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

(3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—

(a) the effectiveness of the services,

(b) the safety of the services, and

(c) the quality of the experience undergone by patients.

(4) In discharging the duty under subsection (1), the Secretary of State must have regard to the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012."

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Commencement Information
I3 S. 2 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

3 The Secretary of State's duty as to the NHS Constitution

After section 1A of the National Health Service Act 2006 insert—

"**1B Duty as to the NHS Constitution**

(1) In exercising functions in relation to the health service, the Secretary of State must have regard to the NHS Constitution.

(2) In this Act, "NHS Constitution" has the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 1 of that Act)."

Commencement Information
I4 S. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

4 The Secretary of State's duty as to reducing inequalities

After section 1B of the National Health Service Act 2006 insert—

"**1C Duty as to reducing inequalities**

In exercising functions in relation to the health service, the Secretary of State must have regard to the need to reduce inequalities between the people of England with respect to the benefits that they can obtain from the health service."

Commencement Information
I5 S. 4 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

5 The Secretary of State's duty as to promoting autonomy

After section 1C of the National Health Service Act 2006 insert—

"**1D Duty as to promoting autonomy**

(1) In exercising functions in relation to the health service, the Secretary of State must have regard to the desirability of securing, so far as consistent with the interests of the health service—

(a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner that it considers most appropriate, and

(b) that unnecessary burdens are not imposed on any such person.

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(2) If, in the case of any exercise of functions, the Secretary of State considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Secretary of State of the duties under section 1, the Secretary of State must give priority to the duties under that section."

Commencement Information
I6 S. 5 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

6 The Secretary of State's duty as to research

After section 1D of the National Health Service Act 2006 insert—

"**1E Duty as to research**

In exercising functions in relation to the health service, the Secretary of State must promote—

(a) research on matters relevant to the health service, and

(b) the use in the health service of evidence obtained from research."

Commencement Information
I7 S. 6 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

7 The Secretary of State's duty as to education and training

After section 1E of the National Health Service Act 2006 insert—

"**1F Duty as to education and training**

(1) The Secretary of State must exercise the functions of the Secretary of State under any relevant enactment so as to secure that there is an effective system for the planning and delivery of education and training to persons who are employed, or who are considering becoming employed, in an activity which involves or is connected with the provision of services as part of the health service in England.

(2) Any arrangements made with a person under this Act for the provision of services as part of that health service must include arrangements for securing that the person co-operates with the Secretary of State in the discharge of the duty under subsection (1) (or, where a Special Health Authority is discharging that duty by virtue of a direction under section 7, with the Special Health Authority).

(3) In subsection (1), "relevant enactment" means—

(a) section 63 of the Health Services and Public Health Act 1968,

(b) this Act,

(c) the Health and Social Care Act 2008,

(d) the Health Act 2009, and

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(e) the Health and Social Care Act 2012."

Commencement Information
I8 S. 7 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

8 Secretary of State's duty as to reporting on and reviewing treatment of providers

After section 1F of the National Health Service Act 2006 insert—

"1G Secretary of State's duty as to reporting on and reviewing treatment of providers

(1) The Secretary of State must, within one year of the passing of the Health and Social Care Act 2012, lay a report before Parliament on the treatment of NHS health care providers as respects any matter, including taxation, which might affect their ability to provide health care services for the purposes of the NHS or the reward available to them for doing so.

(2) The report must include recommendations as to how any differences in the treatment of NHS health care providers identified in the report could be addressed.

(3) The Secretary of State must keep under review the treatment of NHS health care providers as respects any such matter as is mentioned in subsection (1).

(4) In this section—
(a) "NHS health care providers" means persons providing or intending to provide health care services for the purposes of the NHS, and
(b) "health care services for the purposes of the NHS" has the same meaning as in Part 3 of the Health and Social Care Act 2012."

Commencement Information
I9 S. 8 in force at 1.6.2012 by S.I. 2012/1319, **art. 2(2)**

9 The NHS Commissioning Board

(1) After section 1G of the National Health Service Act 2006 insert—

"Role of the Board in the health service in England

1H The National Health Service Commissioning Board and its general functions

(1) There is to be a body corporate known as the National Health Service Commissioning Board ("the Board").

(2) The Board is subject to the duty under section 1(1) concurrently with the Secretary of State except in relation to the part of the health service that is

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provided in pursuance of the public health functions of the Secretary of State or local authorities.

(3) For the purpose of discharging that duty, the Board—

(a) has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act, and

(b) must exercise the functions conferred on it by this Act in relation to clinical commissioning groups so as to secure that services are provided for those purposes in accordance with this Act.

(4) Schedule A1 makes further provision about the Board.

(5) In this Act—

(a) any reference to the public health functions of the Secretary of State is a reference to the functions of the Secretary of State under sections 2A and 2B and paragraphs 7C, 8 and 12 of Schedule 1, and

(b) any reference to the public health functions of local authorities is a reference to the functions of local authorities under sections 2B and 111 and paragraphs 1 to 7B and 13 of Schedule 1."

(2) Before Schedule 1 to that Act, insert the Schedule set out in Schedule 1 to this Act.

Commencement Information

I10 S. 9 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I11 S. 9 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I12 S. 9(1) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 3(1))

I13 S. 9(2) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 3(3))

10 Clinical commissioning groups

After section 1H of the National Health Service Act 2006 insert—

"Role of clinical commissioning groups in the health service in England

1I Clinical commissioning groups and their general functions

(1) There are to be bodies corporate known as clinical commissioning groups established in accordance with Chapter A2 of Part 2.

(2) Each clinical commissioning group has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act."

Commencement Information

I14 S. 10 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I15 S. 10 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I16 S. 10 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Arrangements for provision of health services

11 The Secretary of State's duty as to protection of public health

After section 2 of the National Health Service Act 2006 insert—

"Provision for protection or improvement of public health

2A Secretary of State's duty as to protection of public health

(1) The Secretary of State must take such steps as the Secretary of State considers appropriate for the purpose of protecting the public in England from disease or other dangers to health.

(2) The steps that may be taken under subsection (1) include—

(a) the conduct of research or such other steps as the Secretary of State considers appropriate for advancing knowledge and understanding;

(b) providing microbiological or other technical services (whether in laboratories or otherwise);

(c) providing vaccination, immunisation or screening services;

(d) providing other services or facilities for the prevention, diagnosis or treatment of illness;

(e) providing training;

(f) providing information and advice;

(g) making available the services of any person or any facilities.

(3) Subsection (4) applies in relation to any function under this section which relates to—

(a) the protection of the public from ionising or non-ionising radiation, and

(b) a matter in respect of which the Health and Safety Executive has a function.

(4) In exercising the function, the Secretary of State must—

(a) consult the Health and Safety Executive, and

(b) have regard to its policies."

Commencement Information

I17 S. 11 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

12 Duties as to improvement of public health

After section 2A of the National Health Service Act 2006 insert—

"**2B Functions of local authorities and Secretary of State as to improvement of public health**

(1) Each local authority must take such steps as it considers appropriate for improving the health of the people in its area.

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(2) The Secretary of State may take such steps as the Secretary of State considers appropriate for improving the health of the people of England.

(3) The steps that may be taken under subsection (1) or (2) include—

(a) providing information and advice;

(b) providing services or facilities designed to promote healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way);

(c) providing services or facilities for the prevention, diagnosis or treatment of illness;

(d) providing financial incentives to encourage individuals to adopt healthier lifestyles;

(e) providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment;

(f) providing or participating in the provision of training for persons working or seeking to work in the field of health improvement;

(g) making available the services of any person or any facilities.

(4) The steps that may be taken under subsection (1) also include providing grants or loans (on such terms as the local authority considers appropriate).

(5) In this section, "local authority" means—

(a) a county council in England;

(b) a district council in England, other than a council for a district in a county for which there is a county council;

(c) a London borough council;

(d) the Council of the Isles of Scilly;

(e) the Common Council of the City of London."

Commencement Information

I18 S. 12 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

13 Duties of clinical commissioning groups as to commissioning certain health services

(1) Section 3 of the National Health Service Act 2006 is amended as follows.

(2) In subsection (1)—

(a) for the words from the beginning to "reasonable requirements" substitute "A clinical commissioning group must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility", and

(b) in each of paragraphs (d) and (e) for the words "as he considers" substitute "as the group considers".

(3) After that subsection insert—

"(1A) For the purposes of this section, a clinical commissioning group has responsibility for—

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(a) persons who are provided with primary medical services by a member of the group, and

(b) persons who usually reside in the group's area and are not provided with primary medical services by a member of any clinical commissioning group.

(1B) Regulations may provide that for the purposes of this section a clinical commissioning group also has responsibility (whether generally or in relation to a prescribed service or facility) for persons who—

(a) were provided with primary medical services by a person who is or was a member of the group, or

(b) have a prescribed connection with the group's area.

(1C) The power conferred by subsection (1B)(b) must be exercised so as to provide that, in relation to the provision of services or facilities for emergency care, a clinical commissioning group has responsibility for every person present in its area.

(1D) Regulations may provide that subsection (1A) does not apply—

(a) in relation to persons of a prescribed description (which may include a description framed by reference to the primary medical services with which the persons are provided);

(b) in prescribed circumstances.

(1E) The duty in subsection (1) does not apply in relation to a service or facility if the Board has a duty to arrange for its provision."

(4) After subsection (1E) insert—

"(1F) In exercising its functions under this section and section 3A, a clinical commissioning group must act consistently with—

(a) the discharge by the Secretary of State and the Board of their duty under section 1(1) (duty to promote a comprehensive health service), and

(b) the objectives and requirements for the time being specified in the mandate published under section 13A."

(5) Omit subsections (2) and (3).

(6) For the heading to section 3 substitute "Duties of clinical commissioning groups as to commissioning certain health services".

(7) For the cross-heading preceding section 3 substitute "Arrangements for the provision of certain health services".

(8) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) before paragraph (za) insert—

"(zza) regulations under section 3(1D),".

Commencement Information

I19 S. 13 partly in force: s. 13 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I20 S. 13 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I21 S. 13(1) in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

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I22 S. 13(2)-(5) in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**
I23 S. 13(8) in force at 1.2.2013 in so far as not already in force by S.I. 2012/2657, **art. 2(4)**

14 Power of clinical commissioning groups as to commissioning certain health services

After section 3 of the National Health Service Act 2006 insert—

"**3A Power of clinical commissioning groups to commission certain health services**

(1) Each clinical commissioning group may arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement—

(a) in the physical and mental health of the persons for whom it has responsibility, or

(b) in the prevention, diagnosis and treatment of illness in those persons.

(2) A clinical commissioning group may not arrange for the provision of a service or facility under subsection (1) if the Board has a duty to arrange for its provision by virtue of section 3B or 4.

(3) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of this section as they apply for the purposes of that section."

Commencement Information
I24 S. 14 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**
I25 S. 14 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

15 Power to require Board to commission certain health services

After section 3A of the National Health Service Act 2006 insert—

"**3B Secretary of State's power to require Board to commission services**

(1) Regulations may require the Board to arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of—

(a) dental services of a prescribed description;

(b) services or facilities for members of the armed forces or their families;

(c) services or facilities for persons who are detained in a prison or in other accommodation of a prescribed description;

(d) such other services or facilities as may be prescribed.

(2) A service or facility may be prescribed under subsection (1)(d) only if the Secretary of State considers that it would be appropriate for the Board (rather than clinical commissioning groups) to arrange for its provision as part of the health service.

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(3) In deciding whether it would be so appropriate, the Secretary of State must have regard to—

(a) the number of individuals who require the provision of the service or facility;

(b) the cost of providing the service or facility;

(c) the number of persons able to provide the service or facility;

(d) the financial implications for clinical commissioning groups if they were required to arrange for the provision of the service or facility.

(4) Before deciding whether to make regulations under this section, the Secretary of State must—

(a) obtain advice appropriate for that purpose, and

(b) consult the Board.

(5) The reference in subsection (1)(b) to members of the armed forces is a reference to persons who are members of—

(a) the regular forces within the meaning of the Armed Forces Act 2006, or

(b) the reserve forces within the meaning of that Act."

Commencement Information

I26 S. 15 partly in force: s. 15 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I27 S. 15 in force at 1.2.2013 in so far as not already in force by S.I. 2012/2657, **art. 2(4)**

16 Secure psychiatric services

(1) Section 4 of the National Health Service Act 2006 (high security psychiatric services) is amended as follows.

(2) In subsection (1) for the words from the beginning to "duty to provide" substitute "The Board must arrange for the provision of".

(3) In subsection (3)—

(a) after "may be provided" insert "—

(a)",

and

(b) after paragraph (a) insert ", and

(b) only by a person approved by the Secretary of State for the purposes of this subsection."

(4) After subsection (3) insert—

"(3A) The Secretary of State may—

(a) give directions to a person who provides high security psychiatric services about the provision by that person of those services;

(b) give directions to the Board about the exercise of its functions in relation to high security psychiatric services."

Commencement Information

I28 S. 16 partly in force: s. 16 in force for specified purposes at Royal Assent, see s. 306(1)(d)

Status: *This version of this Act contains provisions that are prospective.*
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I29 S. 16 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

17 Other services etc. provided as part of the health service

(1) In section 5 of the National Health Service Act 2006 (other services) for "about the Secretary of State and services under this Act" substitute "about the provision of services for the purposes of the health service in England".

(2) Schedule 1 to that Act is amended as follows.

(3) In paragraph 1 (medical inspection of pupils)—

(a) for "The Secretary of State" substitute "A local authority", and

(b) for "local authorities" substitute "the local authority".

(4) In paragraph 2—

(a) in sub-paragraph (1)—

(i) for "The Secretary of State" substitute "A local authority", and

(ii) omit ", by arrangement with any local authority,",

(b) in sub-paragraph (2)—

(i) for "The Secretary of State" substitute "A local authority",

(ii) after "educational establishment" insert "in its area", and

(iii) for "a local authority" substitute "the local authority", and

(c) omit sub-paragraph (3).

(5) In paragraph 4—

(a) for "A local authority may not make an arrangement" substitute "A local authority may not provide for any medical inspection or treatment", and

(b) for "the arrangement" substitute "the inspection or (as the case may be) treatment".

(6) In paragraph 5—

(a) omit sub-paragraph (1)(a) and the word "and" immediately following it,

(b) in sub-paragraph (2)—

(i) omit "local authority or",

(ii) for "the Secretary of State" substitute "a local authority", and

(iii) for "him" substitute "it".

(7) In paragraph 7A (weighing and measuring of children)—

(a) for "The Secretary of State" (in each place it occurs) substitute "A local authority",

(b) in sub-paragraph (1) omit ", by arrangement with any local authority,", and

(c) in sub-paragraph (2) —

(i) after "any school" insert "in its area", and

(ii) for "a local authority" substitute "the local authority".

(8) In paragraph 7B (regulations as to weighing and measuring of children)—

(a) in sub-paragraph (1)(b) for "by the Secretary of State" substitute "by a local authority", and

(b) in sub-paragraph (1)(d)—

(i) for "by the Secretary of State" substitute "by a local authority", and

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(ii) after "paragraph 7A" insert "and of any other prescribed information relating to the children concerned", and

(c) in sub-paragraph (2) after "such weighing or measuring" insert "or in relation to information prescribed under sub-paragraph (1)".

(9) After paragraph 7B insert—

7C "**Supply of blood and other human tissues**

The Secretary of State must for the purposes of the health service make arrangements for—

(a) collecting, screening, analysing, processing and supplying blood or other tissues,

(b) preparing blood components and reagents, and

(c) facilitating tissue and organ transplantation."

(10) In paragraph 9 (provision of vehicles for disabled persons)—

(a) the existing text becomes sub-paragraph (1),

(b) in that sub-paragraph—

(i) for "The Secretary of State may provide" substitute "A clinical commissioning group may make arrangements for the provision of", and

(ii) for "persons appearing to him to be persons who have a physical impairment" substitute "persons for whom the group has responsibility and who appear to it to have a physical impairment", and

(c) after that sub-paragraph insert—

"(2) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of sub-paragraph (1) as they apply for the purposes of that section."

(11) In paragraph 10—

(a) in sub-paragraph (1)(a) after "provided" insert "in pursuance of arrangements made",

(b) in sub-paragraph (2) —

(i) for "The Secretary of State may" substitute "The clinical commissioning group may make arrangements for",

(ii) in paragraph (a) for "adapt" substitute "the adaptation of",

(iii) in paragraph (b) for "maintain and repair" substitute "the maintenance and repair of",

(iv) in paragraph (c) for "take out" substitute "the taking out of",

(v) in that paragraph for "pay" substitute "the payment of",

(vi) in paragraph (d) for "provide" (in each place it occurs) substitute "the provision of", and

(vii) in that paragraph for "execute" substitute "the execution of",

(c) in sub-paragraph (3) for "The Secretary of State" substitute "A clinical commissioning group", and

(d) in sub-paragraph (5) for "the Secretary of State" substitute "the clinical commissioning group".

(12) In paragraph 12 (provision of a microbiological service)—

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(a) in sub-paragraph (1)—

(i) omit paragraph (a) and the word "and" immediately following it,

(ii) in paragraph (b) omit "other", and

(iii) in that paragraph for "that service" substitute "a microbiological service provided under section 2A", and

(b) omit sub-paragraph (2).

(13) For paragraph 13 and the cross-heading preceding it substitute—

13 "**Powers in relation to research etc.**

(1) The Secretary of State, the Board or a clinical commissioning group may conduct, commission or assist the conduct of research into—

(a) any matters relating to the causation, prevention, diagnosis or treatment of illness, and

(b) any such other matters connected with any service provided under this Act as the Secretary of State, the Board or the clinical commissioning group (as the case may be) considers appropriate.

(2) A local authority may conduct, commission or assist the conduct of research for any purpose connected with the exercise of its functions in relation to the health service.

(3) The Secretary of State, the Board, a clinical commissioning group or a local authority may for any purpose connected with the exercise of its functions in relation to the health service—

(a) obtain and analyse data or other information;

(b) obtain advice from persons with appropriate professional expertise.

(4) The power under sub-paragraph (1) or (2) to assist any person to conduct research includes power to do so by providing financial assistance or making the services of any person or other resources available.

(5) In this paragraph, "local authority" has the same meaning as in section 2B."

Commencement Information

I30 S. 17(1)-(9)(11)(12) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I31 S. 17(10) in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I32 S. 17(10)(13) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I33 S. 17(13) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

18 Regulations as to the exercise by local authorities of certain public health functions

(1) After section 6B of the National Health Service Act 2006 insert—

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"Regulations as to the exercise of functions

6C Regulations as to the exercise by local authorities of certain public health functions

(1) Regulations may require a local authority to exercise any of the public health functions of the Secretary of State (so far as relating to the health of the public in the authority's area) by taking such steps as may be prescribed.

(2) Regulations may require a local authority to exercise its public health functions by taking such steps as may be prescribed.

(3) Where regulations under subsection (1) require a local authority to exercise any of the public health functions of the Secretary of State, the regulations may also authorise or require the local authority to exercise any prescribed functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).

(4) The making of regulations under subsection (1) does not prevent the Secretary of State from taking any step that a local authority is required to take under the regulations.

(5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a local authority of any of its functions under regulations under subsection (1) are enforceable by or against the local authority (and no other person).

(6) In this section, "local authority" has the same meaning as in section 2B."

(2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zza) insert—

"(zzb) regulations under section 6C(1) or (2),".

Commencement Information

I34 S. 18 partly in force; s. 18 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I35 S. 18 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

19 Regulations relating to EU obligations

After section 6C of the National Health Service Act 2006 insert—

"**6D Regulations relating to EU obligations**

(1) Regulations may require the Board or a clinical commissioning group to exercise a specified EU health function.

(2) In subsection (1)—

(a) "EU health function" means any function exercisable by the Secretary of State for the purpose of implementing EU obligations that concern, or are connected to, the health service, other than a function of making

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subordinate legislation (within the meaning of the Interpretation Act 1978), and

(b) "specified" means specified in the regulations.

(3) The Secretary of State may give directions to the Board or a clinical commissioning group about its exercise of any of its functions under regulations under subsection (1).

(4) The making of regulations under subsection (1) does not prevent the Secretary of State from exercising the specified EU health function.

(5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the Board or a clinical commissioning group of any of its functions under regulations under subsection (1) are enforceable by or against the Board or (as the case may be) the group (and no other person).

(6) The Secretary of State may, for the purpose of securing compliance by the United Kingdom with EU obligations, give directions to the Board or a clinical commissioning group about the exercise of any of its functions."

Commencement Information

I36 S. 19 partly in force; s. 19 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I37 S. 19 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

20 Regulations as to the exercise of functions by the Board or clinical commissioning groups

(1) After section 6D of the National Health Service Act 2006 insert—

"**6E Regulations as to the exercise of functions by the Board or clinical commissioning groups**

(1) Regulations may impose requirements (to be known as "standing rules") in accordance with this section on the Board or on clinical commissioning groups.

(2) The regulations may, in relation to the commissioning functions of the Board or clinical commissioning groups, make provision—

(a) requiring the Board or clinical commissioning groups to arrange for specified treatments or other specified services to be provided or to be provided in a specified manner or within a specified period;

(b) as to the arrangements that the Board or clinical commissioning groups must make for the purpose of making decisions as to—

(i) the treatments or other services that are to be provided;

(ii) the manner in which or period within which specified treatments or other specified services are to be provided;

(iii) the persons to whom specified treatments or other specified services are to be provided;

(c) as to the arrangements that the Board or clinical commissioning groups must make for enabling persons to whom specified treatments

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or other specified services are to be provided to make choices with respect to specified aspects of them.

(3) Regulations by virtue of paragraph (b) of subsection (2) may, in particular, make provision—

(a) requiring the Board or a clinical commissioning group to take specified steps before making decisions as to the matters mentioned in that paragraph;

(b) as to reviews of, or appeals from, such decisions.

(4) The regulations may—

(a) specify matters for which provision must be made in commissioning contracts entered into by the Board or clinical commissioning groups;

(b) require the Board to draft terms and conditions making provision for those matters;

(c) require the Board or clinical commissioning groups to incorporate the terms and conditions drafted by virtue of paragraph (b) in commissioning contracts entered into by the Board or (as the case may be) clinical commissioning groups.

(5) The regulations must—

(a) require the Board to draft such terms and conditions as the Board considers are, or might be, appropriate for inclusion in commissioning contracts entered into by the Board or clinical commissioning groups (other than terms and conditions that the Board is required to draft by virtue of subsection (4)(a));

(b) authorise the Board to require clinical commissioning groups to incorporate terms and conditions prepared by virtue of paragraph (a) in their commissioning contracts;

(c) authorise the Board to draft model commissioning contracts.

(6) The regulations may require the Board to consult prescribed persons before exercising any of its functions by virtue of subsection (4)(b) or (5).

(7) The regulations may require the Board or clinical commissioning groups in the exercise of any of its or their functions—

(a) to provide information of a specified description to specified persons in a specified manner;

(b) to act in a specified manner for the purpose of securing compliance with EU obligations;

(c) to do such other things as the Secretary of State considers necessary for the purposes of the health service.

(8) The regulations may not impose a requirement on only one clinical commissioning group.

(9) If regulations under this section are made so as to come into force on a day other than 1 April, the Secretary of State must—

(a) publish a statement explaining the reasons for making the regulations so as to come into force on such a day, and

(b) lay the statement before Parliament.

(10) In this section—

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(a) "commissioning contracts", in relation to the Board or clinical commissioning groups, means contracts entered into by the Board or (as the case may be) clinical commissioning groups in the exercise of its or their commissioning functions;

(b) "commissioning functions", in relation to the Board or clinical commissioning groups, means the functions of the Board or (as the case may be) clinical commissioning groups in arranging for the provision of services as part of the health service;

(c) "specified" means specified in the regulations."

(2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zzb) insert—

"(zzc) regulations under section 6E, except where they do not include provision by virtue of subsection (7)(c) of that section,".

Commencement Information

I38 S. 20 partly in force; s. 20 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I39 S. 20 in force at 1.2.2013 in so far as not already in force by S.I. 2012/2657, **art. 2(4)**

21 Functions of Special Health Authorities

(1) Section 7 of the National Health Service Act 2006 (distribution of health service functions) is amended as follows.

(2) For subsection (1) substitute—

"(1) The Secretary of State may direct a Special Health Authority to exercise any functions of the Secretary of State or any other person which relate to the health service in England and are specified in the direction.

(1A) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(1B) Before exercising the power in subsection (1) in relation to a function of a person other than the Secretary of State, the Secretary of State must consult that person.

(1C) Regulations may provide that a Special Health Authority specified in the regulations is to have such additional functions in relation to the health service in England as may be so specified."

(3) Omit subsections (2) and (3).

(4) For the heading to that section, and for the cross-heading preceding it, substitute "Functions of Special Health Authorities".

(5) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zzc) insert—

"(zzd) regulations under section 7(1C),".

(6) In section 273 of that Act (further provision about orders and directions), in subsection (4)(b)—

(a) before paragraph (i) insert—

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"(zi) section 7 about a function of a person other than the Secretary of State," and

(b) in paragraph (i) after "a function" insert "of the Secretary of State".

Commencement Information

I40 S. 21 partly in force; s. 21 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I41 S. 21 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)** (with art. 12)

22 Exercise of public health functions of the Secretary of State

After section 7 of the National Health Service Act 2006 insert—

"Exercise of Secretary of State's public health functions

7A Exercise of Secretary of State's public health functions

(1) The Secretary of State may arrange for a body mentioned in subsection (2) to exercise any of the public health functions of the Secretary of State.

(2) Those bodies are—

(a) the Board;

(b) a clinical commissioning group;

(c) a local authority (within the meaning of section 2B).

(3) The power conferred by subsection (1) includes power to arrange for such a body to exercise any functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).

(4) Where the Secretary of State arranges (under subsection (1)) for the Board to exercise a function, the Board may arrange for a clinical commissioning group to exercise that function.

(5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a body mentioned in subsection (2) of any function exercisable by it by virtue of this section are enforceable by or against that body (and no other person).

(6) Powers under this section may be exercised on such terms as may be agreed, including terms as to payment."

Commencement Information

I42 S. 22 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I43 S. 22 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Further provision about the Board

23 The NHS Commissioning Board: further provision

(1) In Part 2 of the National Health Service Act 2006 (health service bodies), before Chapter 1 insert—

"**CHAPTER A1**

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Secretary of State's mandate to the Board

13A Mandate to Board

(1) Before the start of each financial year, the Secretary of State must publish and lay before Parliament a document to be known as "the mandate".

(2) The Secretary of State must specify in the mandate—

(a) the objectives that the Secretary of State considers the Board should seek to achieve in the exercise of its functions during that financial year and such subsequent financial years as the Secretary of State considers appropriate, and

(b) any requirements that the Secretary of State considers it necessary to impose on the Board for the purpose of ensuring that it achieves those objectives.

(3) The Secretary of State must also specify in the mandate the amounts that the Secretary of State has decided to specify in relation to the financial year for the purposes of section 223D(2) and (3) (limits on capital and revenue resource use).

(4) The Secretary of State may specify in the mandate any proposals that the Secretary of State has as to the amounts that the Secretary of State will specify in relation to subsequent financial years for the purposes of section 223D(2) and (3).

(5) The Secretary of State may also specify in the mandate the matters by reference to which the Secretary of State proposes to assess the Board's performance in relation to the first financial year to which the mandate relates.

(6) The Secretary of State may not specify in the mandate an objective or requirement about the exercise of the Board's functions in relation to only one clinical commissioning group.

(7) The Board must—

(a) seek to achieve the objectives specified in the mandate, and

(b) comply with any requirements so specified.

(8) Before specifying any objectives or requirements in the mandate, the Secretary of State must consult—

(a) the Board,

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(b) the Healthwatch England committee of the Care Quality Commission, and

(c) such other persons as the Secretary of State considers appropriate.

(9) Requirements included in the mandate have effect only if regulations so provide.

13B **The mandate: supplemental provision**

(1) The Secretary of State must keep the Board's performance in achieving any objectives or requirements specified in the mandate under review.

(2) If the Secretary of State varies the amount specified for the purposes of section 223D(2) or (3), the Secretary of State must revise the mandate accordingly.

(3) The Secretary of State may make any other revision to the mandate only if—

(a) the Board agrees to the revision,

(b) a parliamentary general election takes place, or

(c) the Secretary of State considers that there are exceptional circumstances that make the revision necessary.

(4) Revisions to the mandate which consist of adding, omitting or modifying requirements have effect only if regulations so provide.

(5) If the Secretary of State revises the mandate, the Secretary of State must—

(a) publish the mandate (as so revised), and

(b) lay it before Parliament, together with an explanation of the reasons for making the revision.

General duties of the Board

13C **Duty to promote NHS Constitution**

(1) The Board must, in the exercise of its functions—

(a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and

(b) promote awareness of the NHS Constitution among patients, staff and members of the public.

(2) In this section, "patients" and "staff" have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

13D **Duty as to effectiveness, efficiency etc.**

The Board must exercise its functions effectively, efficiently and economically.

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13E **Duty as to improvement in quality of services**

(1) The Board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—

(a) the prevention, diagnosis or treatment of illness, or

(b) the protection or improvement of public health.

(2) In discharging its duty under subsection (1), the Board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

(3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—

(a) the effectiveness of the services,

(b) the safety of the services, and

(c) the quality of the experience undergone by patients.

(4) In discharging its duty under subsection (1), the Board must have regard to—

(a) any document published by the Secretary of State for the purposes of this section, and

(b) the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

13F **Duty as to promoting autonomy**

(1) In exercising its functions, the Board must have regard to the desirability of securing, so far as consistent with the interests of the health service—

(a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate, and

(b) that unnecessary burdens are not imposed on any such person.

(2) If, in the case of any exercise of functions, the Board considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Board of its duties under sections 1(1) and 1H(3)(b), the Board must give priority to those duties.

13G **Duty as to reducing inequalities**

The Board must, in the exercise of its functions, have regard to the need to—

(a) reduce inequalities between patients with respect to their ability to access health services, and

(b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

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13H **Duty to promote involvement of each patient**

The Board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

(a) the prevention or diagnosis of illness in the patients, or

(b) their care or treatment.

13I **Duty as to patient choice**

The Board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

13J **Duty to obtain appropriate advice**

The Board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

(a) the prevention, diagnosis or treatment of illness, and

(b) the protection or improvement of public health.

13K **Duty to promote innovation**

(1) The Board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

(2) The Board may make payments as prizes to promote innovation in the provision of health services.

(3) A prize may relate to—

(a) work at any stage of innovation (including research);

(b) work done at any time (including work before the commencement of section 23 of the Health and Social Care Act 2012).

13L **Duty in respect of research**

The Board must, in the exercise of its functions, promote—

(a) research on matters relevant to the health service, and

(b) the use in the health service of evidence obtained from research.

13M **Duty as to promoting education and training**

The Board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

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13N **Duty as to promoting integration**

(1) The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—

(a) improve the quality of those services (including the outcomes that are achieved from their provision),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(2) The Board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—

(a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(3) The Board must encourage clinical commissioning groups to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure—

(a) that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or

(b) that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).

(4) In this section—

"health-related services" means services that may have an effect on the health of individuals but are not health services or social care services;

"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

13O **Duty to have regard to impact on services in certain areas**

(1) In making commissioning decisions, the Board must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England.

(2) In this section, "commissioning decisions", in relation to the Board, means decisions about the carrying out of its functions in arranging for the provision of health services.

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13P **Duty as respects variation in provision of health services**

The Board must not exercise its functions for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

(a) whether the persons in question are in the public or (as the case may be) private sector, or

(b) some other aspect of their status.

Public involvement

13Q **Public involvement and consultation by the Board**

(1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by the Board in the exercise of its functions ("commissioning arrangements").

(2) The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

(a) in the planning of the commissioning arrangements by the Board,

(b) in the development and consideration of proposals by the Board for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and

(c) in decisions of the Board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

(3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

Functions in relation to information

13R **Information on safety of services provided by the health service**

(1) The Board must establish and operate systems for collecting and analysing information relating to the safety of the services provided by the health service.

(2) The Board must make information collected by virtue of subsection (1), and any other information obtained by analysing it, available to such persons as the Board considers appropriate.

(3) The Board may impose charges, calculated on such basis as it considers appropriate, in respect of information made available by it under subsection (2).

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(4) The Board must give advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service.

(5) The Board must monitor the effectiveness of the advice and guidance given by it under subsection (4).

(6) A clinical commissioning group must have regard to any advice or guidance given to it under subsection (4).

(7) The Board may arrange for any other person (including another NHS body) to exercise any of the Board's functions under this section.

(8) Arrangements made under subsection (7) do not affect the liability of the Board for the exercise of any of its functions.

13S **Guidance in relation to processing of information**

(1) The Board must publish guidance for registered persons on the practice to be followed by them in relation to the processing of—

(a) patient information, and

(b) any other information obtained or generated in the course of the provision of the health service.

(2) Registered persons who carry on an activity which involves, or is connected with, the provision of health care must have regard to any guidance published under this section.

(3) In this section, "patient information", "processing" and "registered person" have the same meaning as in section 20A of the Health and Social Care Act 2008.

Business plan and report

13T **Business plan**

(1) Before the start of each financial year, the Board must publish a business plan setting out how it proposes to exercise its functions in that year and each of the next two financial years.

(2) The business plan must, in particular, explain how the Board proposes to discharge its duties under—

(a) sections 13E, 13G and 13Q, and

(b) sections 223C to 223E.

(3) The business plan must, in particular, explain how the Board proposes to achieve the objectives, and comply with the requirements, specified in the mandate for the first financial year to which the plan relates.

(4) The Board may revise the plan.

(5) The Board must publish any revised plan.

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13U **Annual report**

(1) As soon as practicable after the end of each financial year, the Board must publish an annual report on how it has exercised its functions during the year.

(2) The annual report must, in particular, contain an assessment of—

(a) the extent to which it met any objectives or requirements specified in the mandate for that year,

(b) the extent to which it gave effect to the proposals for that year in its business plan, and

(c) how effectively it discharged its duties under sections 13E, 13G and 13Q.

(3) The Board must—

(a) lay the annual report before Parliament, and

(b) once it has done so, send a copy of it to the Secretary of State.

(4) The Secretary of State must, having considered the annual report, set out in a letter to the Board the Secretary of State's assessment of the Board's performance of its functions in the financial year in question.

(5) The letter must, in particular, contain the Secretary of State's assessment of the matters mentioned in subsection (2)(a) to (c).

(6) The Secretary of State must—

(a) publish the letter to the Board, and

(b) lay it before Parliament.

Additional powers

13V **Establishment of pooled funds**

(1) The Board and one or more clinical commissioning groups may establish and maintain a pooled fund.

(2) A pooled fund is a fund—

(a) which is made up of contributions by the bodies which established it, and

(b) out of which payments may be made, with the agreement of those bodies, towards expenditure incurred in the discharge of any of their commissioning functions.

(3) In this section, "commissioning functions" means functions in arranging for the provision of services as part of the health service.

13W **Board's power to generate income, etc.**

(1) The Board has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services, etc.) for the purpose of making additional income available for improving the health service.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) The Board may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the Board of its functions.

13X **Power to make grants etc.**

(1) The Board may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the Board has functions.

(2) The payments may be made subject to such terms and conditions as the Board considers appropriate.

13Y **Board's incidental powers: further provision**

The power conferred on the Board by section 2 includes, in particular, power to—

(a) enter into agreements,
(b) acquire and dispose of property, and
(c) accept gifts (including property to be held on trust for the purposes of the Board).

Exercise of functions of Board

13Z **Exercise of functions**

(1) This section applies to functions exercisable by the Board under or by virtue of this Act or any prescribed provision of any other Act.

(2) The Board may arrange for any such function to be exercised by or jointly with—

(a) a Special Health Authority,
(b) a clinical commissioning group, or
(c) such other body as may be prescribed.

(3) Regulations may provide that the power in subsection (2) does not apply in relation to a function of a prescribed description.

(4) Where any functions are (by virtue of subsection (2)) exercisable jointly by the Board and another body, they may be exercised by a joint committee of the Board and the other body.

(5) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the other party to the arrangements.

(6) Arrangements made under this section do not affect the liability of the Board for the exercise of any of its functions.

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Power to confer additional functions

13Z1 **Power to confer additional functions on the Board**

(1) Regulations may provide that the Board is to have such additional functions in relation to the health service as may be specified in the regulations.

(2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of the Board.

Intervention powers

13Z2 **Failure by the Board to discharge any of its functions**

(1) The Secretary of State may give a direction to the Board if the Secretary of State considers that—

(a) the Board—

(i) is failing or has failed to discharge any of its functions, or

(ii) is failing or has failed properly to discharge any of its functions, and

(b) the failure is significant.

(2) A direction under subsection (1) may direct the Board to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.

(3) If the Board fails to comply with a direction under subsection (1), the Secretary of State may—

(a) discharge the functions to which it relates, or

(b) make arrangements for any other person to discharge them on the Secretary of State's behalf.

(4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.

(5) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

Disclosure of information

13Z3 **Permitted disclosures of information**

(1) The Board may disclose information obtained by it in the exercise of its functions if—

(a) the information has previously been lawfully disclosed to the public,

(b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),

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(c) the disclosure is made in accordance with any enactment or court order,

(d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,

(e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,

(f) the disclosure is made for the purpose of facilitating the exercise of any of the Board's functions,

(g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or

(h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).

(2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

13Z4 **Interpretation**

(1) In this Chapter—

"the health service" means the health service in England;

"health services" means services provided as part of the health service and, in sections 13O and 13Q, also includes services that are to be provided as part of the health service.

(2) Any reference (however expressed) in the following provisions of this Act to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),
section 13A(2),
section 13C(1),
section 13D,
section 13E(1),
section 13F,
section 13G,
section 13H,
section 13I,
section 13J,
section 13K(1),
section 13L,
section 13M,
section 13N(1) and (2),
section 13O(2),
section 13Q(1),
section 13T(1),

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section 13U(1) and (4),
section 13W(2),
section 13X(1),
section 13Z2(1),
section 13Z3(1),
section 72(1),
section 75(1)(a) and (2),
section 82,
section 223C(2)(a),
in Schedule A1, paragraph 13.

(3) Any reference (however expressed) in the following provisions of other Acts to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),
section 197(6) of the Health and Social Care Act 2012 (participation of the Board in work of Health and Wellbeing Boards),
section 199(4) of that Act (supply of information to Health and Wellbeing Boards),
section 290(1) and (2) of that Act (duties to co-operate),
section 291(2)(d) of that Act (breaches of duties to co-operate).

(4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).”

(2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (za) insert—

“(zb) regulations under section 13Z1,”.

Commencement Information

I44 S. 23 partly in force; s. 23 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I45 S. 23 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 4)
I46 S. 23 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**
I47 S. 23 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

24 Financial arrangements for the Board

Before the cross-heading preceding section 224 of the National Health Service Act 2006 insert—

“The Board

223B **Funding of the Board**

(1) The Secretary of State must pay to the Board in respect of each financial year sums not exceeding the amount allotted for that year by the Secretary of

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State towards meeting the expenditure of the Board which is attributable to the performance by it of its functions in that year.

(2) An amount is allotted to the Board for a financial year under this section when the Board is notified in writing by the Secretary of State that the amount is allotted to it for that year.

(3) The Secretary of State may make a new allotment under this section increasing or reducing the allotment previously so made only if—

(a) the Board agrees to the change,

(b) a parliamentary general election takes place, or

(c) the Secretary of State considers that there are exceptional circumstances that make a new allotment necessary.

(4) The Secretary of State may give directions to the Board with respect to the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.

(5) Sums falling to be paid to the Board under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.

223BC **Financial duties of the Board: expenditure**

(1) The Board must ensure that total health expenditure in respect of each financial year does not exceed the aggregate of—

(a) the amount allotted to the Board for that year under section 223B,

(b) any sums received by the Board or clinical commissioning groups in that year under any provision of this Act (other than sums received by the Board under section 223B or by clinical commissioning groups under section 223G), and

(c) any sums received by the Board or clinical commissioning groups in that year otherwise than under this Act for the purpose of enabling it or them to defray such expenditure.

(2) In this section, "total health expenditure", in relation to a financial year, means—

(a) expenditure which is attributable to the performance by the Board of its functions in that year, other than sums paid by it under section 223G, and

(b) expenditure which is attributable to the performance by clinical commissioning groups of their functions in that year.

(3) The Secretary of State may by directions determine whether expenditure by the Board or a clinical commissioning group which is of a description specified in the directions must, or must not, be treated for the purposes of this section as part of total health expenditure.

(4) The Secretary of State may by directions determine the extent to which, and the circumstances in which, sums received by the Board or a clinical commissioning group under section 223B or (as the case may be) 223G but not yet spent must be treated for the purposes of this section as part of total health expenditure, and to which financial year's expenditure they must be attributed.

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(5) The Secretary of State may by directions require the Board to use banking facilities specified in the directions for any purposes so specified.

223D **Financial duties of the Board: controls on total resource use**

(1) In this Chapter—

"total capital resource use", in relation to a financial year, means the use of capital resources in that year by the Board and clinical commissioning groups (taken together);

"total revenue resource use", in relation to a financial year, means the use of revenue resources in that year by the Board and clinical commissioning groups (taken together).

(2) The Board must ensure that total capital resource use in a financial year does not exceed the amount specified by the Secretary of State.

(3) The Board must ensure that total revenue resource use in a financial year does not exceed the amount specified by the Secretary of State.

(4) The Secretary of State may give directions, in relation to a financial year, specifying descriptions of resources which must, or must not, be treated as capital resources or revenue resources for the purposes of this Chapter.

(5) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must not be taken into account for the purposes of this Chapter.

(6) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must be taken into account for the purposes of this section.

(7) The amount specified for the purposes of subsection (2) or (3) may be varied only if—

(a) the Board agrees to the change,

(b) a parliamentary general election takes place, or

(c) the Secretary of State considers that there are exceptional circumstances which make the variation necessary.

(8) Any reference in this Chapter to the use of capital resources or revenue resources is a reference to their expenditure, consumption or reduction in value.

223E **Financial duties of the Board: additional controls on resource use**

(1) The Secretary of State may direct the Board to ensure that total capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(2) The Secretary of State may direct the Board to ensure that total revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(3) The Secretary of State may direct the Board to ensure —

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(a) that total revenue resource use in a financial year which is attributable to such prescribed matters relating to administration as are specified in the direction does not exceed an amount so specified;

(b) that the Board's use of revenue resources in a financial year which is attributable to such prescribed matters relating to administration as are specified in the direction does not exceed an amount so specified.

(4) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of subsection (1) or (as the case may be) subsection (2) or (3).

(5) The Secretary of State may not give a direction under subsection (1) or (2) unless the direction is for the purpose of complying with a limit imposed by the Treasury.

223F **Power to establish contingency fund**

(1) The Board may use a proportion of the sums paid to it under section 223B to establish a contingency fund.

(2) The Board may make a payment out of the fund where the payment is necessary in order to enable—

(a) the Board to discharge any of its commissioning functions, or

(b) a clinical commissioning group to discharge any of its functions.

(3) The Board must publish guidance as to how it proposes to exercise its powers to make payments out of the contingency fund.

(4) In this section, "commissioning functions" means functions in arranging for the provision of services as part of the health service."

Commencement Information

I48 S. 24 partly in force; s. 24 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I49 S. 24 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I50 S. 24 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Further provision about clinical commissioning groups

25 Clinical commissioning groups: establishment etc.

(1) After Chapter A1 of Part 2 of the National Health Service Act 2006 insert—

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"**CHAPTER A2**

CLINICAL COMMISSIONING GROUPS

Establishment of clinical commissioning groups

14A General duties of Board in relation to clinical commissioning groups

(1) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day specified by order of the Secretary of State for the purposes of this section each provider of primary medical services is a member of a clinical commissioning group.

(2) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day so specified the areas specified in the constitutions of clinical commissioning groups—

(a) together cover the whole of England, and

(b) do not coincide or overlap.

(3) For the purposes of this Chapter, "provider of primary medical services" means a person who is a party to an arrangement mentioned in subsection (4).

(4) The arrangements mentioned in this subsection are—

(a) a general medical services contract to provide primary medical services of a prescribed description,

(b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description,

(c) section 92 arrangements for the provision of primary medical services of a prescribed description.

(5) Where a person who is a provider of primary medical services is a party to more than one arrangement mentioned in subsection (4), the person is to be treated for the purposes of this Chapter as a separate provider of primary medical services in respect of each of those arrangements.

(6) Where two or more individuals practising in partnership are parties to an arrangement mentioned in subsection (4), the partnership is to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

(7) Where two or more individuals are parties to an arrangement mentioned in subsection (4) but are not practising in partnership, those persons collectively are to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

14B Applications for the establishment of clinical commissioning groups

(1) An application for the establishment of a clinical commissioning group may be made to the Board.

(2) The application may be made by any two or more persons each of whom—

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(a) is or wishes to be a provider of primary medical services, and

(b) wishes to be a member of the clinical commissioning group.

(3) The application must be accompanied by—

(a) a copy of the proposed constitution of the clinical commissioning group,

(b) the name of the person whom the group wishes the Board to appoint as its accountable officer (as to which see paragraph 12 of Schedule 1A), and

(c) such other information as the Board may specify in a document published for the purposes of this section.

(4) At any time before the Board determines the application—

(a) a person who is or wishes to be a provider of primary medical services (and wishes to be a member of the clinical commissioning group) may become a party to the application, with the agreement of the Board and the existing applicants;

(b) any of the applicants may withdraw.

(5) At any time before the Board determines the application, the applicants may modify the proposed constitution with the agreement of the Board.

(6) Part 1 of Schedule 1A makes provision about the constitution of a clinical commissioning group.

14C **Determination of applications**

(1) The Board must grant an application under section 14B if it is satisfied as to the following matters.

(2) Those matters are—

(a) that the constitution complies with the requirements of Part 1 of Schedule 1A and is otherwise appropriate,

(b) that each of the members specified in the constitution will be a provider of primary medical services on the date the clinical commissioning group is established,

(c) that the area specified in the constitution is appropriate,

(d) that it would be appropriate for the Board to appoint, as the accountable officer of the group, the person named by the group under section 14B(3)(b),

(e) that the applicants have made appropriate arrangements to ensure that the clinical commissioning group will be able to discharge its functions,

(f) that the applicants have made appropriate arrangements to ensure that the group will have a governing body which satisfies any requirements imposed by or under this Act and is otherwise appropriate, and

(g) such other matters as may be prescribed.

(3) Regulations may make provision—

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(a) as to factors which the Board must or may take into account in deciding whether it is satisfied as to the matters mentioned in subsection (2);

(b) as to the procedure for the making and determination of applications under section 14B.

14D **Effect of grant of application**

(1) If the Board grants an application under section 14B—

(a) a clinical commissioning group is established, and

(b) the proposed constitution has effect as the clinical commissioning group's constitution.

(2) Part 2 of Schedule 1A makes further provision about clinical commissioning groups.

Variation of constitution

14E **Applications for variation of constitution**

(1) A clinical commissioning group may apply to the Board to vary its constitution (including doing so by varying its area or its list of members).

(2) If the Board grants the application, the constitution of the clinical commissioning group has effect subject to the variation.

(3) Regulations may make provision—

(a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;

(b) as to factors which the Board must or may take into account in determining whether to grant such applications;

(c) as to the procedure for the making and determination of such applications.

14F **Variation of constitution otherwise than on application**

(1) The Board may vary the area specified in the constitution of a clinical commissioning group.

(2) The Board may—

(a) add any person who is a provider of primary medical services to the list of members specified in the constitution of a clinical commissioning group;

(b) remove any person from such a list.

(3) The power conferred by subsection (1) or (2) is exercisable if—

(a) the clinical commissioning group consents to the variation, or

(b) the Board considers that the variation is necessary for the purpose of discharging any of its duties under section 14A.

(4) Before varying the constitution of a clinical commissioning group under subsection (1) or (2), the Board must consult—

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(a) that group, and
(b) any other clinical commissioning group that the Board thinks might be affected by the variation.

(5) Regulations may—
(a) confer powers on the Board to vary the constitution of a clinical commissioning group;
(b) make provision as to the circumstances in which those powers are exercisable and the procedure to be followed before they are exercised.

Mergers, dissolution etc.

14G **Mergers**

(1) Two or more clinical commissioning groups may apply to the Board for—
(a) those groups to be dissolved, and
(b) another clinical commissioning group to be established under this section.

(2) An application under this section must be accompanied by—
(a) a copy of the proposed constitution of the clinical commissioning group,
(b) the name of the person whom the group wishes the Board to appoint as its accountable officer, and
(c) such other information as the Board may specify in a document published for the purposes of this section.

(3) The applicants may, with the agreement of the Board, modify the application or the proposed constitution at any time before the Board determines the application.

(4) Sections 14C and 14D(1) apply in relation to an application under this section as they apply in relation to an application under section 14B.

14H **Dissolution**

(1) A clinical commissioning group may apply to the Board for the group to be dissolved.

(2) Regulations may make provision—
(a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
(b) as to factors which the Board must or may take into account in determining whether to grant such applications;
(c) as to the procedure for the making and determination of such applications.

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Supplemental provision about applications, variation, mergers etc.

14I **Transfers in connection with variation, merger, dissolution etc.**

(1) The Board may make a property transfer scheme or a staff transfer scheme in connection with—

(a) the variation of the constitution of a clinical commissioning group under section 14E or 14F, or

(b) the dissolution of a clinical commissioning group under section 14G or 14H.

(2) A property transfer scheme is a scheme for the transfer from the clinical commissioning group of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to the Board or another clinical commissioning group.

(3) A staff transfer scheme is a scheme for the transfer from the clinical commissioning group of any rights or liabilities under or in connection with a contract of employment to the Board or another clinical commissioning group.

(4) Part 3 of Schedule 1A makes further provision about property transfer schemes and staff transfer schemes.

14J **Publication of constitution of clinical commissioning groups**

(1) A clinical commissioning group must publish its constitution.

(2) If the constitution of a clinical commissioning group is varied under section 14E or 14F, the group must publish the constitution as so varied.

14K **Guidance about the establishment of clinical commissioning groups etc.**

The Board may publish guidance as to—

(a) the making of applications under section 14B for the establishment of a clinical commissioning group, including guidance on the form, content or publication of the proposed constitution;

(b) the making of applications under section 14E, 14G or 14H;

(c) the publication of the constitutions of clinical commissioning groups under section 14J.

Governing bodies of clinical commissioning groups

14L **Governing bodies of clinical commissioning groups**

(1) A clinical commissioning group must have a governing body.

(2) The main function of the governing body is to ensure that the group has made appropriate arrangements for ensuring that it complies with—

(a) its obligations under section 14Q, and

(b) such generally accepted principles of good governance as are relevant to it.

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(3) The governing body also has—

(a) the function of determining the remuneration, fees and allowances payable to the employees of the clinical commissioning group or to other persons providing services to it,

(b) the function of determining the allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A, and

(c) such other functions connected with the exercise of its main function as may be specified in the group's constitution or by regulations.

(4) Only the following may be members of the governing body—

(a) a member of the group who is an individual;

(b) an individual appointed by virtue of regulations under section 14N(2);

(c) an individual of a description specified in the constitution of the group.

(5) Regulations may make provision requiring a clinical commissioning group to obtain the approval of its governing body before exercising any functions specified in the regulations.

(6) Regulations may make provision requiring governing bodies of clinical commissioning groups to publish, in accordance with the regulations, prescribed information relating to determinations made under subsection (3)(a) or (b).

(7) The Board may publish guidance for governing bodies on the exercise of their functions under subsection (3)(a) or (b).

14M **Audit and remuneration committees of governing bodies**

(1) The governing body of a clinical commissioning group must have an audit committee and a remuneration committee.

(2) The audit committee has—

(a) such functions in relation to the financial duties of the clinical commissioning group as the governing body considers appropriate for the purpose of assisting it in discharging its function under section 14L(2), and

(b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

(3) The remuneration committee has—

(a) the function of making recommendations to the governing body as to the discharge of its functions under section 14L(3)(a) and (b), and

(b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

14N **Regulations as to governing bodies of clinical commissioning groups**

(1) Regulations may make provision specifying the minimum number of members of governing bodies of clinical commissioning groups.

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(2) Regulations may—

(a) provide that the members of governing bodies must include the accountable officer of the clinical commissioning group;

(b) provide that the members of governing bodies, or their audit or remuneration committees, must include—

(i) individuals who are health care professionals of a prescribed description;

(ii) individuals who are lay persons;

(iii) individuals of any other description which is prescribed;

(c) in relation to any description of individuals mentioned in regulations by virtue of paragraph (b), specify—

(i) the minimum number of individuals of that description who must be appointed;

(ii) the maximum number of such individuals who may be appointed;

(d) provide that the descriptions specified for the purposes of section 14L(4)(c) may not include prescribed descriptions.

(3) Regulations may make provision as to—

(a) qualification and disqualification for membership of governing bodies or their audit or remuneration committees;

(b) how members are to be appointed;

(c) the tenure of members (including the circumstances in which a member ceases to hold office or may be removed or suspended from office);

(d) eligibility for re-appointment.

(4) Regulations may make provision for the appointment of chairs and deputy chairs of governing bodies or their audit or remuneration committees, including provision as to—

(a) qualification and disqualification for appointment;

(b) tenure of office (including the circumstances in which the chair or deputy chair ceases to hold office or may be removed or suspended from office);

(c) eligibility for re-appointment.

(5) Regulations may—

(a) make provision as to the matters which must be included in the constitutions of clinical commissioning groups under paragraph 8 of Schedule 1A;

(b) make such other provision about the procedure of governing bodies or their audit or remuneration committees as the Secretary of State considers appropriate, including provision about the frequency of meetings.

(6) In this section—

"health care professional" means an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;

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"lay person" means an individual who is not—

(a) a member of the clinical commissioning group,

(b) a health care professional, or

(c) an individual of a prescribed description.

Conflicts of interest

14O **Registers of interests and management of conflicts of interest**

(1) Each clinical commissioning group must maintain one or more registers of the interests of—

(a) the members of the group,

(b) the members of its governing body,

(c) the members of its committees or sub-committees or of committees or sub-committees of its governing body, and

(d) its employees.

(2) Each clinical commissioning group must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.

(3) Each clinical commissioning group must make arrangements to ensure—

(a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the group,

(b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days, and

(c) that any such declaration is included in the registers maintained under subsection (1).

(4) Each clinical commissioning group must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making processes.

(5) The Board must publish guidance for clinical commissioning groups on the discharge of their functions under this section.

(6) Each clinical commissioning group must have regard to guidance published under subsection (5).

(7) For the purposes of this section, the commissioning functions of a clinical commissioning group are the functions of the group in arranging for the provision of services as part of the health service."

(2) After Schedule 1 to the National Health Service Act 2006 insert the Schedule set out in Schedule 2 to this Act.

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Commencement Information

I51 S. 25 partly in force; s. 25 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I52 S. 25 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I53 S. 25(1) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 5)

I54 S. 25(2) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

26 Clinical commissioning groups: general duties etc.

After section 14O of the National Health Service Act 2006 insert—

"General duties of clinical commissioning groups

14P Duty to promote NHS Constitution

(1) Each clinical commissioning group must, in the exercise of its functions—

(a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and

(b) promote awareness of the NHS Constitution among patients, staff and members of the public.

(2) In this section, "patients" and "staff" have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

14Q Duty as to effectiveness, efficiency etc.

Each clinical commissioning group must exercise its functions effectively, efficiently and economically.

14R Duty as to improvement in quality of services

(1) Each clinical commissioning group must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness.

(2) In discharging its duty under subsection (1), a clinical commissioning group must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

(3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—

(a) the effectiveness of the services,

(b) the safety of the services, and

(c) the quality of the experience undergone by patients.

(4) In discharging its duty under subsection (1), a clinical commissioning group must have regard to any guidance published under section 14Z8.

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14S Duty in relation to quality of primary medical services

Each clinical commissioning group must assist and support the Board in discharging its duty under section 13E so far as relating to securing continuous improvement in the quality of primary medical services.

14T Duties as to reducing inequalities

Each clinical commissioning group must, in the exercise of its functions, have regard to the need to—

(a) reduce inequalities between patients with respect to their ability to access health services, and

(b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

14U Duty to promote involvement of each patient

(1) Each clinical commissioning group must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

(a) the prevention or diagnosis of illness in the patients, or

(b) their care or treatment.

(2) The Board must publish guidance for clinical commissioning groups on the discharge of their duties under this section.

(3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

14V Duty as to patient choice

Each clinical commissioning group must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

14W Duty to obtain appropriate advice

(1) Each clinical commissioning group must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

(a) the prevention, diagnosis or treatment of illness, and

(b) the protection or improvement of public health.

(2) The Board may publish guidance for clinical commissioning groups on the discharge of their duties under subsection (1).

(3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

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14X Duty to promote innovation

Each clinical commissioning group must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

14Y Duty in respect of research

Each clinical commissioning group must, in the exercise of its functions, promote—

(a) research on matters relevant to the health service, and

(b) the use in the health service of evidence obtained from research.

14Z Duty as to promoting education and training

Each clinical commissioning group must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

14Z1 Duty as to promoting integration

(1) Each clinical commissioning group must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—

(a) improve the quality of those services (including the outcomes that are achieved from their provision),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(2) Each clinical commissioning group must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—

(a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(3) In this section—

"health-related services" means services that may have an effect on the health of individuals but are not health services or social care services;

"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

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Public involvement

14Z2 Public involvement and consultation by clinical commissioning groups

(1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a clinical commissioning group in the exercise of its functions ("commissioning arrangements").

(2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

(a) in the planning of the commissioning arrangements by the group,

(b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and

(c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

(3) The clinical commissioning group must include in its constitution—

(a) a description of the arrangements made by it under subsection (2), and

(b) a statement of the principles which it will follow in implementing those arrangements.

(4) The Board may publish guidance for clinical commissioning groups on the discharge of their functions under this section.

(5) A clinical commissioning group must have regard to any guidance published by the Board under subsection (4).

(6) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

Arrangements with others

14Z3 Arrangements by clinical commissioning groups in respect of the exercise of functions

(1) Any two or more clinical commissioning groups may make arrangements under this section.

(2) The arrangements may provide for—

(a) one of the clinical commissioning groups to exercise any of the commissioning functions of another on its behalf, or

(b) all the clinical commissioning groups to exercise any of their commissioning functions jointly.

(3) For the purposes of the arrangements a clinical commissioning group may—

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(a) make payments to another clinical commissioning group, or

(b) make the services of its employees or any other resources available to another clinical commissioning group.

(4) For the purposes of the arrangements, all the clinical commissioning groups may establish and maintain a pooled fund.

(5) A pooled fund is a fund—

(a) which is made up of contributions by all the groups, and

(b) out of which payments may be made towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.

(6) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

(7) In this section, "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (including the function of making a request to the Board for the purposes of section 14Z9).

14Z4 Joint exercise of functions with Local Health Boards

(1) Regulations may provide for any prescribed functions of a clinical commissioning group to be exercised jointly with a Local Health Board.

(2) Regulations may provide for any functions that are (by virtue of subsection (1)) exercisable jointly by a clinical commissioning group and a Local Health Board to be exercised by a joint committee of the group and the Local Health Board.

(3) Arrangements made by virtue of this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

Additional powers of clinical commissioning groups

14Z5 Raising additional income

(1) A clinical commissioning group has power to do anything specified in section 7(2)(a), (b) and (e) to (h) of the Health and Medicines Act 1988 (provision of goods etc.) for the purpose of making additional income available for improving the health service.

(2) A clinical commissioning group may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the group of its functions.

14Z6 Power to make grants

(1) A clinical commissioning group may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the group has functions.

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(2) The payments may be made subject to such terms and conditions as the group considers appropriate.

Board's functions in relation to clinical commissioning groups

14Z7 Responsibility for payments to providers

(1) The Board may publish a document specifying—

(a) circumstances in which a clinical commissioning group is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another clinical commissioning group in the discharge of its commissioning functions, and

(b) how the amount of any such payment is to be determined.

(2) A clinical commissioning group is required to make payments in accordance with any document published under subsection (1).

(3) Where a clinical commissioning group is required to make a payment by virtue of subsection (2), no other clinical commissioning group is liable to make it.

(4) Accordingly, any obligation of another clinical commissioning group to make the payment ceases to have effect.

(5) Any sums payable by virtue of subsection (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

(6) The Board may publish guidance for clinical commissioning groups for the purpose of assisting them in understanding and applying any document published under subsection (1).

(7) In this section and section 14Z8, "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service.

14Z8 Guidance on commissioning by the Board

(1) The Board must publish guidance for clinical commissioning groups on the discharge of their commissioning functions.

(2) Each clinical commissioning group must have regard to guidance under this section.

(3) The Board must consult the Healthwatch England committee of the Care Quality Commission—

(a) before it first publishes guidance under this section, and

(b) before it publishes any revised guidance containing changes that are, in the opinion of the Board, significant.

14Z9 Exercise of functions by the Board

(1) The Board may, at the request of a clinical commissioning group, exercise on behalf of the group—

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(a) any of its functions under section 3 or 3A which are specified in the request, and

(b) any other functions of the group which are related to the exercise of those functions.

(2) Regulations may provide that the power in subsection (1) does not apply in relation to functions of a prescribed description.

(3) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the clinical commissioning group.

(4) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

14Z10 Power of Board to provide assistance or support

(1) The Board may provide assistance or support to a clinical commissioning group.

(2) The assistance that may be provided includes—

(a) financial assistance, and

(b) making the services of the Board's employees or any other resources of the Board available to the clinical commissioning group.

(3) Assistance or support provided under this section may be provided on such terms and conditions, including terms as to payment, as the Board considers appropriate.

(4) The Board may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this section.

(5) A clinical commissioning group must comply with any restrictions imposed under subsection (4).

Commissioning plans and reports

14Z11 Commissioning plan

(1) Before the start of each relevant period, a clinical commissioning group must prepare a plan setting out how it proposes to exercise its functions in that period.

(2) In subsection (1), "relevant period", in relation to a clinical commissioning group, means—

(a) the period which —

(i) begins on such day during the first financial year of the group as the Board may direct, and

(ii) ends at the end of that financial year, and

(b) each subsequent financial year.

(3) The plan must, in particular, explain how the group proposes to discharge its duties under—

(a) sections 14R, 14T and 14Z2, and

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(b) sections 223H to 223J.

(4) The clinical commissioning group must publish the plan.

(5) The clinical commissioning group must give a copy of the plan to the Board before the date specified by the Board in a direction.

(6) The clinical commissioning group must give a copy of the plan to each relevant Health and Wellbeing Board.

(7) The Board may publish guidance for clinical commissioning groups on the discharge of their functions by virtue of this section and sections 14Z12 and 14Z13.

(8) A clinical commissioning group must have regard to any guidance published by the Board under subsection (7).

(9) In this Chapter, "relevant Health and Wellbeing Board", in relation to a clinical commissioning group, means a Health and Wellbeing Board established by a local authority whose area coincides with, or includes the whole or any part of, the area of the group.

14Z12 Revision of commissioning plans

(1) A clinical commissioning group may revise a plan published by it under section 14Z11.

(2) If the clinical commissioning group revises the plan in a way which it considers to be significant—

(a) the group must publish the revised plan, and

(b) subsections (5) and (6) of section 14Z11 apply in relation to the revised plan as they apply in relation to the original plan.

(3) If the clinical commissioning group revises the plan in any other way, the group must—

(a) publish a document setting out the changes it has made to the plan, and

(b) give a copy of the document to the Board and each relevant Health and Wellbeing Board.

14Z13 Consultation about commissioning plans

(1) This section applies where a clinical commissioning group is—

(a) preparing a plan under section 14Z11, or

(b) revising a plan under section 14Z12 in a way which it considers to be significant.

(2) The clinical commissioning group must consult individuals for whom it has responsibility for the purposes of section 3.

(3) The clinical commissioning group must involve each relevant Health and Wellbeing Board in preparing or revising the plan.

(4) The clinical commissioning group must, in particular—

(a) give each relevant Health and Wellbeing Board a draft of the plan or (as the case may be) the plan as revised, and

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(b) consult each such Board on whether the draft takes proper account of each joint health and wellbeing strategy published by it which relates to the period (or any part of the period) to which the plan relates.

(5) Where a Health and Wellbeing Board is consulted under subsection (4)(b), the Health and Wellbeing Board must give the clinical commissioning group its opinion on the matter mentioned in that subsection.

(6) Where a Health and Wellbeing Board is consulted under subsection (4)(b)—

(a) it may also give the Board its opinion on the matter mentioned in that subsection, and

(b) if it does so, it must give the clinical commissioning group a copy of its opinion.

(7) If a clinical commissioning group revises or further revises a draft after it has been given to each relevant Health and Wellbeing Board under subsection (4), subsections (4) to (6) apply in relation to the revised draft as they apply in relation to the original draft.

(8) A clinical commissioning group must include in a plan published under section 14Z11(4) or 14Z12(2)—

(a) a summary of the views expressed by individuals consulted under subsection (2),

(b) an explanation of how the group took account of those views, and

(c) a statement of the final opinion of each relevant Health and Wellbeing Board consulted in relation to the plan under subsection (4).

(9) In this section, "joint health and wellbeing strategy" means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007 which is prepared and published by a Health and Wellbeing Board by virtue of section 196 of the Health and Social Care Act 2012.

14Z14 Opinion of Health and Wellbeing Boards on commissioning plans

(1) A relevant Health and Wellbeing Board—

(a) may give the Board its opinion on whether a plan published by a clinical commissioning group under section 14Z11(4) or 14Z12(2) takes proper account of each joint health and wellbeing strategy published by the Health and Wellbeing Board which relates to the period (or any part of the period) to which the plan relates, and

(b) if it does so, must give the clinical commissioning group a copy of its opinion.

(2) In this section, "joint health and wellbeing strategy" has the same meaning as in section 14Z13.

14Z15 Reports by clinical commissioning groups

(1) In each financial year other than its first financial year, a clinical commissioning group must prepare a report (an "annual report") on how it has discharged its functions in the previous financial year.

(2) An annual report must, in particular—

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(a) explain how the clinical commissioning group has discharged its duties under sections 14R, 14T and 14Z2, and

(b) review the extent to which the group has contributed to the delivery of any joint health and wellbeing strategy to which it was required to have regard under section 116B(1)(b) of the Local Government and Public Involvement in Health Act 2007.

(3) In preparing the review required by subsection (2)(b), the clinical commissioning group must consult each relevant Health and Wellbeing Board.

(4) The Board may give directions to clinical commissioning groups as to the form and content of an annual report.

(5) A clinical commissioning group must give a copy of its annual report to the Board before the date specified by the Board in a direction.

(6) A clinical commissioning group must—

(a) publish its annual report, and

(b) hold a meeting for the purpose of presenting the report to members of the public.

Performance assessment of clinical commissioning groups

14Z16 Performance assessment of clinical commissioning groups

(1) The Board must conduct a performance assessment of each clinical commissioning group in respect of each financial year.

(2) A performance assessment is an assessment of how well the clinical commissioning group has discharged its functions during that year.

(3) The assessment must, in particular, include an assessment of how well the group has discharged its duties under—

(a) sections 14R, 14T, 14W and 14Z2,

(b) sections 223H to 223J, and

(c) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).

(4) In conducting a performance assessment, the Board must consult each relevant Health and Wellbeing Board as to its views on the clinical commissioning group's contribution to the delivery of any joint health and wellbeing strategy to which the group was required to have regard under section 116B(1)(b) of that Act of 2007.

(5) The Board must, in particular, have regard to—

(a) any document published by the Secretary of State for the purposes of this section, and

(b) any guidance published under section 14Z8.

(6) The Board must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by the Board in respect of that year.

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Powers to require information etc.

14Z17 Circumstances in which powers in sections 14Z18 and 14Z19 apply

(1) Sections 14Z18 and 14Z19 apply where the Board has reason to believe—

(a) that the area of a clinical commissioning group is no longer appropriate, or

(b) that a clinical commissioning group might have failed, might be failing or might fail to discharge any of its functions.

(2) For the purposes of this section—

(a) a failure to discharge a function includes a failure to discharge it properly, and

(b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

14Z18 Power to require documents and information etc.

(1) Where this section applies, the Board may require a person mentioned in subsection (2) to provide to the Board any information, documents, records or other items that the Board considers it necessary or expedient to have for the purposes of any of its functions in relation to the clinical commissioning group.

(2) The persons mentioned in this subsection are—

(a) the clinical commissioning group if it has possession or control of the item in question;

(b) any member or employee of the group who has possession or control of the item in question.

(3) A person must comply with a requirement imposed under subsection (1).

(4) The power conferred by subsection (1) includes power to require that any information, documents or records kept by means of a computer be provided in legible form.

(5) The power conferred by subsection (1) does not include power to require the provision of personal records.

(6) In subsection (5), "personal records" has the meaning given by section 12 of the Police and Criminal Evidence Act 1984.

14Z19 Power to require explanation

(1) Where this section applies, the Board may require the clinical commissioning group to provide it with an explanation of any matter which relates to the exercise by the group of any of its functions, including an explanation of how the group is proposing to exercise any of its functions.

(2) The Board may require the explanation to be given—

(a) orally at such time and place as the Board may specify, or

(b) in writing.

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(3) The clinical commissioning group must comply with a requirement imposed under subsection (1).

14Z20 Use of information

Any information, documents, records or other items that are obtained by the Board in pursuance of section 14Z18 or 14Z19 may be used by the Board in connection with any of its functions in relation to clinical commissioning groups.

Intervention powers

14Z21 Power to give directions, dissolve clinical commissioning groups etc.

(1) This section applies if the Board is satisfied that—

(a) a clinical commissioning group is failing or has failed to discharge any of its functions, or

(b) there is a significant risk that a clinical commissioning group will fail to do so.

(2) The Board may direct the clinical commissioning group to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.

(3) The Board may direct—

(a) the clinical commissioning group, or

(b) the accountable officer of the group,

to cease to perform any functions for such period or periods as may be specified in the direction.

(4) The Board may—

(a) terminate the appointment of the clinical commissioning group's accountable officer, and

(b) appoint another person to be its accountable officer.

(5) Paragraph 12(4) of Schedule 1A does not apply to an appointment under subsection (4)(b).

(6) The Board may vary the constitution of the clinical commissioning group, including doing so by—

(a) varying its area,

(b) adding any person who is a provider of primary medical services to the list of members, or

(c) removing any person from that list.

(7) The Board may dissolve the clinical commissioning group.

(8) Where a direction is given under subsection (3) the Board may—

(a) exercise any of the functions that are the subject of the direction on behalf of the clinical commissioning group or (as the case may be) the accountable officer;

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(b) direct another clinical commissioning group or (as the case may be) the accountable officer of another clinical commissioning group to perform any of those functions on behalf of the group or (as the case may be) the accountable officer, in such manner and within such period or periods as may be specified in the directions.

(9) A clinical commissioning group to which a direction is given under subsection (3) must—

(a) where the Board exercises a function of the group under subsection (8)(a), co-operate with the Board, and

(b) where a direction is given under subsection (8)(b) to another clinical commissioning group or to the accountable officer of another clinical commissioning group, co-operate with the other group or (as the case may be) the accountable officer.

(10) Before exercising the power conferred by subsection (8)(b) the Board must consult the clinical commissioning group to which it is proposing to give the direction.

(11) Where the Board exercises a power conferred by subsection (6) or (7), the Board may make a property transfer scheme or a staff transfer scheme.

(12) In subsection (11), "property transfer scheme" and "staff transfer scheme" have the same meaning as in section 14I.

(13) Part 3 of Schedule 1A applies in relation to a property transfer scheme or a staff transfer scheme under subsection (11) as it applies in relation to a property transfer scheme or (as the case may be) a staff transfer scheme under section 14I(1).

(14) For the purposes of this section—

(a) a failure to discharge a function includes a failure to discharge it properly, and

(b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

Procedural requirements in connection with certain powers

14Z22 Procedural requirements in connection with certain powers

(1) Before exercising the power to dissolve a clinical commissioning group under section 14Z21(7) the Board must consult the following persons—

(a) the clinical commissioning group,

(b) relevant local authorities, and

(c) any other persons the Board considers it appropriate to consult.

(2) For that purpose, the Board must provide those persons with a statement—

(a) explaining that it is proposing to exercise the power, and

(b) giving its reasons for doing so.

(3) After consulting those persons (and before exercising the power), the Board must publish a report containing its response to the consultation.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) If the Board decides to exercise the power, the report must, in particular, explain its reasons for doing so.

(5) Regulations may make provision as to the procedure to be followed by the Board before the exercise of the powers conferred by sections 14Z18, 14Z19 and 14Z21.

(6) The Board must publish guidance as to how it proposes to exercise the powers conferred by those sections.

(7) For the purposes of subsection (1) a local authority is a relevant local authority if its area coincides with, or includes the whole or any part of, the area of the clinical commissioning group.

Disclosure of information

14Z23 Permitted disclosures of information

(1) A clinical commissioning group may disclose information obtained by it in the exercise of its functions if—

(a) the information has previously been lawfully disclosed to the public,

(b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),

(c) the disclosure is made in accordance with any enactment or court order,

(d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,

(e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,

(f) the disclosure is made for the purpose of facilitating the exercise of any of the clinical commissioning group's functions,

(g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or

(h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).

(2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

14Z24 Interpretation

(1) In this Chapter—

"financial year", in relation to a clinical commissioning group, includes the period which begins on the day the group is established and ends on the following 31 March;

"the health service" means the health service in England;

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"health services" means services provided as part of the health service and, in section 14Z2, also includes services that are to be provided as part of the health service;

"relevant Health and Wellbeing Board", in relation to a clinical commissioning group, has the meaning given by section 14Z11(9).

(2) Any reference (however expressed) in the following provisions of this Act to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),
section 14C(2)(e),
section 14P,
section 14Q,
section 14T,
section 14U(1),
section 14V,
section 14W(1),
section 14X,
section 14Y,
section 14Z,
section 14Z1(1) and (2),
section 14Z2(1),
section 14Z4(1),
section 14Z5(2),
section 14Z6(1),
section 14Z7(7),
section 14Z11(1),
section 14Z15(1),
section 14Z16(2),
sections 14Z17(1), 14Z19(1) and 14Z21(1) and (3),
section 14Z23(1),
section 72(1),
section 75(1)(a) and (2),
section 77(1)(b),
section 82,
section 89(1A)(d),
section 94(3A)(d),
section 223C(2)(b),
section 223H(1),
in Schedule 1A, paragraphs 3(1) and (3), 6, 12(9)(b) and 16(3).

(3) Any reference (however expressed) in the following provisions of other Acts to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),

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section 199(4) of the Health and Social Care Act 2012 (supply of information to Health and Wellbeing Boards),
section 291(2)(d) of that Act (breaches of duties to co-operate),
in Schedule 6 to that Act, paragraph 8(4).

(4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).”

Commencement Information

I55 S. 26 partly in force; s. 26 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I56 S. 26 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 6)
I57 S. 26 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**
I58 S. 26 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

27 Financial arrangements for clinical commissioning groups

After section 223F of the National Health Service Act 2006 insert—

“Clinical commissioning groups

223G Means of meeting expenditure of clinical commissioning groups out of public funds

(1) The Board must pay in respect of each financial year to each clinical commissioning group sums not exceeding the amount allotted for that year by the Board to the group towards meeting the expenditure of the group which is attributable to the performance by it of its functions in that year.

(2) In determining the amount to be allotted to a clinical commissioning group for any year, the Board may take into account—

(a) the expenditure of the clinical commissioning group during any previous financial year, and

(b) the amount that it proposes to hold, during the year to which the allotment relates, in any contingency fund established under section 223F.

(3) An amount is allotted to a clinical commissioning group for a year under this section when the group is notified in writing by the Board that the amount is allotted to it for that year.

(4) The Board may make a new allotment under this section increasing or reducing an allotment previously so made.

(5) Where the Board allots an amount to a clinical commissioning group or makes a new allotment under subsection (4), it must notify the Secretary of State.

(6) The Board may give directions to a clinical commissioning group with respect to—

(a) the application of sums paid to it by virtue of a new allotment increasing an allotment previously so made, and

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(b) the payment of sums by it to the Board in respect of charges or other sums referable to the valuation or disposal of assets.

(7) Sums falling to be paid to clinical commissioning groups under this section are payable subject to such conditions as to records, certificates or otherwise as the Board may determine.

(8) In this section and sections 223H to 223K "financial year" includes the period which begins on the day the clinical commissioning group is established and ends on the following 31 March.

223H Financial duties of clinical commissioning groups: expenditure

(1) Each clinical commissioning group must, in respect of each financial year, perform its functions so as to ensure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of—

(a) the amount allotted to it for that year under section 223G,

(b) any sums received by it in that year under any provision of this Act (other than sums received by it under section 223G), and

(c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray such expenditure.

(2) The Board may by directions determine—

(a) whether specified sums must, or must not, be treated for the purposes of this section as received by a specified clinical commissioning group,

(b) whether specified expenditure must, or must not, be treated for those purposes as expenditure within subsection (1) of a specified clinical commissioning group, or

(c) the extent to which, and the circumstances in which, sums received by a clinical commissioning group under section 223G but not yet spent must be treated for the purposes of this section as part of the expenditure of the group, and to which financial year's expenditure they must be attributed.

(3) The Secretary of State may by directions require a clinical commissioning group to use specified banking facilities for any specified purposes.

(4) In this section, "specified" means specified in the directions.

223I Financial duties of clinical commissioning groups: use of resources

(1) For the purposes of this section and section 223J—

(a) a clinical commissioning group's capital resource use, in relation to a financial year, means the group's use of capital resources in that year, and

(b) a clinical commissioning group's revenue resource use, in relation to a financial year, means the group's use of revenue resources in that year.

(2) A clinical commissioning group must ensure that its capital resource use in a financial year does not exceed the amount specified by direction of the Board.

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(3) A clinical commissioning group must ensure that its revenue resource use in a financial year does not exceed the amount specified by direction of the Board.

(4) Any directions given in relation to a financial year under subsection (6) of section 223D apply (in relation to that year) for the purposes of this section as they apply for the purposes of that section.

(5) The Board may by directions make provision for determining to which clinical commissioning group a use of capital resources or revenue resources is to be attributed for the purposes of this section or section 223J.

(6) Where the Board gives a direction under subsection (2) or (3), it must notify the Secretary of State.

223J Financial duties of clinical commissioning groups: additional controls on resource use

(1) The Board may direct a clinical commissioning group to ensure that its capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(2) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(3) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to prescribed matters relating to administration does not exceed an amount specified in the direction.

(4) The Board may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of subsection (1) or (as the case may be) subsection (2) or (3).

(5) The Board may not exercise the power conferred by subsection (1) or (2) in relation to particular matters unless the Secretary of State has given a direction in relation to those matters under subsection (1) of section 223E or (as the case may be) subsection (2) of that section.

(6) The Board may not exercise the power conferred by subsection (3) in relation to prescribed matters relating to administration unless the Secretary of State has given a direction in relation to those matters under subsection (3)(a) of section 223E.

223K Payments in respect of quality

(1) The Board may, after the end of a financial year, make a payment to a clinical commissioning group.

(2) For the purpose of determining whether to make a payment under subsection (1) and (if so) the amount of the payment, the Board must take into account at least one of the following factors—

(a) the quality of relevant services provided during the financial year;

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(b) any improvement in the quality of relevant services provided during that year (in comparison to the quality of relevant services provided during previous financial years);

(c) the outcomes identified during the financial year as having been achieved from the provision at any time of relevant services;

(d) any improvement in the outcomes identified during that financial year as having been so achieved (in comparison to the outcomes identified during previous financial years as having been so achieved).

(3) For that purpose, the Board may also take into account either or both of the following factors—

(a) relevant inequalities identified during that year;

(b) any reduction in relevant inequalities identified during that year (in comparison to relevant inequalities identified during previous financial years).

(4) Regulations may make provision as to the principles or other matters that the Board must or may take into account in assessing any factor mentioned in subsection (2) or (3).

(5) Regulations may provide that, in prescribed circumstances, the Board may, if it considers it appropriate to do so—

(a) not make a payment that would otherwise be made to a clinical commissioning group under subsection (1), or

(b) reduce the amount of such a payment.

(6) Regulations may make provision as to how payments under subsection (1) may be spent (which may include provision as to circumstances in which the whole or part of any such payments may be distributed to members of the clinical commissioning group).

(7) A clinical commissioning group must publish an explanation of how the group has spent any payment made to it under subsection (1).

(8) In this section—

"relevant services" means services provided in pursuance of arrangements made by the clinical commissioning group—

(a) under section 3 or 3A or Schedule 1, or

(b) by virtue of section 7A;

"relevant inequalities" means inequalities between the persons for whose benefit relevant services are at any time provided with respect to—

(a) their ability to access the services, or

(b) the outcomes achieved for them by their provision."

Commencement Information

I59 S. 27 partly in force; s. 27 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I60 S. 27 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I61 S. 27 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

28 Requirement for primary medical services provider to belong to clinical commissioning group

(1) In section 89 of the National Health Service Act 2006 (general medical services contracts: required terms), after subsection (1) insert—

"(1A) Regulations under subsection (1) may, in particular, make provision—

(a) for requiring a contractor who provides services of a prescribed description (a "relevant contractor") to be a member of a clinical commissioning group;

(b) as to arrangements for securing that a relevant contractor appoints one individual to act on its behalf in the dealings between it and the clinical commissioning group to which it belongs;

(c) for imposing requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);

(d) for requiring a relevant contractor, in doing anything pursuant to the contract, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).

(1B) Provision by virtue of subsection (1A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.

(1C) In the case of a contract entered into by two or more individuals practising in partnership—

(a) regulations making provision under subsection (1A)(a) may make provision for requiring each partner to secure that the partnership is a member of the clinical commissioning group;

(b) regulations making provision under subsection (1A)(b) may make provision as to arrangements for securing that the partners make the appointment;

(c) regulations making provision under subsection (1A)(d) may make provision for requiring each partner to act as mentioned there.

(1D) Regulations making provision under subsection (1A) for the case of a contract entered into by two or more individuals practising in partnership may make provision as to the effect of a change in the membership of the partnership.

(1E) The regulations may require an individual appointed for the purposes of subsection (1A)(b)—

(a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and

(b) to meet such other conditions as may be prescribed."

(2) In section 94 of that Act (regulations about arrangements under section 92 of that Act for provision of primary medical services), after subsection (3) insert—

"(3A) Regulations under subsection (3)(d) may—

(a) require a person who provides services of a prescribed description in accordance with section 92 arrangements (a "relevant provider") to be a member of a clinical commissioning group;

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(b) make provision as to arrangements for securing that a relevant provider appoints one individual to act on its behalf in dealings between it and the clinical commissioning group to which it belongs;

(c) impose requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);

(d) require a relevant provider, in doing anything pursuant to section 92 arrangements, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).

(3B) Provision by virtue of subsection (3A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.

(3C) In the case of an agreement made with two or more persons—

(a) regulations making provision under subsection (3A)(a) may require each person to secure that the persons collectively are a member of the clinical commissioning group;

(b) regulations making provision under subsection (3A)(b) may make provision as to arrangements for securing that the persons collectively make the appointment;

(c) regulations making provision under subsection (3A)(d) may require each person to act as mentioned there.

(3D) Regulations making provision under subsection (3A) for the case of an agreement made with two or more persons may make provision as to the effect of a change in the composition of the group of persons involved.

(3E) The regulations may require an individual appointed for the purposes of subsection (3A)(b)—

(a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and

(b) to meet such other conditions as may be prescribed."

Commencement Information

I62 S. 28 partly in force; s. 28 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I63 S. 28 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Further provision about local authorities' role in the health service

29 Other health service functions of local authorities under the 2006 Act

(1) The National Health Service Act 2006 (c. 41) is amended as follows.

(2) In section 111 (dental public health)—

(a) in subsection (1) for "A Primary Care Trust" substitute "A local authority",

(b) in subsection (2)—

(i) for "Primary Care Trust" (in each place where it occurs) substitute "local authority", and

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(ii) in paragraph (b) for "other Primary Care Trusts" substitute "other local authorities", and

(c) after subsection (2) insert—

"(3) In this section, "local authority" has the same meaning as in section 2B."

(3) In section 249 (joint working with the prison service) after subsection (4) insert—

"(4A) For the purposes of this section, each local authority (within the meaning of section 2B) is to be treated as an NHS body."

Commencement Information

I64 S. 29 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

30 Appointment of directors of public health

In Part 3 of the National Health Service Act 2006 (local authorities and the NHS) before section 74 insert—

"73A **Appointment of directors of public health**

(1) Each local authority must, acting jointly with the Secretary of State, appoint an individual to have responsibility for —

(a) the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1,

(b) the exercise by the authority of its functions by virtue of section 6C(1) or (3),

(c) anything done by the authority in pursuance of arrangements under section 7A,

(d) the exercise by the authority of any of its functions that relate to planning for, or responding to, emergencies involving a risk to public health,

(e) the functions of the authority under section 325 of the Criminal Justice Act 2003, and

(f) such other functions relating to public health as may be prescribed.

(2) The individual so appointed is to be an officer of the local authority and is to be known as its director of public health.

(3) Subsection (4) applies if the Secretary of State—

(a) considers that the director has failed or might have failed to discharge (or to discharge properly) the responsibilities of the director under—

(i) subsection (1)(b), or

(ii) subsection (1)(c) where the arrangements relate to the Secretary of State's functions under section 2A, and

(b) has consulted the local authority.

(4) The Secretary of State may direct the local authority to—

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(a) review how the director has discharged the responsibilities mentioned in subsection (3)(a);

(b) investigate whether the director has failed to discharge (or to discharge properly) those responsibilities;

(c) consider taking any steps specified in the direction;

(d) report to the Secretary of State on the action it has taken in pursuance of a direction given under any of the preceding paragraphs.

(5) A local authority may terminate the appointment of its director of public health.

(6) Before terminating the appointment of its director of public health, a local authority must consult the Secretary of State.

(7) A local authority must have regard to any guidance given by the Secretary of State in relation to its director of public health, including guidance as to appointment and termination of appointment, terms and conditions and management.

(8) In this section, "local authority" has the same meaning as in section 2B."

Commencement Information

I65 S. 30 partly in force; s. 30 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I66 S. 30 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

31 Exercise of public health functions of local authorities

In Part 3 of the National Health Service Act 2006 after section 73A insert—

"**73B Exercise of public health functions of local authorities: further provision**

(1) A local authority must, in the exercise of any functions mentioned in subsection (2), have regard to any document published by the Secretary of State for the purposes of this section.

(2) The functions mentioned in this subsection are—

(a) the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1,

(b) the exercise by the authority of its functions by virtue of section 6C(1) or (3),

(c) anything done by the authority in pursuance of arrangements under section 7A,

(d) the functions of the authority under section 325 of the Criminal Justice Act 2003, and

(e) such other functions relating to public health as may be prescribed.

(3) The Secretary of State may give guidance to local authorities as to the exercise of any functions mentioned in subsection (2).

(4) A document published under subsection (1), and guidance given under subsection (3), may include guidance as to the appointment of officers of the

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local authority to discharge any functions mentioned in subsection (2), and as to their terms and conditions, management and dismissal.

(5) The director of public health for a local authority must prepare an annual report on the health of the people in the area of the local authority.

(6) The local authority must publish the report.

(7) In this section, "local authority" has the same meaning as in section 2B."

Commencement Information

I67 S. 31 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

32 Complaints about exercise of public health functions by local authorities

In Part 3 of the National Health Service Act 2006 (local authorities and the NHS) after section 73B insert—

"**73C Complaints about exercise of public health functions by local authorities**

(1) Regulations may make provision about the handling and consideration of complaints made under the regulations about —

(a) the exercise by a local authority of any of its public health functions;

(b) the exercise by a local authority of its functions by virtue of section 6C(1) or (3);

(c) anything done by a local authority in pursuance of arrangements made under section 7A;

(d) the exercise by a local authority of any of its other functions—

(i) which relate to public health, and

(ii) for which its director of public health has responsibility;

(e) the provision of services by another person in pursuance of arrangements made by a local authority in the exercise of any function mentioned in paragraphs (a) to (d).

(2) The regulations may provide for a complaint to be considered by one or more of the following—

(a) the local authority in respect of whose functions the complaint is made;

(b) an independent panel established under the regulations;

(c) any other person or body.

(3) The regulations may provide for a complaint or any matter raised by a complaint—

(a) to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 for the Commissioner to consider whether to investigate the complaint or matter under that Part;

(b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) Where the regulations make provision under subsection (3)(a) they may also provide for the complaint to be treated as satisfying sections 26A and 26B of the Act of 1974.

(5) Section 115 of the Health and Social Care (Community Health and Standards) Act 2003 (health care and social services complaints regulations: supplementary) applies in relation to regulations under this section as it applies in relation to regulations under subsection (1) of section 113 of that Act.

(6) In this section, "local authority" has the same meaning as in section 2B."

Commencement Information
I68 S. 32 partly in force; s. 32 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I69 S. 32 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Abolition of Strategic Health Authorities and Primary Care Trusts

33 Abolition of Strategic Health Authorities

(1) The Strategic Health Authorities continued in existence or established under section 13 of the National Health Service Act 2006 are abolished.

(2) Chapter 1 of Part 2 of that Act (Strategic Health Authorities) is repealed.

Commencement Information
I70 S. 33 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

34 Abolition of Primary Care Trusts

(1) The Primary Care Trusts continued in existence or established under section 18 of the National Health Service Act 2006 are abolished.

(2) Chapter 2 of Part 2 of that Act (Primary Care Trusts) is repealed.

Commencement Information
I71 S. 34 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Functions relating to fluoridation of water

35 Fluoridation of water supplies

(1) Chapter 4 of Part 3 of the Water Industry Act 1991 (fluoridation), as amended by the Water Act 2003, is amended as follows.

(2) In section 87 (fluoridation of water supplies at request of relevant authorities), in subsection (3)(a) for sub-paragraph (i) substitute—

"(i) in relation to areas in England, are to the Secretary of State;".

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) After subsection (3) of that section insert—

"(3A) The Secretary of State may make a request under subsection (1) only if the Secretary of State is required to do so by section 88G(2) (following the making of a fluoridation proposal in accordance with section 88B)."

(4) In subsection (4) of that section, for paragraph (a) substitute—

"(a) in relation to England, such area as the Secretary of State considers appropriate for the purpose of complying with section 88G(2);".

(5) After subsection (7) of that section insert—

"(7A) The Secretary of State must, in relation to the terms to be included in any arrangements under this section, consult any local authority whose area includes, coincides with or is wholly or partly within the specified area.

(7B) In this section and the following provisions of this Chapter "local authority" means—

(a) a county council in England;

(b) a district council in England, other than a council for a district in a county for which there is a county council;

(c) a London borough council;

(d) the Common Council of the City of London."

(6) After subsection (7B) of that section (as inserted by subsection (5) above) insert—

"(7C) If the Secretary of State and the Welsh Ministers request a particular water undertaker to enter into arrangements in respect of adjoining areas—

(a) they must co-operate with each other so as to secure that the arrangements (taken together) are operable and efficient; and

(b) if suitable terms are not agreed for all the arrangements, a combined reference may be made by them under section 87B below to enable the terms of each set of arrangements to be determined so that they are consistent.

(7D) If the Secretary of State requests a water undertaker to vary arrangements for an area which adjoins an area in respect of which the Welsh Ministers have made arrangements with the same water undertaker, the Secretary of State must co-operate with the Welsh Ministers so as to secure that following the variation the arrangements (taken together) will be operable and efficient.

(7E) If the Welsh Ministers request a water undertaker to vary arrangements for an area which adjoins an area in respect of which the Secretary of State has made arrangements with the same water undertaker, the Welsh Ministers must co-operate with the Secretary of State so as to secure that following the variation the arrangements (taken together) will be operable and efficient.

(7F) If suitable terms are not agreed for a variation to which subsection (7D) or (7E) applies, a combined reference may be made by the Secretary of State and the Welsh Ministers under section 87B below so that (following the variation) both sets of arrangements are consistent."

(7) Omit subsections (8) to (10) of that section.

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(8) In subsection (11) of that section for "a relevant authority" substitute "the Welsh Ministers".

(9) In section 87A (target concentration of fluoridation), after subsection (3) insert—

"(3A) If the Secretary of State proposes to—

(a) make arrangements which provide for the concentration in the specified area (or any part of it) to be lower than the general target concentration, or

(b) vary existing arrangements so that they so provide,

the Secretary of State shall consult any local authority whose area includes, coincides with or is wholly or partly within the specified area."

(10) In section 87B (fluoridation arrangements: determination of terms), in subsection (2) —

(a) for paragraph (a) substitute—

"(a) the Secretary of State may—

(i) determine the terms of the arrangements as the Secretary of State sees fit; or

(ii) refer the matter for determination by such other person as the Secretary of State considers appropriate; and", and"

(b) omit paragraph (b).

(11) In that section, in subsection (4) for the words from the beginning to "section 87(8)(b) or (10)" substitute "Where a combined reference is made under section 87(7C)(b) or 87(7F)".

(12) In section 87C (fluoridation arrangements: compliance), omit subsection (8).

(13) In section 89—

(a) in the heading, after "Consultation" insert ":Wales",

(b) in subsections (1) and (4) for "a relevant authority" substitute "the Welsh Ministers",

(c) in subsection (1) for "the appropriate authority" (in each place where it occurs) substitute "the Welsh Ministers",

(d) in subsection (3), in paragraph (a) for "relevant authorities" substitute "the Welsh Ministers",

(e) in subsection (4) for "the appropriate authority so directs" substitute "the Welsh Ministers so direct", and

(f) omit subsection (5).

(14) In section 90A (review of fluoridation) after subsection (5) insert—

"(5A) The relevant authority must, in exercising its functions under subsection (1)—

(a) consult any local authority affected by the arrangements at such times as the relevant authority considers appropriate, and

(b) in particular, consult any such local authority before it publishes a report under paragraph (b) of that subsection."

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Commencement Information

I72 S. 35(1)-(5)(7)-(14) in force at 1.4.2013 for E. by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

36 Procedural requirements in connection with fluoridation of water supplies

After section 88A of the Water Industry Act 1991 insert—

"88B Requirement for fluoridation proposal: England

(1) The Secretary of State may not request a water undertaker to enter into arrangements under section 87(1) unless a fluoridation proposal is made to the Secretary of State.

(2) A fluoridation proposal is a proposal that the Secretary of State enter into arrangements with one or more water undertakers to increase the fluoride content of the water supplied by the undertaker or undertakers to premises within such area or areas in England as may be specified in the proposal.

(3) A fluoridation proposal may be made by one or more local authorities in England.

(4) A local authority may not make a fluoridation proposal unless its area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.

(5) In the following provisions of this Chapter, "proposer", in relation to a fluoridation proposal, means the local authority or authorities which made the proposal.

(6) Any reference in the following provisions of this Chapter to a local authority affected by a fluoridation proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.

88C Initial consultation etc. on fluoridation proposal

(1) This section applies if a fluoridation proposal is made.

(2) The proposer must consult the Secretary of State as to whether the arrangements which would result from implementing the proposal would be operable and efficient.

(3) The proposer must consult each water undertaker who supplies water to premises within the area or areas specified in the proposal as to whether the arrangements which would result from implementing the proposal, insofar as they might affect the undertaker, would be operable and efficient.

(4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.

(5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (3).

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(6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements would not be operable and efficient, no further steps may be taken in relation to the proposal.

88D Additional requirements where other local authorities affected

(1) This section applies where—

(a) a fluoridation proposal is made,

(b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,

(c) one or more local authorities other than the proposer are affected by the proposal, and

(d) the proposer wishes to take further steps in relation to the proposal.

(2) The proposer must notify any other local authority which is affected by the proposal.

(3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.

(4) The Secretary of State must by regulations—

(a) make provision as to the arrangements which must be made for the purposes of subsection (3), and

(b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

88E Decision on fluoridation proposal

(1) This section applies where—

(a) a fluoridation proposal is made,

(b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,

(c) in a case where section 88D applies, the conditions prescribed under subsection (4)(b) of that section are satisfied, and

(d) the proposer wishes to take further steps in relation to the proposal.

(2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.

(3) The proposer may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.

(4) But the proposal may not be modified so as to extend the boundary of any area to which it relates, or to add another area, except in circumstances prescribed in regulations by the Secretary of State.

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(5) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to make such requests under section 87(1) as are necessary to implement the proposal.

(6) The Secretary of State may by regulations make provision—

(a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (5);

(b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (5).

88F Decision-making procedure: exercise of functions by committee

(1) This section applies in relation to the exercise of functions under or by virtue of section 88E(2) to (5) ("the fluoridation functions") except where the proposer is a single local authority and either—

(a) no other local authorities are affected by the proposal, or

(b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the fluoridation functions.

(2) The local authorities affected by the proposal must—

(a) arrange for an existing joint committee of the authorities to exercise the fluoridation functions,

(b) establish a joint committee of the authorities for that purpose, or

(c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the fluoridation functions.

(3) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the fluoridation functions.

(4) The Secretary of State may by regulations make provision—

(a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;

(b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);

(c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (3);

(d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the fluoridation functions.

88G Secretary of State's duty in relation to fluoridation proposal

(1) This section applies if the Secretary of State is requested to make such requests under section 87(1) as are necessary to implement a fluoridation proposal.

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(2) The Secretary of State must comply with the request if the Secretary of State is satisfied that the requirements imposed by sections 88B to 88F have been met in relation to the proposal.

(3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88C(2) or (3), 88D(4) or 88E(2).

88H Payments by local authorities towards fluoridation costs

(1) This section applies where a water undertaker enters into arrangements with the Secretary of State under section 87(1).

(2) The Secretary of State may require all local authorities affected by the arrangements to make payments to the Secretary of State to meet any costs incurred by the Secretary of State under the terms of the arrangements.

(3) The amount to be paid by each of the affected local authorities is to be determined—

(a) where a joint committee, or a joint sub-committee of Health and Wellbeing Boards, has exercised the fluoridation functions of the authorities in relation to the proposal which resulted in the arrangements being made and the committee or sub-committee continues to exist at the time when the Secretary of State exercises the power conferred by subsection (2), by that committee or sub-committee;

(b) in any other case, by agreement between the local authorities.

(4) If the amount to be paid by the affected local authorities is not determined as mentioned in subsection (3), the Secretary of State may—

(a) determine the amount to be paid, or

(b) refer the matter for determination by such other person as the Secretary of State considers appropriate.

(5) The amount determined in accordance with subsection (3) may, at the request of one or more of the affected local authorities, be varied with the agreement of all of them.

(6) If the affected local authorities fail to reach agreement for the purposes of subsection (5), the Secretary of State may—

(a) determine whether to vary the amount (and, if so, how), or

(b) refer the matter for determination by such other person as the Secretary of State considers appropriate.

(7) Any reference in this section to a local authority affected by arrangements under section 87(1) is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.

88I Variation or termination of arrangements under section 87(1)

(1) The Secretary of State may not request a water undertaker to vary arrangements entered into by the water undertaker under section 87(1) unless a proposal ("a

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variation proposal") is made to the Secretary of State for a variation in the arrangements.

(2) The Secretary of State may not give notice to a water undertaker under section 87C(7) to terminate arrangements entered into by the water undertaker under section 87(1) unless a proposal ("a termination proposal") is made to the Secretary of State for the termination of the arrangements.

(3) Subsection (1) does not apply in relation to a variation to provide for the concentration of fluoride in the area specified in the arrangements (or any part of it) to be lower than the general target concentration.

(4) The Secretary of State may by regulations provide that subsection (1) or (2) does not apply in prescribed circumstances.

(5) A variation or termination proposal may be made by one or more of the local authorities affected by the arrangements.

(6) The Secretary of State may by regulations provide that, where a termination proposal is made in relation to arrangements under section 87(1), no further termination proposal may be made in relation to the arrangements until the end of such period as may be specified in the regulations.

(7) In the following provisions of this Chapter, "proposer", in relation to a variation or termination proposal, means the local authority or authorities which made the proposal.

(8) Any reference in this section and in the following provisions of this Chapter to a local authority affected by a variation or termination proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.

(9) In relation to a proposal for the variation of the area specified in arrangements under section 87(1), any reference in this section and in the following provisions of this Chapter to a local authority affected by the proposal also includes a reference to a local authority whose area would include, coincide with or be wholly or partly within the area specified in the arrangements if the variation were made.

88J Initial consultation etc. on variation or termination proposal

(1) This section applies if a variation or termination proposal is made.

(2) In the case of a variation proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether the arrangements as varied in accordance with the proposal would be operable and efficient.

(3) In the case of a termination proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether it would be reasonably practicable to terminate the arrangements.

(4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.

(5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (2) or (3).

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(6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements as varied would not be operable and efficient or (as the case may be) that it would not be reasonably practicable to terminate the arrangements, no further steps may be taken in relation to the proposal.

88K Additional requirements where other local authorities affected

(1) This section applies where—

(a) a variation or termination proposal is made,

(b) the Secretary of State is of the opinion that the arrangements as varied would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,

(c) one or more local authorities other than the proposer are affected by the proposal, and

(d) the proposer wishes to take further steps in relation to the proposal.

(2) The proposer must notify any other local authority which is affected by the proposal.

(3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.

(4) The duty in subsection (3) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.

(5) The Secretary of State may by regulations provide that the duty in subsection (3) does not apply in prescribed circumstances.

(6) The Secretary of State must by regulations—

(a) make provision as to the arrangements which must be made for the purposes of subsection (3), and

(b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

88L Decision on variation or termination proposal

(1) This section applies where—

(a) a variation or termination proposal is made,

(b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,

(c) in a case where the duty in section 88K(3) applies, the conditions prescribed under subsection (6)(b) of that section are satisfied, and

(d) the proposer wishes to take further steps in relation to the proposal.

(2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.

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(3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.

(4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.

(5) The proposer of a variation proposal may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.

(6) But, except in circumstances prescribed in regulations by the Secretary of State, the proposal may not be modified so as to propose the extension of the boundary of the area specified in the arrangements or, if the proposal is that the arrangements be varied so as to extend the boundary, may not be modified so as to propose a further extension of it.

(7) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to request the water undertaker to vary the arrangements or (as the case may be) to give notice under section 87C(7) to the water undertaker to terminate the arrangements.

(8) The Secretary of State may by regulations may make provision—

(a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (7);

(b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (7).

88M Decision-making procedure: exercise of functions by committee

(1) This section applies in relation to the exercise of functions under or by virtue of section 88L(2) to (7) ("the relevant functions") except where the proposer is a single local authority and either—

(a) no other local authorities are affected by the proposal, or

(b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the functions.

(2) The local authorities affected by the proposal must—

(a) arrange for an existing joint committee of the authorities to exercise the relevant functions,

(b) establish a joint committee of the authorities for that purpose, or

(c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the relevant functions.

(3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.

(4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.

(5) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the relevant functions.

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(6) The Secretary of State may by regulations make provision—

(a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;

(b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);

(c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (5);

(d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the relevant functions.

88N Secretary of State's duty in relation to requests for variation or termination

(1) This section applies if (following the making of a variation or termination proposal) the Secretary of State is requested—

(a) to request a variation of arrangements entered into under section 87(1), or

(b) (as the case may be) to give notice under section 87C(7) to a water undertaker to terminate such arrangements.

(2) The Secretary of State must comply with the request if satisfied that the requirements imposed by sections 88I to 88M have been met in relation to the proposal.

(3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88J(2) or (3), 88K(6) or 88L(2).

88O Power to make regulations as to maintenance of section 87 arrangements

(1) The Secretary of State may by regulations prescribe circumstances in which arrangements must be made in accordance with the regulations—

(a) for consulting and ascertaining opinion on whether arrangements under section 87(1) ("section 87(1) arrangements") should be maintained, and

(b) for enabling authorities affected by section 87(1) arrangements to decide whether to propose to the Secretary of State that they be maintained.

(2) The regulations must make provision requiring the Secretary of State to give notice under section 87C(7) to a water undertaker to terminate section 87(1) arrangements entered into by the undertaker if—

(a) the outcome of arrangements made by virtue of subsection (1)(b) is that the affected authorities decide not to propose that the section 87(1) arrangements be maintained, and

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(b) the Secretary of State is satisfied that any requirements imposed by regulations under subsection (1), as to the arrangements to be made for the purposes mentioned in that subsection, have been met.

(3) Subsection (2)(b) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed by regulations made under subsection (1).

(4) The provision that may be made by regulations under subsection (1) (as to the arrangements to be made for the purposes mentioned in that subsection) includes provision corresponding, or similar, to any requirements imposed by or under sections 88K to 88M."

Commencement Information

I73 S. 36 partly in force; s. 36 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I74 S. 36 in force at 1.4.2013 for E. by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

37 Fluoridation of water supplies: transitional provision

(1) In relation to any time on or after the commencement of section 35, any relevant arrangements which have effect immediately before its commencement are to be treated for the purposes of Chapter 4 of Part 3 of the Water Industry Act 1991 as if they were arrangements entered into by the water undertaker with the Secretary of State under section 87(1) of that Act.

(2) In subsection (1) "relevant arrangements" means—

(a) any arrangements entered into by a water undertaker with a Strategic Health Authority under section 87(1) of the Water Industry Act 1991, and

(b) any arrangements which are treated as arrangements falling within paragraph (a) by virtue of section 91 of that Act (as it had effect immediately before the commencement of this section).

(3) In its application to arrangements which are treated by virtue of subsection (1) as arrangements entered into by a water undertaker with the Secretary of State under section 87(1) of the Water Industry Act 1991, section 88H of that Act applies as if for subsection (3) there were substituted—

"(3) The amount to be paid by each of the affected local authorities is to be determined by agreement between the local authorities.".

(4) Section 91 of the Water Industry Act 1991 (pre-1985 fluoridation schemes) ceases to have effect in relation to arrangements which are (by virtue of subsection (1)) treated as if they were arrangements entered into by a water undertaker with the Secretary of State under section 87(1) of that Act.

Commencement Information

I75 S. 37 in force at 1.4.2013 for E. by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Functions relating to mental health matters

38 Approval functions

(1) After section 12 of the Mental Health Act 1983 insert—

"**12ZA Agreement for exercise of approval function: England**

(1) The Secretary of State may enter into an agreement with another person for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—

(a) with that other person, and

(b) if a requirement under section 12ZB has effect, with the other person by whom the function is exercisable under that requirement.

(2) In this section and sections 12ZB and 12ZC, "approval function" means—

(a) the function under section 12(2), or

(b) the function of approving persons as approved clinicians.

(3) An agreement under this section may, in particular, provide for an approval function to be exercisable by the other party—

(a) in all circumstances or only in specified circumstances;

(b) in all areas or only in specified areas.

(4) An agreement under this section may provide for an approval function to be exercisable by the other party—

(a) for a period specified in the agreement, or

(b) for a period determined in accordance with the agreement.

(5) The other party to an agreement under this section must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.

(6) An instruction under subsection (5) may require the other party to cease to exercise the function to such extent as the instruction specifies.

(7) The agreement may provide for the Secretary of State to pay compensation to the other party in the event of an instruction such as is mentioned in subsection (6) being given.

(8) An instruction under subsection (5) may be given in such form as the Secretary of State may determine.

(9) The Secretary of State must publish instructions under subsection (5) in such form as the Secretary of State may determine; but that does not apply to an instruction such as is mentioned in subsection (6).

(10) An agreement under this section may provide for the Secretary of State to make payments to the other party; and the Secretary of State may make payments to other persons in connection with the exercise of an approval function by virtue of this section.

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12ZB Requirement to exercise approval functions: England

(1) The Secretary of State may impose a requirement on the National Health Service Commissioning Board ("the Board") or a Special Health Authority for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—

(a) with the Board or (as the case may be) Special Health Authority, and

(b) if an agreement under section 12ZA has effect, with the other person by whom the function is exercisable under that agreement.

(2) The Secretary of State may, in particular, require the body concerned to exercise an approval function—

(a) in all circumstances or only in specified circumstances;

(b) in all areas or only in specified areas.

(3) The Secretary of State may require the body concerned to exercise an approval function—

(a) for a period specified in the requirement, or

(b) for a period determined in accordance with the requirement.

(4) Where a requirement under subsection (1) is imposed, the Board or (as the case may be) Special Health Authority must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.

(5) An instruction under subsection (4) may be given in such form as the Secretary of State may determine.

(6) The Secretary of State must publish instructions under subsection (4) in such form as the Secretary of State may determine.

(7) Where the Board or a Special Health Authority has an approval function by virtue of this section, the function is to be treated for the purposes of the National Health Service Act 2006 as a function that it has under that Act.

(8) The Secretary of State may make payments in connection with the exercise of an approval function by virtue of this section.

12ZC Provision of information for the purposes of section 12ZA or 12ZB

(1) A relevant person may provide another person with such information as the relevant person considers necessary or appropriate for or in connection with—

(a) the exercise of an approval function; or

(b) the exercise by the Secretary of State of the power—

(i) to enter into an agreement under section 12ZA;

(ii) to impose a requirement under section 12ZB; or

(iii) to give an instruction under section 12ZA(5) or 12ZB(4).

(2) The relevant persons are—

(a) the Secretary of State;

(b) a person who is a party to an agreement under section 12ZA; or

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(c) if the Secretary of State imposes a requirement under section 12ZB on the National Health Service Commissioning Board or a Special Health Authority, the Board or (as the case may be) Special Health Authority.

(3) This section, in so far as it authorises the provision of information by one relevant person to another relevant person, has effect notwithstanding any rule of common law which would otherwise prohibit or restrict the provision.

(4) In this section, "information" includes documents and records."

(2) In section 54(1) of that Act (requirement for certain medical evidence etc. to be from practitioner approved under section 12 of the Act), after "the Secretary of State" insert ", or by another person by virtue of section 12ZA or 12ZB above,".

(3) In section 139(4) of that Act (protection for acts done in pursuance of the Act: exceptions), at the end insert "or against a person who has functions under this Act by virtue of section 12ZA in so far as the proceedings relate to the exercise of those functions".

(4) In section 145(1) of that Act (interpretation), in the definition of "approved clinician", after "the Secretary of State" insert "or another person by virtue of section 12ZA or 12ZB above".

(5) In each of the following provisions, after "the Secretary of State" insert ", or by another person by virtue of section 12ZA or 12ZB of that Act,"—

(a) in section 8(2) of the Criminal Procedure (Insanity) Act 1964 (interpretation), in the definition of "duly approved",

(b) in section 51(1) of the Criminal Appeal Act 1968 (interpretation), in the definition of "duly approved",

(c) in section 6(1) of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (interpretation), in the definition of "duly approved",

(d) in section 157(6) of the Criminal Justice Act 2003 (mentally disordered offenders: definition of "medical report"),

(e) in section 172(1) of the Armed Forces Act 2006 (fitness to stand trial etc: definition of "duly approved"), and

(f) in section 258(5) of that Act (mentally disordered offenders), in the definition of "medical report".

Commencement Information

I76 S. 38 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

39 Discharge of patients

(1) In section 23 of the Mental Health Act 1983 (discharge of patients), omit subsections (3) and (3A).

(2) In section 24 of that Act (visiting and examination of patients), omit subsections (3) and (4).

(3) In Schedule 1 to that Act (application of certain provisions of that Act to patients subject to hospital and guardianship orders)—

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(a) in Part 1, in paragraph 1, omit "24(3) and (4),", and
(b) in Part 2, in paragraph 1, omit "24(3) and (4),".

(4) In consequence of the repeals made by this section—
(a) in the National Health Service and Community Care Act 1990, in Schedule 9—
(i) omit paragraph 24(3)(a) and the "and" following it, and
(ii) omit paragraph 24(4),
(b) in the Health Authorities Act 1995, in Schedule 1, omit paragraph 107(2)(a) and (3),
(c) in the Care Standards Act 2000, in Schedule 4, omit paragraph 9(3),
(d) in the Health and Social Care (Community Health and Standards) Act 2003, in Schedule 4, omit paragraphs 53(a) and 54,
(e) in the Domestic Violence, Crime and Victims Act 2004—
(i) omit sections 37A(5), 38A(3), 43A(5) and 44A(3),
(ii) in section 37A(7)(a), omit ", (5)", and
(iii) in section 43A(7), omit ", (5)", and
(f) in the Mental Health Act 2007, in Schedule 3, omit paragraphs 10(5) and (6) and 11(3) and (4).

Commencement Information
I77 S. 39 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

40 After-care

(1) Section 117 of the Mental Health Act 1983 (after-care) is amended as follows.

(2) In subsection (2)—
(a) after "duty of the" insert "clinical commissioning group or",
(b) omit "Primary Care Trust or" in each place it appears, and
(c) after "such time as the" insert "clinical commissioning group or".

(3) After subsection (2C) insert—

"(2D) Subsection (2), in its application to the clinical commissioning group, has effect as if for "to provide" there were substituted "to arrange for the provision of".

(2E) The Secretary of State may by regulations provide that the duty imposed on the clinical commissioning group by subsection (2) is, in the circumstances or to the extent prescribed by the regulations, to be imposed instead on another clinical commissioning group or the National Health Service Commissioning Board.

(2F) Where regulations under subsection (2E) provide that the duty imposed by subsection (2) is to be imposed on the National Health Service Commissioning Board, subsection (2D) has effect as if the reference to the clinical commissioning group were a reference to the National Health Service Commissioning Board.

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(2G) Section 272(7) and (8) of the National Health Service Act 2006 applies to the power to make regulations under subsection (2E) as it applies to a power to make regulations under that Act."

(4) In subsection (3)—

(a) after "section "the" insert "clinical commissioning group or",

(b) omit "Primary Care trust or" in each place it appears, and

(c) after "means the", in the first place it appears, insert "clinical commissioning group or".

(5) In section 275 of the National Health Service Act 2006 (interpretation) after subsection (4) insert—

"(5) In each of the following, the reference to section 3 includes a reference to section 117 of the Mental Health Act 1983 (after-care)—

(a) in section 223K(8), paragraph (a) of the definition of "relevant services",

(b) in section 244(3), paragraph (a)(i) of the definition of "relevant health service provider",

(c) in section 252A(10), the definition of "service arrangements",

(d) section 253(1A)(d)(ii)."

(6) In section 48 of the Health and Social Care Act 2008 (special reviews and investigations), in subsection (2)(ba), after "the National Health Service Act 2006" insert "or section 117 of the Mental Health Act 1983 (after-care)".

(7) In section 97 of that Act (general interpretation of Part 1), in subsection (2A), after "section 7A of that Act)" insert "or section 117 of the Mental Health Act 1983 (after-care)".

(8) In consequence of the repeals made by subsections (2)(b) and (4)(b), omit paragraph 47 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002.

Commencement Information

I78 S. 40 partly in force; s. 40 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I79 S. 40 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I80 S. 40(1)-(4)(8) in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

41 Provision of pocket money for in-patients

(1) Section 122 of the Mental Health Act 1983 (provision of pocket money for in-patients) is amended as follows.

(2) In subsection (1)—

(a) for "Secretary of State may" substitute "Welsh Ministers may (in relation to Wales)",

(b) for "he thinks fit" substitute "the Welsh Ministers think fit",

(c) for "their" substitute "those persons'",

(d) for "him" substitute "the Welsh Ministers", and

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(e) for "they" substitute "those persons".

(3) In subsection (2)—

(a) omit "the National Health Service Act 2006 and", and

(b) for "either of those Acts" substitute "that Act".

(4) In section 146 of that Act (application to Scotland), omit "122,".

Commencement Information

I81 S. 41 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

42 Transfers to and from special hospitals

(1) Omit section 123 of the Mental Health Act 1983 (transfers to and from special hospitals).

(2) In section 68A of that Act (power to reduce periods after which cases must be referred to tribunal), in subsection (4)—

(a) after paragraph (c), insert "or",

(b) omit the "or" following paragraph (d), and

(c) omit paragraph (e).

(3) In section 138 of that Act (retaking of patients escaping from custody), in subsection (4)(a), omit "or under section 123 above".

(4) In consequence of the repeal made by subsection (1), omit paragraph 67 of Schedule 4 to the Health Act 1999.

(5) This section does not affect—

(a) the authority for the detention of a person who is liable to be detained under the Mental Health Act 1983 before the commencement of this section,

(b) that Act in relation to any application, order or direction for admission or removal to a hospital made under that Act before that commencement, or

(c) the authority for the retaking of a person who, before that commencement, escapes while being taken to or from a hospital as mentioned in section 138(4)(a) of that Act.

Commencement Information

I82 S. 42 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

43 Independent mental health advocates

(1) In section 130A of the Mental Health Act 1983 (independent mental health advocates: England), in subsection (1)—

(a) for "The Secretary of State" substitute "A local social services authority whose area is in England", and

(b) at the end insert "for whom the authority is responsible for the purposes of this section".

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(2) In subsection (4) of that section, for "the Secretary of State" substitute "a local social services authority".

(3) In section 130C of that Act (provision supplementary to section 130A), after subsection (4) insert—

"(4A) A local social services authority is responsible for a qualifying patient if—

(a) in the case of a qualifying patient falling within subsection (2)(a) above, the hospital or registered establishment in which he is liable to be detained is situated in that authority's area;

(b) in the case of a qualifying patient falling within subsection (2)(b) above, that authority is the responsible local social services authority within the meaning of section 34(3) above;

(c) in the case of a qualifying patient falling within subsection (2)(c), the responsible hospital is situated in that authority's area;

(d) in the case of a qualifying patient falling within subsection (3)—

(i) in a case where the patient has capacity or is competent to do so, he nominates that authority as responsible for him for the purposes of section 130A above, or

(ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in his welfare, nominates that authority on his behalf as responsible for him for the purposes of that section.

(4B) In subsection (4A)(d) above—

(a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;

(b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;

(c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act."

(4) In Schedule 1 to the Local Authority Social Services Act 1970 (social services functions), in the entry for the Mental Health Act 1983, at the appropriate place insert—

"Section 130A	Making arrangements to enable independent mental health advocates to be available to help qualifying patients".

Commencement Information

I83 S. 43 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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44 Patients' correspondence

(1) In section 134 of the Mental Health Act 1983 (patients' correspondence), in subsection (1)—

(a) before "the approved clinician" insert "or", and

(b) omit "or the Secretary of State".

(2) Subsection (1) of this section does not affect the validity of any requests made to the Secretary of State under section 134(1) of that Act and having effect immediately before the commencement of this section.

Commencement Information

I84 S. 44 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

45 Notification of hospitals having arrangements for special cases

(1) In section 140 of the Mental Health Act 1983 (notification of hospitals having arrangements for special cases)—

(a) after "the duty of" insert "every clinical commissioning group and of",

(b) omit "every Primary Care Trust and of",

(c) after "the area of the" insert "clinical commissioning group or",

(d) omit "Primary Care Trust or" in the first place it appears,

(e) after "available to the" insert "clinical commissioning group or", and

(f) omit "Primary Care Trust or" in the second place it appears.

(2) In consequence of the repeals made by this section, in the National Health Service Reform and Health Care Professions Act 2002, in Schedule 2, omit paragraph 48(a) and (c).

Commencement Information

I85 S. 45 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Emergency powers

46 Role of the Board and clinical commissioning groups in respect of emergencies

For the cross-heading preceding section 253 of the National Health Service Act 2006 substitute "Emergencies: role of the Secretary of State, the Board and clinical commissioning groups" and after the cross-heading insert—

"252A **Role of the Board and clinical commissioning groups in respect of emergencies**

(1) The Board and each clinical commissioning group must take appropriate steps for securing that it is properly prepared for dealing with a relevant emergency.

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(2) The Board must take such steps as it considers appropriate for securing that each clinical commissioning group is properly prepared for dealing with a relevant emergency.

(3) The steps taken by the Board under subsection (2) must include monitoring compliance by each clinical commissioning group with its duty under subsection (1).

(4) The Board must take such steps as it considers appropriate for securing that each relevant service provider is properly prepared for dealing with a relevant emergency.

(5) The steps taken by the Board under subsection (4) must include monitoring compliance by the service provider with any requirements imposed on it by its service arrangements for the purpose of securing that it is properly prepared for dealing with a relevant emergency.

(6) The Board may take such steps as it considers appropriate for facilitating a co-ordinated response to an emergency by the clinical commissioning groups and relevant service providers for which it is a relevant emergency.

(7) The Board may arrange for any body or person to exercise any functions of the Board under subsections (2) to (6).

(8) Where the Board makes arrangements with another body or person under subsection (7) it may also arrange for that other body or person to exercise any functions that the Board has, by virtue of being a Category 1 responder, under Part 1 of the Civil Contingencies Act 2004.

(9) A relevant service provider must appoint an individual to be responsible for—

(a) securing that the provider is properly prepared for dealing with a relevant emergency,

(b) securing that the provider complies with any requirements mentioned in subsection (5), and

(c) providing the Board with such information as it may require for the purpose of discharging its functions under this section.

(10) In this section—

"relevant emergency"—

(a) in relation to the Board or a clinical commissioning group, means any emergency which might affect the Board or the group (whether by increasing the need for the services that it may arrange or in any other way);

(b) in relation to a relevant service provider, means any emergency which might affect the provider (whether by increasing the need for the services that it may provide or in any other way);

"relevant service provider" means any body or person providing services in pursuance of service arrangements;

"service arrangements", in relation to a relevant service provider, means arrangements made by the Board or a clinical commissioning group under or by virtue of section 3, 3A, 3B, 4 or 7A or Schedule 1."

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Commencement Information

I86 S. 46 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

47 Secretary of State's emergency powers

(1) Section 253 of the National Health Service Act 2006 (emergency powers) is amended as follows.

(2) In subsection (1) for the words from "it is necessary" to the end of the subsection substitute "it is appropriate to do so".

(3) After subsection (1) insert—

"(1A) A direction under this section may be given to—

(a) an NHS body other than a Local Health Board;

(b) the National Institute for Health and Care Excellence;

(c) the Health and Social Care Information Centre;

(d) any body or person, other than an NHS body, providing services in pursuance of arrangements made—

(i) by the Secretary of State under section 12,

(ii) by the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1,

(iii) by a local authority for the purpose of the exercise of its functions under or by virtue of section 2B or 6C(1) or Schedule 1, or

(iv) by the Board, a clinical commissioning group or a local authority by virtue of section 7A."

(4) For subsection (2) substitute—

"(2) In relation to a body within subsection (1A)(a) to (c), the powers conferred by this section may be exercised—

(a) to give directions to the body about the exercise of any of its functions;

(b) to direct the body to cease to exercise any of its functions for a specified period;

(c) to direct the body to exercise any of its functions concurrently with another body or person for a specified period;

(d) to direct the body to exercise any function conferred on another body or person under or by virtue of this Act for a specified period (whether to the exclusion of, or concurrently with, that body or person).

(2A) In relation to a body or person within subsection (1A)(d), the powers conferred by this section may be exercised—

(a) to give directions to the body or person about the provision of any services that it provides in pursuance of arrangements mentioned in subsection (1A)(d);

(b) to direct the body or person to cease to provide any of those services for a specified period;

(c) to direct the body or person to provide other services for the purposes of the health service for a specified period."

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(5) After subsection (2A) insert—

"(2B) The Secretary of State may direct the Board to exercise the functions of the Secretary of State under this section.

(2C) The Secretary of State may give directions to the Board about its exercise of any functions that are the subject of a direction under subsection (2B).

(2D) In this section, "specified" means specified in the direction."

(6) Omit subsection (4) (exclusion of NHS foundation trusts from application of emergency powers).

(7) In section 273 of that Act (further provision about orders and directions under the Act), in subsection (4)(c)(ii), for "or 120" substitute ", 120 or 253".

Commencement Information

I87 S. 47 partly in force; s. 47 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I88 S. 47 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Miscellaneous

48 New Special Health Authorities

(1) After section 28 of the National Health Service Act 2006 (special health authorities) insert—

"**28A Special Health Authorities: further provision**

(1) This section applies in relation to an order under section 28 which is made after the coming into force of section 48 of the Health and Social Care Act 2012.

(2) The order must include—

(a) provision for the abolition of the Special Health Authority on a day specified in the order, and

(b) provision as to the transfer of officers, property and liabilities of the Authority on its abolition.

(3) The day specified in accordance with subsection (2)(a) must be within the period of 3 years beginning with the day on which the Special Health Authority is established.

(4) The power (by virtue of section 273(1)) to vary an order under section 28 includes power to vary the provision mentioned in subsection (2) by—

(a) providing for the abolition of the Special Health Authority on a day which is earlier or later than the day for the time being specified in the order;

(b) making different provision as to the matters mentioned in subsection (2)(b).

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(5) If an order is varied to provide for the abolition of the Special Health Authority on a later day, that day must be within the period of 3 years beginning with the day on which the Special Health Authority would (but for the variation) have been abolished."

(2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6), after paragraph (zb) insert—

"(zc) an order under section 28 which varies such an order as mentioned in section 28A(5),".

Commencement Information

I89 S. 48 partly in force; s. 48 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I90 S. 48 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

49 Primary care services: directions as to exercise of functions

(1) After section 98 of the National Health Service Act 2006 insert—

"Directions

98A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary medical services.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary medical services (including functions which the Board has been directed to exercise under subsection (1)).

(4) The Board may direct a clinical commissioning group to exercise any of the Board's functions relating to the provision of primary medical services.

(5) The Board may give directions to a clinical commissioning group about the exercise by it of any functions relating to the provision of primary medical services (including functions which the group has been directed to exercise under subsection (4)).

(6) Subsection (4) does not apply to such functions, or functions of such descriptions, as may be prescribed.

(7) Where the Board gives a direction under subsection (4) or (5), it may disclose to the clinical commissioning group information it has about the provision of the primary medical services in question, if the Board considers it necessary or appropriate to do so in order to enable or assist the group to exercise the function specified in the direction.

(8) A clinical commissioning group exercising a function specified in a direction under subsection (4) or (5) must report to the Board on matters arising out of the group's exercise of the function.

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(9) A report under subsection (8) must be made in such form and manner as the Board may specify.

(10) The Board may, in exercising its functions relating to the provision of the primary medical services in question, have regard to a report under subsection (8).”

(2) After section 114 of that Act insert—

“Directions

114A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary dental services.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary dental services (including functions which the Board has been directed to exercise under subsection (1)).”

(3) After section 125 of that Act insert—

“Directions

125A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary ophthalmic services.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary ophthalmic services (including functions which the Board has been directed to exercise under subsection (1)).

(4) The Board may direct a clinical commissioning group, a Special Health Authority or such other body as may be prescribed to exercise any of the Board's functions relating to the provision of primary ophthalmic services.

(5) The Board may give directions to a clinical commissioning group, a Special Health Authority or such other body as may be prescribed about the exercise by the body of any functions relating to the provision of primary ophthalmic services (including functions which it has been directed to exercise under subsection (4)).

(6) Subsection (4) does not apply to such functions, or functions of such descriptions, as may be prescribed.

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(7) Where the Board gives a direction to a body under subsection (4) or (5), it may disclose to the body the information it has about the provision of the primary ophthalmic services in question, if the Board considers it necessary or appropriate to do so in order to enable or assist the body to exercise the function specified in the direction.

(8) A body which is given a direction under subsection (4) or (5) must report to the Board on matters arising out of the exercise of the function to which the direction relates.

(9) A report under subsection (8) must be made in such form and manner as the Board may specify.

(10) The Board may, in exercising its functions relating to the provision of the primary ophthalmic services in question, have regard to a report under subsection (8).”

(4) After section 168 of that Act insert—

“Directions

168A Exercise of functions

(1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to services that may be provided as pharmaceutical services, or as local pharmaceutical services, under this Part.

(2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

(3) The Secretary of State may give directions to the Board about its exercise of any functions relating to pharmaceutical services or to local pharmaceutical services (including functions which the Board has been directed to exercise under subsection (1)).”

Commencement Information

I91 S. 49 partly in force; s. 49 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I92 S. 49 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

50 Charges in respect of certain public health functions

(1) After section 186 of the National Health Service Act 2006 insert—

“**186A Charges in respect of public health functions**

(1) The Secretary of State may make charges under this subsection in respect of any step taken under section 2A.

(2) The power conferred by subsection (1) does not apply in respect of the provision of a service or facility to an individual, or the taking of any other step in relation to an individual, for the purpose of protecting the individual's health.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Charges under subsection (1) may be calculated on such basis as the Secretary of State considers appropriate.

(4) Regulations may provide for the making and recovery of charges in respect of—

(a) the taking of prescribed steps by a local authority under section 2A (by virtue of regulations under section 6C(1)), and

(b) the taking of prescribed steps by a local authority under section 2B.

(5) Regulations under subsection (4) may make provision as to the calculation of charges authorised by the regulations, including provision prescribing the amount or the maximum amount that may be charged.

(6) Nothing in this section affects any other power conferred by or under this Act to make charges."

(2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zc) insert—

"(zd) regulations under section 186A(4),".

Commencement Information

I93 S. 50 partly in force; s. 50 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I94 S. 50 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

51 Pharmaceutical services expenditure

(1) After section 165 of the National Health Service Act 2006 insert—

"**165A Pharmaceutical remuneration: further provision**

(1) The Board must provide the Secretary of State with such information relating to the remuneration paid by the Board to persons providing pharmaceutical services or local pharmaceutical services as the Secretary of State may require.

(2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.

(3) Schedule 12A makes further provision about pharmaceutical remuneration."

(2) After Schedule 12 to that Act insert the Schedule set out in Schedule 3 to this Act.

Commencement Information

I95 S. 51 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

52 Secretary of State's duty to keep health service functions under review

In Part 13 of the National Health Service Act 2006, after section 247B (as inserted by section 60) insert—

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"Duty to keep under review

247C Secretary of State's duty to keep health service functions under review

(1) The Secretary of State must keep under review the effectiveness of the exercise by the bodies mentioned in subsection (2) of functions in relation to the health service in England.

(2) The bodies mentioned in this subsection are—

(a) the Board;
(b) Monitor;
(c) the Care Quality Commission and its Healthwatch England committee;
(d) the National Institute for Health and Care Excellence;
(e) the Health and Social Care Information Centre;
(f) Special Health Authorities.

(3) The Secretary of State may include in an annual report under section 247D the Secretary of State's views on the effectiveness of the exercise by the bodies mentioned in subsection (2) of functions in relation to the health service."

Commencement Information
I96 S. 52 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

53 Secretary of State's annual report

After section 247C of the National Health Service Act 2006 insert—

"Annual report

247D Secretary of State's annual report

(1) The Secretary of State must publish an annual report on the performance of the health service in England.

(2) The report must include the Secretary of State's assessment of the effectiveness of the discharge of the duties under sections 1A and 1C.

(3) The Secretary of State must lay any report prepared under this section before Parliament."

Commencement Information
I97 S. 53 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

54 Certification of death

(1) Chapter 2 of Part 1 of the Coroners and Justice Act 2009 (notification, certification and registration of deaths) is amended as follows.

(2) In section 19 (medical examiners)—

(a) in subsection (1) for "Primary Care Trusts" substitute "Local authorities",

(b) in subsection (2) for "Trust" (in each place where it occurs) substitute "local authority", and

(c) in subsection (5) for "a Primary Care Trust" substitute "a local authority".

(3) In section 20 (medical certificate of cause of death), in subsection (5) for "Primary Care Trust" substitute "local authority".

Commencement Information

I98 S. 54 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

55 Amendments related to Part 1 and transitional provision

(1) Schedule 4 (which makes further amendments of the National Health Service Act 2006 in consequence of the provision made by this Part) has effect.

(2) Schedule 5 (which makes amendments of other enactments in consequence of the provision made by this Part) has effect.

(3) Schedule 6 (which makes transitional provision in connection with this Part) has effect.

Commencement Information

I99 S. 55(1) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**

I100 S. 55(1) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I101 S. 55(1) in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I102 S. 55(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I103 S. 55(2) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I104 S. 55(2) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I105 S. 55(3) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**

I106 S. 55(3) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

PART 2

FURTHER PROVISION ABOUT PUBLIC HEALTH

56 Abolition of Health Protection Agency

(1) The Health Protection Agency is abolished.

(2) The Health Protection Agency Act 2004 is repealed.

(3) Subsection (2) does not apply to—

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) paragraph 3 of Schedule 3 to that Act (which amends Schedule 2 to the Immigration Act 1971), and

(b) section 11(1) of that Act so far as it gives effect to that paragraph.

(4) Schedule 7 (which makes amendments of other enactments in consequence of the provision made by this section) has effect.

Commencement Information

I107 S. 56 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7, 8(2), 9)

57 Functions in relation to biological substances

(1) The appropriate authority must—

(a) devise standards for the purity and potency of biological substances,

(b) prepare, approve, hold and distribute standard preparations of biological substances,

(c) design appropriate procedures for testing biological substances,

(d) provide or arrange for the provision of laboratory facilities for testing biological substances,

(e) carry out tests on biological substances,

(f) examine records kept in connection with the manufacture and quality control of biological substances,

(g) report on the results of tests or examinations conducted in pursuance of paragraph (e) or (f), and

(h) carry out or arrange for the carrying out of such research, or provide or arrange for the provision of such information or training, as it considers appropriate in connection with the functions mentioned in paragraphs (a) to (g).

(2) The appropriate authority may do anything which it considers is appropriate for facilitating, or incidental or conducive to, the exercise of any of its functions under this section.

(3) Subsections (4) and (5) apply to any person that exercises functions similar to those of the appropriate authority under this section (whether or not in relation to the United Kingdom).

(4) The appropriate authority must co-operate with the person in the exercise of those functions.

(5) The person must co-operate with the appropriate authority in the exercise of the authority's functions under this section.

(6) The appropriate authority may make charges (whether or not on a commercial basis) in respect of anything done by it under this section.

(7) Any function conferred on the appropriate authority by this section may be performed by either the Secretary of State or the Department of Health, Social Services and Public Safety in Northern Ireland acting alone or both of them acting jointly (and references in this section to the appropriate authority are to be construed accordingly).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(8) In this section "biological substance" means a substance whose purity or potency cannot, in the opinion of the Secretary of State, be adequately tested by chemical means.

Commencement Information

I108 S. 57 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

58 Radiation protection functions

(1) The appropriate authority must take such steps as it considers appropriate for the purposes of protecting the public from radiation (whether ionising or not).

(2) The steps that may be taken under subsection (1) include—

(a) the conduct of research or such other steps as the appropriate authority considers appropriate for advancing knowledge and understanding;

(b) providing technical services (whether in laboratories or otherwise);

(c) providing services for the prevention, diagnosis or treatment of illness arising from exposure to radiation;

(d) providing training;

(e) providing information and advice;

(f) making available the services of any person or any facilities.

(3) The appropriate authority may do anything which it considers appropriate for facilitating, or incidental or conducive to, the exercise of any of its functions under this section.

(4) The appropriate authority may make charges (whether or not on a commercial basis) in respect of anything done by it under this section.

(5) In the exercise of any function under this section which relates to a matter in respect of which a Health and Safety body has a function, the appropriate authority must—

(a) consult the body, and

(b) have regard to the body's policies.

(6) Each of the following is a Health and Safety body—

(a) the Health and Safety Executive;

(b) the Health and Safety Executive for Northern Ireland.

[[F1](c) the Office for Nuclear Regulation.**]**

(7) In subsection (2)(f), "facilities" has the same meaning as in the National Health Service Act 2006.

(8) In this section, "the appropriate authority" means—

(a) the Scottish Ministers to the extent that the functions are exercisable within devolved competence (within the meaning of the Scotland Act 1998);

(b) the Department of Health, Social Services and Public Safety in Northern Ireland to the extent that the functions relate to a transferred matter (within the meaning of the Northern Ireland Act 1998);

(c) the Secretary of State in any other case.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(9) In this section, "the public" means—

(a) where the appropriate authority is the Secretary of State, the public in Wales, Scotland and Northern Ireland,

(b) where the appropriate authority is the Scottish Ministers, the public in Scotland, and

(c) where the appropriate authority is the Department of Health, Social Services and Public Safety in Northern Ireland, the public in Northern Ireland.

(10) This section does not apply in relation to England.

Textual Amendments

F1 S. 58(6)(c) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 103**; S.I. 2014/251, art. 4

Commencement Information

I109 S. 58 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

59 Repeal of AIDS (Control) Act 1987

(1) The AIDS (Control) Act 1987 is repealed.

(2) The AIDS (Control) (Northern Ireland) Order 1987 (S.I. 1987/1832 (N.I. 18)) is revoked.

Commencement Information

I110 S. 59 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

60 Co-operation with bodies exercising functions in relation to public health

(1) In Part 13 of the National Health Service Act 2006, before section 248 (and the cross-heading preceding it) insert—

"Co-operation in relation to public health functions

247B Co-operation in relation to public health functions

(1) This section applies to any body or other person that exercises functions similar to those of the Secretary of State under section 2A (whether or not in relation to the United Kingdom).

(2) The Secretary of State must co-operate with the body or other person in the exercise by it of those functions.

(3) If the Secretary of State acts under subsection (2) at the request of the body or other person, the Secretary of State may impose charges in respect of any costs incurred by the Secretary of State in doing so.

(4) The body or other person must co-operate with the Secretary of State in the exercise by the Secretary of State of functions under section 2A.

Status: *This version of this Act contains provisions that are prospective.*
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(5) If the body or other person acts under subsection (4) at the request of the Secretary of State, it may impose charges in respect of any costs incurred by it in doing so."

(2) In section 271 of that Act (territorial limit of exercise of functions), in subsection (3) after paragraph (d) insert—

"(da) section 247B (co-operation in relation to public health functions),".

Commencement Information

I111 S. 60 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 1

MONITOR

61 Monitor

(1) The body corporate known as the Independent Regulator of NHS Foundation Trusts—

(a) is to continue to exist, and

(b) is to be known as Monitor.

(2) Schedule 8 (which makes further provision about Monitor) has effect.

Commencement Information

I112 S. 61(1) in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

I113 S. 61(2) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

62 General duties

(1) The main duty of Monitor in exercising its functions is to protect and promote the interests of people who use health care services by promoting provision of health care services which—

(a) is economic, efficient and effective, and

(b) maintains or improves the quality of the services.

(2) In carrying out its main duty, Monitor must have regard to the likely future demand for health care services.

(3) Monitor must exercise its functions with a view to preventing anti-competitive behaviour in the provision of health care services for the purposes of the NHS which is against the interests of people who use such services.

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(4) Monitor must exercise its functions with a view to enabling health care services provided for the purposes of the NHS to be provided in an integrated way where it considers that this would—

(a) improve the quality of those services (including the outcomes that are achieved from their provision) or the efficiency of their provision,

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(5) Monitor must exercise its functions with a view to enabling the provision of health care services provided for the purposes of the NHS to be integrated with the provision of health-related services or social care services where it considers that this would—

(a) improve the quality of those health care services (including the outcomes that are achieved from their provision) or the efficiency of their provision,

(b) reduce inequalities between persons with respect to their ability to access those health care services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those health care services.

(6) Monitor must, in carrying out its duties under subsections (4) and (5), have regard to the way in which—

(a) the National Health Service Commissioning Board carries out its duties under section 13N of the National Health Service Act 2006, and

(b) clinical commissioning groups carry out their duties under section 14Z1 of that Act.

(7) Monitor must secure that people who use health care services, and other members of the public, are involved to an appropriate degree in decisions that Monitor makes about the exercise of its functions (other than decisions it makes about the exercise of its functions in a particular case).

(8) Monitor must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

(a) the prevention, diagnosis or treatment of illness (within the meaning of the National Health Service Act 2006), and

(b) the protection or improvement of public health.

(9) Monitor must exercise its functions in a manner consistent with the performance by the Secretary of State of the duty under section 1(1) of the National Health Service Act 2006 (promotion of comprehensive health service).

(10) Monitor must not exercise its functions for the purpose of causing a variation in the proportion of health care services provided for the purposes of the NHS that is provided by persons of a particular description if that description is by reference to—

(a) whether the persons in question are in the public or (as the case may be) private sector, or

(b) some other aspect of their status.

(11) In this section—

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"health-related services" means services that may have an effect on people's health but are not health care services or social care services;

"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

Commencement Information

I114 S. 62(1)-(5)(6)(a)(7)-(11) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

I115 S. 62(1)-(5)(6)(a)(7)-(11) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I116 S. 62(6)(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

63 Secretary of State's guidance on duty under section 62(9)

(1) The Secretary of State may, for the purpose of assisting Monitor to comply with its duty under section 62(9), publish guidance on—

(a) the objectives specified in the mandate published under section 13A of the National Health Service Act 2006 which the Secretary of State considers to be relevant to Monitor's exercise of its functions, and

(b) the Secretary of State's reasons for considering those objectives to be relevant to Monitor's exercise of its functions.

(2) In exercising its functions, Monitor must have regard to guidance under subsection (1).

(3) Where the Secretary of State publishes guidance under subsection (1), the Secretary of State must lay a copy of the published guidance before Parliament.

(4) The Secretary of State—

(a) may revise guidance under subsection (1), and

(b) if the Secretary of State does so, must publish the guidance as revised and lay it before Parliament.

Commencement Information

I117 S. 63 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

64 General duties: supplementary

(1) This section applies for the purposes of this Part.

(2) "Anti-competitive behaviour" means behaviour which would (or would be likely to) prevent, restrict or distort competition and a reference to preventing anti-competitive behaviour includes a reference to eliminating or reducing the effects (or potential effects) of the behaviour.

(3) "Health care" means all forms of health care provided for individuals, whether relating to physical or mental health, with a reference in this Part to health care services being read accordingly; and for the purposes of this Part it does not matter if a health care service is also an adult social care service (as to which, see section 65).

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(4) "The NHS" means the comprehensive health service continued under section 1(1) of the National Health Service Act 2006, except the part of it that is provided in pursuance of the public health functions (within the meaning of that Act) of the Secretary of State or local authorities.

(5) A reference to the provision of health care services for the purposes of the NHS is a reference to their provision for those purposes in accordance with that Act.

(6) Nothing in section 62 requires Monitor to do anything in relation to the supply to persons who provide health care services of goods that are to be provided as part of those services.

Commencement Information

I118 S. 64(1)(3)-(5) in force at 1.6.2012 for specified purposes by S.I. 2012/1319, **art. 2(2)**

I119 S. 64(1)(3)-(5) in force at 1.7.2012 in so far as not already in force by S.I. 2012/1319, **art. 2(3)**

I120 S. 64(1) in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)** (with art. 3)

I121 S. 64(2)(6) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)** (with art. 3)

65 Power to give Monitor functions relating to adult social care services

(1) Regulations may provide for specified functions of Monitor also to be exercisable in relation to adult social care services.

(2) Any regulations under this section must apply in relation to England only.

(3) The regulations may amend this Part.

(4) "Adult social care"—

(a) includes all forms of personal care and other practical assistance provided for individuals who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance, but

(b) does not include anything provided by an establishment or agency for which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of the Care Standards Act 2000.

Commencement Information

I122 S. 65 partly in force; s. 65 in force for specified purposes at Royal Assent, see s. 306(1)(d)

66 Matters to have regard to in exercise of functions

(1) In exercising its functions, Monitor must have regard, in particular, to the need to maintain the safety of people who use health care services.

(2) Monitor must, in exercising its functions, also have regard to the following matters in so far as they are consistent with the matter referred to in subsection (1)—

(a) the desirability of securing continuous improvement in the quality of health care services provided for the purposes of the NHS and in the efficiency of their provision,

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(b) the need for commissioners of health care services for the purposes of the NHS to ensure that the provision of access to the services for those purposes operates fairly,

(c) the need for commissioners of health care services for the purposes of the NHS to ensure that people who require health care services for those purposes are provided with access to them,

(d) the need for commissioners of health care services for the purposes of the NHS to make the best use of resources when doing so,

(e) the desirability of persons who provide health care services for the purposes of the NHS co-operating with each other in order to improve the quality of health care services provided for those purposes,

(f) the need to promote research into matters relevant to the NHS by persons who provide health care services for the purposes of the NHS,

(g) the need for high standards in the education and training of health care professionals who provide health care services for the purposes of the NHS, and

(h) where the Secretary of State publishes a document for the purposes of section 13E of the National Health Service Act 2006 (improvement of quality of services), any guidance published by the Secretary of State on the parts of that document which the Secretary of State considers to be particularly relevant to Monitor's exercise of its functions.

(3) Where the Secretary of State publishes guidance referred to in subsection (2)(h), the Secretary of State must lay a copy of the published guidance before Parliament.

(4) The Secretary of State—

(a) may revise the guidance, and

(b) if the Secretary of State does so, must publish the guidance as revised and lay it before Parliament.

Commencement Information

I123 S. 66 in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

I124 S. 66 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

67 Conflicts between functions

(1) In a case where Monitor considers that any of its general duties conflict with each other, it must secure that the conflict is resolved in the manner it considers best.

(2) Monitor must act so as to secure that there is not, and could not reasonably be regarded as being, a conflict between—

(a) its exercise of any of its functions under Chapter 5 of Part 2 of the National Health Service Act 2006 (regulation of NHS foundation trusts) [F2]... or under paragraph 17 of Schedule 8 to this Act (accounts of NHS foundation trusts), and

(b) its exercise of any of its other functions.

[F3](3) . . . . . .

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(4) If Monitor secures the resolution of a conflict between its general duties in a case that comes within subsection (5), or that Monitor considers is otherwise of unusual importance, it must publish a statement setting out—

(a) the nature of the conflict,

(b) the manner in which it decided to resolve it, and

(c) its reasons for deciding to resolve it in that manner.

(5) A case comes within this subsection if it involves—

(a) a matter likely to have a significant impact on persons who provide health care services for the purposes of the NHS;

(b) a matter likely to have a significant impact on people who use health care services provided for the purposes of the NHS;

(c) a matter likely to have a significant impact on the general public in England (or in a particular part of England);

(d) a major change in the activities Monitor carries on;

(e) a major change in the standard conditions of licences under Chapter 3 (see section 94).

(6) Where Monitor is required to publish a statement under subsection (4), it must do so as soon as reasonably practicable after making its decision.

(7) The duty under subsection (4) does not apply in so far as Monitor is subject to an obligation not to publish a matter that needs to be included in the statement.

(8) Every annual report of Monitor must include—

(a) a statement of the steps it has taken in the financial year to which the report relates to comply with the duty under subsection (2), and

(b) a summary of the manner in which, in that financial year, Monitor has secured the resolution of conflicts between its general duties arising in cases of the kind referred to in subsection (5).

(9) Monitor's general duties for the purposes of this section are its duties under sections 62 and 66.

Textual Amendments

F2 Words in s. 67(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 114(1)(a)**, 306(4); S.I. 2013/671, art. 2(3)

F3 S. 67(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 114(1)(b)**, 306(4); S.I. 2013/671, art. 2(3)

Commencement Information

I125 S. 67(1)(2)(4)-(9) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)** (with art. 4)

I126 S. 67(3) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

68 Duty to review regulatory burdens

(1) Monitor must keep the exercise of its functions under review and secure that in exercising its functions it does not—

(a) impose burdens which it considers to be unnecessary, or

(b) maintain burdens which it considers to have become unnecessary.

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(2) In keeping the exercise of its functions under review, Monitor must have regard to such principles as appear to it to represent best regulatory practice.

(3) Subsection (1) does not require the removal of a burden which has become unnecessary where its removal would, having regard to all the circumstances, be impractical or disproportionate.

(4) Monitor must from time to time publish a statement setting out—

(a) what it proposes to do pursuant to subsection (1) in the period to which the statement relates,

(b) what it has done pursuant to that subsection since publishing the previous statement, and

(c) where a burden relating to the exercise of the function which has become unnecessary is maintained pursuant to subsection (3), the reasons why removal of the burden would, having regard to all the circumstances, be impractical or disproportionate.

(5) The first statement—

(a) must be published as soon as practicable after the commencement of this section, and

(b) must relate to the period of 12 months beginning with the date of publication.

(6) A subsequent statement—

(a) must be published during the period to which the previous statement related or as soon as reasonably practicable after that period, and

(b) must relate to the period of 12 months beginning with the end of the previous period.

(7) Monitor must, in exercising its functions, have regard to the statement that is in force at the time in question.

(8) Monitor may revise a statement before or during the period to which it relates; and, if it does so, it must publish the revision as soon as reasonably practicable.

Commencement Information

I127 S. 68(1)-(3) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

I128 S. 68(1)-(3) in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

I129 S. 68(4)-(8) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

69 Duty to carry out impact assessments

(1) This section applies where Monitor is proposing to do something that it considers would be likely—

(a) to have a significant impact on persons who provide health care services for the purposes of the NHS;

(b) to have a significant impact on people who use health care services provided for the purposes of the NHS;

(c) to have a significant impact on the general public in England (or in a particular part of England);

(d) to involve a major change in the activities Monitor carries on;

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(e) to involve a major change in the standard conditions of licences under Chapter 3 (see section 94).

(2) But this section does not apply to—

(a) the carrying out by Monitor of an analysis of how markets involving the provision of health care services are operating, or

(b) the exercise of functions under or by virtue of Chapter 2.

(3) Nor does this section apply if it appears to Monitor that the urgency of the matter makes compliance with this section impracticable or inappropriate.

(4) Before implementing the proposal, Monitor must either—

(a) carry out and publish an assessment of the likely impact of implementation, or

(b) publish a statement setting out its reasons for concluding that it does not need to carry out an assessment under paragraph (a).

(5) The assessment must set out Monitor's explanation of how the discharge of its general duties (within the meaning of section 67)—

(a) would be secured by implementation of the proposal, but

(b) would not be secured by the exercise of functions that Monitor has by virtue of section 72 or 73.

(6) The assessment may take such form, and relate to such matters, as Monitor may determine; and in determining the matters to which the assessment is to relate, Monitor must have regard to such general guidance on carrying out impact assessments as it considers appropriate.

(7) The assessment must specify the consultation period within which representations with respect to the proposal may be made to Monitor; and for that purpose the consultation period must not be less than 28 days beginning with the day after that on which the assessment is published under subsection (4).

(8) Monitor may not implement the proposal unless the consultation period has ended.

(9) Where Monitor is required (apart from this section) to consult about, or afford a person an opportunity to make representations about, a proposal that comes within subsection (1), the requirements of this section—

(a) are in addition to the other requirement, but

(b) may be met contemporaneously with it.

(10) Every annual report of Monitor must set out—

(a) a list of the assessments carried out under this section during the financial year to which the report relates, and

(b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out during that year or a previous financial year relate.

Commencement Information

I130 S. 69 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

Status: *This version of this Act contains provisions that are prospective.*
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70 Information

(1) Information obtained by, or documents, records or other items produced to, Monitor in connection with any of its functions may be used by Monitor in connection with any of its other functions.

(2) For the purposes of exercising a function under this Part, the Secretary of State may request Monitor to provide the Secretary of State with such information as the Secretary of State may specify.

(3) Monitor must comply with a request under subsection (2).

Commencement Information

I131 S. 70 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

71 Failure to perform functions

(1) This section applies if the Secretary of State considers that Monitor is failing, or has failed, to perform any function of Monitor's, other than a function it has by virtue of section 72 or 73, and that the failure is significant.

(2) The Secretary of State may direct Monitor to perform such of those functions, and in such manner and within such period, as the direction specifies.

(3) But the Secretary of State may not give a direction under subsection (2) in relation to the performance of functions in a particular case.

(4) If Monitor fails to comply with a direction under subsection (2), the Secretary of State may—

(a) perform the functions to which the direction relates, or

(b) make arrangements for some other person to perform them on the Secretary of State's behalf.

(5) Where the Secretary of State exercises a power under subsection (2) or (4), the Secretary of State must publish the reasons for doing so.

(6) For the purposes of this section—

(a) a failure to perform a function includes a failure to perform it properly, and

(b) a failure to perform a function properly includes a failure to perform it consistently with what the Secretary of State considers to be the interests of the health service in England or (as the case may be) with what otherwise appears to the Secretary of State to be the purpose for which it is conferred; and "the health service" has the same meaning as in the National Health Service Act 2006.

Commencement Information

I132 S. 71 partly in force; s. 71 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I133 S. 71 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)** (with art. 5)

Status: *This version of this Act contains provisions that are prospective.*
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CHAPTER 2

COMPETITION

72 Functions under the Competition Act 1998

(1) The functions referred to in subsection (2) are concurrent functions of Monitor and the **[**F4CMA**]**.

(2) The functions are those that the **[**F4CMA**]** has under Part 1 of the Competition Act 1998, other than sections 31D(1) to (6), 38(1) to (6)**[**F5, 40B(1) to (4)**]** and 51, so far as relating to any of the following which concern the provision of health care services in England—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act (anti-competitive practices),

(b) conduct of the kind mentioned in section 18(1) of that Act (abuse of dominant position),

(c) agreements, decisions or concerted practices of the kind mentioned in Article 101 of the Treaty on the Functioning of the European Union (anti-competitive practices),

(d) conduct which amounts to abuse of the kind mentioned in Article 102 of that Treaty (abuse of dominant position).

(3) So far as necessary for the purposes of subsections (1) and (2), references in Part 1 of the Competition Act 1998 to the **[**F4CMA**]** are to be read as including references to Monitor, except in sections 31D(1) to (6), 38(1) to (6) **[**F5, 40B(1) to (4)**]**, 51, 52(6) and (8) and 54.

Textual Amendments

F4 Word in s. 72 substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 188** (with art. 3)

F5 Words in s. 72(2)(3) inserted (E.W.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 48**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

Commencement Information

I134 S. 72 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

73 Functions under Part 4 of the Enterprise Act 2002

(1) The functions referred to in subsection (2) are concurrent functions of Monitor and the **[**F6CMA**]**.

(2) The functions are those that the **[**F7CMA**]** has under Part 4 of the Enterprise Act 2002 (market investigations), other than sections 166 **[**F8, 171 and 174E**]**, so far as **[**F9those functions—

(a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and

(b) relate to**]** activities which concern the provision of health care services in England.

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(3) So far as necessary for the purposes of subsections **[**F10(1) and (2)—

(a) references**]** in Part 4 of the Enterprise Act 2002 to the **[**F11CMA**]** (including references in provisions of that Act applied by that Part) are to be read as including references to Monitor, except in sections **[**F12166, 171 and 174E;

(b) references in that Part to section 5 of the Enterprise Act 2002 are to be construed as including references to paragraph 14 of Schedule 8 to this Act.**]**

[F13(3A) Section 130A of the Enterprise Act 2002 is to have effect in its application in relation to Monitor by virtue of subsections (1) and (2)—

(a) as if for subsection (1) of that section there were substituted—

"(1) Where Monitor—

(a) is proposing to carry out its functions under paragraph 14 of Schedule 8 to the Health and Social Care Act 2012 in relation to a matter for the purposes mentioned in subsection (2), and

(b) considers that the matter is one in respect of which it would be appropriate for it to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

Monitor must publish a notice under this section (referred to in this Part as a "market study notice").", and

(b) as if in subsection (2)(a) of that section, for "the acquisition or supply of goods or services of one or more than one description in the United Kingdom has or may have effects adverse to consumers" there were substituted "activities which concern the provision of health care services in England (within the meaning given by section 64 of the Health and Social Care Act 2012) has or may have effects adverse to the interests of people who use those services".**]**

(4) Before the **[**F14CMA**]** or Monitor first exercises functions which are exercisable concurrently by virtue of this section, it must consult the other.

(5) Neither the **[**F14CMA**]** nor Monitor may exercise in relation to any matter functions which are exercisable concurrently by virtue of this section if functions which are so exercisable have been exercised in relation to that matter by the other.

(6) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act is to have effect so far as relating to functions exercisable by Monitor by virtue of this section as if the references in section 117(1)(a) and (2) to the **[**F14CMA**]** included references to Monitor.

Textual Amendments

F6 Word in s. 73(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(2)** (with art. 3)

F7 Word in s. 73(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(3)(b)** (with art. 3)

F8 Words in s. 73(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(3)(a)** (with art. 3)

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F9 Words in s. 73(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(3)(c)** (with art. 3)

F10 Words in s. 73(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(4)(a)** (with art. 3)

F11 Word in s. 73(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(4)(b)** (with art. 3)

F12 Words in s. 73(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(4)(c)** (with art. 3)

F13 S. 73(3A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(5)** (with art. 3)

F14 Word in s. 73(4)-(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(6)** (with art. 3)

Commencement Information

I135 S. 73 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

74 Competition functions: supplementary

(1) No objection may be taken to anything done by or in relation to Monitor under the Competition Act 1998 or Part 4 of the Enterprise Act 2002 on the ground that it should have been done by or in relation to the **[**[F15]CMA**]**.

(2) Subject to subsection (3), sections 62 and 66 (general duties of Monitor) do not apply in relation to anything done by Monitor in the carrying out of its functions by virtue of section 72 or 73.

(3) In the carrying out of any functions by virtue of section 72 or 73, Monitor may nevertheless have regard to any of the matters in respect of which a duty is imposed by section 62 or 66 if it is a matter to which the **[**[F16]CMA**]** is entitled to have regard in the carrying out of those functions.

(4) In section 9E of the Company Directors Disqualification Act 1986 (specified regulators in cases of disqualification for competition infringements), in subsection (2) after paragraph (e) insert "; or

(f) Monitor."

(5) In section 54 of the Competition Act 1998, in subsection (1) (definition of "regulator" for the purposes of Part 1 of that Act)—

(a) omit the "and" preceding paragraph (g), and

(b) after that paragraph insert "; and

(h) Monitor."

(6) In section 136 of the Enterprise Act 2002 (investigations and reports on market investigation references)—

(a) in subsection (7) (meaning of "relevant sectoral enactment"), at the end insert—

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"(i) in relation to Monitor, section 73 of the Health and Social Care Act 2012.",

(b) in subsection (8) (meaning of "relevant sectoral regulator"), for "Communications or" substitute "Communications,", and

(c) in that subsection, after "Utility Regulation" insert "or Monitor".

(7) In section 168 of that Act (regulated markets)—

(a) in subsection (3) (meaning of "relevant action"), after paragraph (o) insert—

"(p) modifying the conditions of a licence issued under section 87 of the Health and Social Care Act 2012.",

(b) in subsection (4) (meaning of "relevant statutory functions"), after paragraph (q) insert—

"(r) in relation to any licence issued under section 87 of the Health and Social Care Act 2012, the duties of Monitor under sections 62 and 66 of that Act.", and

(c) in subsection (5) (meaning of "sectoral regulator"), after paragraph (i) insert—

"(ia) Monitor;".

Textual Amendments

F15 Word in s. 74(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 190** (with art. 3)

F16 Word in s. 74(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 190** (with art. 3)

Commencement Information

I136 S. 74(1)-(6) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I137 S. 74(7) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

75 Requirements as to procurement, patient choice and competition

(1) Regulations may impose requirements on the National Health Service Commissioning Board and clinical commissioning groups for the purpose of securing that, in commissioning health care services for the purposes of the NHS, they—

(a) adhere to good practice in relation to procurement;

(b) protect and promote the right of patients to make choices with respect to treatment or other health care services provided for the purposes of the NHS;

(c) do not engage in anti-competitive behaviour which is against the interests of people who use such services.

(2) Requirements imposed by regulations under this section apply to an arrangement for the provision of goods and services only if the value of the consideration attributable to the services is greater than that attributable to the goods.

(3) Regulations under this section may, in particular, impose requirements relating to—

(a) competitive tendering for the provision of services;

(b) the management of conflicts between the interests involved in commissioning services and the interests involved in providing them.

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(4) The regulations may provide for the requirements imposed, or such of them as are prescribed, not to apply in relation to arrangements of a prescribed description.

Commencement Information

I138 S. 75 partly in force; s. 75 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I139 S. 75 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

76 Requirements under section 75: investigations, declarations and directions

(1) Regulations under section 75 may confer on Monitor—

(a) a power to investigate a complaint that the National Health Service Commissioning Board or a clinical commissioning group has failed to comply with a requirement imposed by the regulations;

(b) a power to investigate on its own initiative whether the Board or a clinical commissioning group has failed to comply with a requirement imposed by virtue of section 75(1)(c);

(c) a power to require the Board or a clinical commissioning group to provide it with such information as Monitor may specify for the purposes of an investigation it carries out by virtue of paragraph (a) or (b);

(d) a power to require the Board or a clinical commissioning group to provide an explanation of such information as it provides by virtue of paragraph (c).

(2) A power conferred by virtue of subsection (1)(a) is exercisable only where Monitor considers that the person making the complaint has sufficient interest in the arrangement to which the complaint relates.

(3) Regulations under section 75 may confer on Monitor a power to declare that an arrangement for the provision of health care services for the purposes of the NHS is ineffective.

(4) A power conferred by virtue of subsection (3) is exercisable only in prescribed circumstances and subject to prescribed restrictions and only where Monitor is satisfied that—

(a) the National Health Service Commissioning Board or a clinical commissioning group has failed to comply with a requirement of regulations under section 75, and

(b) the failure is sufficiently serious.

(5) On a declaration being made by virtue of subsection (3), the arrangement is void; but that does not affect—

(a) the validity of anything done pursuant to the arrangement,

(b) any right acquired or liability incurred under the arrangement, or

(c) any proceedings or remedy in respect of such a right or liability.

(6) Regulations under section 75 may confer on Monitor a power to direct the National Health Service Commissioning Board or a clinical commissioning group—

(a) to put in place measures for the purpose of preventing failures to comply with requirements imposed by the regulations or mitigating the effect of such failures;

(b) to remedy a failure to comply with such a requirement;

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(c) not to exercise in a prescribed manner prescribed functions in relation to arrangements for the provision of health care services;

(d) to vary or withdraw an invitation to tender for the provision of health care services;

(e) to vary an arrangement for the provision of health care services made in consequence of putting the provision of the services out to tender.

(7) A failure to comply with a requirement imposed by regulations under section 75 which causes loss or damage is actionable, except in so far as the regulations restrict the right to bring such an action.

(8) Regulations under section 75 may—

(a) provide for a specified defence to such an action;

(b) prevent a person who has brought such an action under **[**F17the Public Contracts Regulations 2015 (S.I. 2015/102)**][**F18or the Concession Contracts Regulations 2016 (S.I. 2016/273)**]** from bringing such an action under the regulations under section 75 in respect of the whole or part of the same loss or damage.

Textual Amendments

F17 Words in s. 76(8)(b) substituted (26.2.2015) by The Public Contracts Regulations 2015 (S.I. 2015/102), reg. 1(2), **Sch. 6 para. 9**

F18 Words in s. 76(8)(b) inserted (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 1 para. 9** (with reg. 5)

Modifications etc. (not altering text)

C1 S. 76(7) excluded (1.4.2013) by The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013 (S.I. 2013/257), regs. 1(1), **17** (with reg. 1(4))

C2 S. 76(7) excluded (1.4.2013) by The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (S.I. 2013/500), regs. 1(1), **17** (with reg. 1(4))

Commencement Information

I140 S. 76 partly in force; s. 76 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I141 S. 76 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

77 Requirements under section 75: undertakings

(1) Regulations under section 75 may confer on Monitor a power to accept an undertaking (referred to in this Chapter as a "section 77 undertaking") from the National Health Service Commissioning Board or a clinical commissioning group to take such action of a kind mentioned in subsection (2) as is specified in the undertaking within such period as is so specified.

(2) The specified action must be—

(a) action of a description given in paragraphs (a) to (e) of section 76(6), or

(b) action of such a description as may be prescribed.

(3) Where Monitor accepts a section 77 undertaking then, unless the Board, or (as the case may be) the clinical commissioning group from whom the undertaking is accepted, has failed to comply with the undertaking or any part of it, Monitor may not—

(a) continue to carry out the investigation in question,

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(b) make a declaration by virtue of subsection (3) of section 76 in relation to the arrangement in question, or

(c) give a direction by virtue of subsection (6) of that section in relation to the failure in question.

(4) Where the Board, or (as the case may be) the clinical commissioning group from whom Monitor has accepted a section 77 undertaking, has failed to comply fully with the undertaking but has complied with part of it, Monitor must take the partial compliance into account in deciding whether to do something mentioned in paragraphs (a) to (c) of subsection (3).

(5) Schedule 9 (which makes further provision about section 77 undertakings) has effect.

Commencement Information

I142 S. 77 partly in force; s. 77 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I143 S. 77 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

78 Guidance

(1) Monitor must publish guidance about—

(a) compliance with requirements imposed by regulations under section 75;

(b) how it intends to exercise powers conferred on it by regulations under that section.

(2) Before publishing guidance under subsection (1)(a) or (b), Monitor must consult—

(a) the National Health Service Commissioning Board, and

(b) such other persons as Monitor considers appropriate.

(3) Before publishing guidance under subsection (1)(a) or (b), Monitor must obtain the approval of the Secretary of State.

(4) Monitor may revise guidance under this section and, if it does so, must publish the guidance as revised.

(5) Before publishing guidance revised under subsection (4), Monitor must consult the persons mentioned in subsection (2).

Commencement Information

I144 S. 78 in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)** (with art. 6)

79 Mergers involving NHS foundation trusts

(1) For the purposes of Part 3 of the Enterprise Act 2002 (completed and anticipated mergers), each of the following cases is to be treated as being (in so far as it would not otherwise be) a case in which two or more enterprises cease to be distinct enterprises.

(2) The first case is where the activities of two or more NHS foundation trusts cease to be distinct activities.

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(3) The second case is where the activities of one or more NHS foundation trusts and the activities of one or more businesses cease to be distinct activities.

(4) Where the **[**[F19]CMA**]** decides to carry out an investigation under Part 3 of the Enterprise Act 2002 of a matter involving an NHS foundation trust, it must as soon as reasonably practicable notify Monitor.

(5) As soon as reasonably practicable after receiving a notification under subsection (4), Monitor must provide the **[**[F19]CMA**]** with advice on—

(a) the effect of the matter under investigation on benefits (in the form of those within section 30(1)(a) of the Enterprise Act 2002 (relevant customer benefits)) for people who use health care services provided for the purposes of the NHS, and

(b) such other matters relating to the matter under investigation as Monitor considers appropriate.

(6) In subsections (2) and (3), a reference to the activities of an NHS foundation trust or a business includes a reference to part of its activities.

(7) In this section, "enterprise" and "business" each have the same meaning as in Part 3 of the Enterprise Act 2002.

Textual Amendments

F19 Word in s. 79 substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 191** (with art. 3)

Commencement Information

I145 S. 79 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

80 Co-operation with the [F20]CMA]

(1) Monitor and the **[**[F21]CMA**]** must co-operate with each other in the exercise of their respective functions under the Competition Act 1998 and the Enterprise Act 2002.

(2) In particular each must give the other—

(a) such information in its possession as the other may require to enable it to exercise those functions,

(b) such other information in its possession as it considers would assist the other in exercising those functions, and

(c) such other assistance as the other may require to assist it in exercising those functions.

[[F22](3) The reference in subsection (1) to the functions of the CMA is a reference to those functions which are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013).**]**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F20 Word in s. 80 heading substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 192(4)** (with art. 3)

F21 Word in s. 80(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 192(2)** (with art. 3)

F22 S. 80(3) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 192(3)** (with art. 3)

Commencement Information

I146 S. 80 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

CHAPTER 3

LICENSING

Licensing requirement

81 Requirement for health service providers to be licensed

(1) Any person who provides a health care service for the purposes of the NHS must hold a licence under this Chapter.

(2) Regulations may make provision for the purposes of this Chapter for determining, in relation to a service provided by two or more persons acting in different capacities, which of those persons is to be regarded as the person who provides the service.

Commencement Information

I147 S. 81 partly in force; s. 81 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I148 S. 81 in force at 1.4.2013 for specified purposes by S.I. 2013/671, **art. 2(3)**

I149 S. 81 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

82 Deemed breach of requirement to be licensed

(1) This section applies where a licence holder—

(a) in providing a health care service for the purposes of the NHS, carries on a regulated activity (within the meaning of Part 1 of the Health and Social Care Act 2008), but

(b) is not registered under Chapter 2 of Part 1 of that Act in respect of the carrying on of that activity.

(2) The licence holder is to be regarded as providing the service in breach of the requirement under section 81 to hold a licence.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I150 S. 82 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

83 Exemption regulations

(1) Regulations (referred to in this section and section 84 as "exemption regulations") may provide for the grant of exemptions from the requirement under section 81 in respect of—

(a) a prescribed person or persons of a prescribed description;

(b) the provision of a prescribed health care service or a health care service of a prescribed description.

(2) Exemption regulations may grant an exemption—

(a) either generally or to the extent prescribed;

(b) either unconditionally or subject to prescribed conditions;

(c) indefinitely, for a prescribed period or for a period determined by or under the exemption.

(3) Conditions subject to which an exemption may be granted include, in particular, conditions requiring any person providing a service pursuant to the exemption—

(a) to comply with any direction given by Monitor about such matters as are specified in the exemption or are of a description so specified,

(b) except to the extent that Monitor otherwise approves, to do, or not to do, such things as are specified in the exemption or are of a description so specified (or to do, or not to do, such things in a specified manner), and

(c) to refer for determination by Monitor such questions arising under the exemption as are specified in the exemption or are of a description so specified.

(4) Before making exemption regulations the Secretary of State must give notice to—

(a) Monitor,

(b) the National Health Service Commissioning Board, and

(c) the Care Quality Commission and its Healthwatch England committee.

(5) The Secretary of State must also publish a notice under subsection (4).

(6) A notice under subsection (4) must—

(a) state that the Secretary of State proposes to make exemption regulations and set out their proposed effect,

(b) set out the Secretary of State's reasons for the proposal, and

(c) specify the period ("the notice period") within which representations with respect to the proposal may be made.

(7) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (5).

(8) Where an exemption is granted the Secretary of State—

(a) if the exemption is granted to a prescribed person, must give notice of it to that person, and

(b) must publish the exemption.

Status: *This version of this Act contains provisions that are prospective.*
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Commencement Information

I151 S. 83 partly in force; s. 83 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I152 S. 83 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

84 Exemption regulations: supplementary

(1) Regulations may revoke exemption regulations by which an exemption was granted to a person, or amend such regulations by which more than one exemption was so granted so as to withdraw any of the exemptions—

(a) at the person's request,

(b) in accordance with any provision of the exemption regulations by which the exemption was granted, or

(c) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect.

(2) Regulations may revoke exemption regulations by which an exemption was granted to persons of a prescribed description, or amend such regulations by which more than one exemption was so granted so as to withdraw any of the exemptions—

(a) in accordance with any provision of the exemption regulations by which the exemption was granted, or

(b) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect.

(3) The Secretary of State may by direction withdraw an exemption granted to persons of a description prescribed in exemption regulations for any person of that description—

(a) at the person's request,

(b) in accordance with any provision of the exemption regulations by which the exemption was granted, or

(c) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect in the case of the person.

(4) Subsection (5) applies where the Secretary of State proposes to—

(a) make regulations under subsection (1)(b) or (c) or (2), or

(b) give a direction under subsection (3)(b) or (c).

(5) The Secretary of State must—

(a) consult the following about the proposal—

(i) Monitor;

(ii) the National Health Service Commissioning Board;

(iii) the Care Quality Commission and its Healthwatch England committee;

(b) where the Secretary of State is proposing to make regulations under subsection (1)(b) or (c), give notice of the proposal to the person to whom the exemption was granted;

(c) where the Secretary of State is proposing to make regulations under subsection (2), publish the notice;

(d) where the Secretary of State is proposing to give a direction under subsection (3)(b) or (c), give notice of the proposal to the person from whom the Secretary of State proposes to withdraw the exemption.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) The notice must—

(a) state that the Secretary of State proposes to make the regulations or give the direction (as the case may be),

(b) set out the Secretary of State's reasons for the proposal, and

(c) specify the period within which representations with respect to the proposal may be made.

(7) The period so specified must be not less than 28 days beginning with the day after that on which the notice is received or (as the case may be) published.

Commencement Information

I153 S. 84 partly in force; s. 84 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I154 S. 84 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Licensing procedure

85 Application for licence

(1) A person seeking to hold a licence under this Chapter must make an application to Monitor.

(2) The application must be made in such form, and contain or be accompanied by such information, as Monitor requires.

Commencement Information

I155 S. 85 in force at 1.4.2013 for specified purposes by S.I. 2013/671, **art. 2(3)**

I156 S. 85 in force at 1.1.2014 by S.I. 2013/2896, **art. 2(1)**(3)

86 Licensing criteria

(1) Monitor must set and publish the criteria which must be met by a person in order for that person to be granted a licence under this Chapter.

(2) Monitor may revise the criteria and, if it does so, must publish them as revised.

(3) Monitor may not set or revise the criteria unless the Secretary of State has by order approved the criteria or (as the case may be) revised criteria.

Commencement Information

I157 S. 86 in force at 1.4.2013 for specified purposes by S.I. 2013/671, **art. 2(3)**

I158 S. 86 in force at 1.1.2014 by S.I. 2013/2896, **art. 2(1)**(3)

87 Grant or refusal of licence

(1) This section applies where an application for a licence has been made under section 85.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) If Monitor is satisfied that the applicant meets the criteria for holding a licence for the time being published under section 86 it must as soon as reasonably practicable grant the application; otherwise it must refuse it.

(3) On granting the application, Monitor must issue a licence to the applicant.

(4) A licence issued under this section is subject to—

(a) such of the standard conditions (see section 94) as are applicable to the licence, **[**F23and**]**

(b) such other conditions included in the licence by virtue of section 95 (referred to in this Chapter as "the special conditions"). F24...

F24(c) . . . . . .

Textual Amendments

F23 Word in s. 87(4)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 114(1)(c)**, 306(4); S.I. 2013/671, art. 2(3)

F24 S. 87(4)(c) and preceding word omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 114(1)(d)**, 306(4); S.I. 2013/671, art. 2(3)

Commencement Information

I159 S. 87 in force at 1.4.2013 for specified purposes by S.I. 2013/671, **art. 2(3)**

I160 S. 87 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

88 Application and grant: NHS foundation trusts

(1) This section applies where an NHS trust becomes an NHS foundation trust pursuant to section 36 of the National Health Service Act 2006 (effect of authorisation of NHS foundation trust).

(2) The NHS foundation trust is to be treated by Monitor as having—

(a) duly made an application for a licence under section 85, and

(b) met the criteria for holding a licence for the time being published under section 86.

(3) An NHS foundation trust in existence on the day on which this section comes into force is to be treated for the purposes of this section as having become an NHS foundation trust pursuant to section 36 of the National Health Service Act 2006 on that day.

Commencement Information

I161 S. 88 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

89 Revocation of licence

Monitor may at any time revoke a licence under this Chapter—

(a) on the application of the licence holder, or

(b) if Monitor is satisfied that the licence holder has failed to comply with a condition of the licence.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I162 S. 89 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

90 Right to make representations

(1) Monitor must give notice—

(a) to an applicant for a licence under this Chapter of a proposal to refuse the application;

(b) to the licence holder of a proposal to revoke a licence under section 89(b).

(2) A notice under this section must—

(a) set out Monitor's reasons for its proposal;

(b) specify the period within which representations with respect to the proposal may be made to Monitor.

(3) The period so specified must be not less than 28 days beginning with the day after that on which the notice is received.

Commencement Information
I163 S. 90(1)(a) in force at 1.4.2014 by S.I. 2014/39, **art. 2(3)**
I164 S. 90(1)(b)(2)(3) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

91 Notice of decisions

(1) This section applies if Monitor decides to—

(a) refuse an application for a licence under section 87, or

(b) revoke a licence under section 89(b).

(2) Monitor must give notice of its decision to the applicant or the licence holder (as the case may be).

(3) A notice under this section must explain the right of appeal conferred by section 92.

(4) A decision of Monitor to revoke a licence under section 89(b) takes effect on such day as may be specified by Monitor, being a day no earlier than—

(a) if an appeal is brought under section 92, the day on which the decision on appeal is confirmed or the appeal is abandoned,

(b) where the licence holder notifies Monitor before the end of the period for bringing an appeal under section 92 that the licence holder does not intend to appeal, the day on which Monitor receives the notification, or

(c) the day after that period.

Commencement Information
I165 S. 91(1)(a) in force at 1.4.2014 by S.I. 2014/39, **art. 2(3)**
I166 S. 91(1)(b)(2)-(4) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)** (with art. 4)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

92 Appeals to the Tribunal

(1) An appeal lies to the First-tier Tribunal against a decision of Monitor to—

(a) refuse an application for a licence under section 87, or

(b) revoke a licence under section 89(b).

(2) The grounds for an appeal under this section are that the decision was—

(a) based on an error of fact,

(b) wrong in law, or

(c) unreasonable.

(3) On an appeal under this section, the First-tier Tribunal may—

(a) confirm Monitor's decision,

(b) direct that the decision is not to have effect, or

(c) remit the decision to Monitor.

Commencement Information

I167 S. 92(1)(a) in force at 1.4.2014 by S.I. 2014/39, **art. 2(3)**

I168 S. 92(1)(b)(2)(3) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

93 Register of licence holders

(1) Monitor must maintain and publish a register of licence holders.

(2) The register may contain such information as Monitor considers appropriate for the purpose of keeping members of the public informed about licence holders including, in particular, information about the revocation of any licence under this Chapter.

(3) Monitor must secure that copies of the register are available at its offices for inspection at all reasonable times by any person.

(4) Any person who asks Monitor for a copy of, or an extract from, the register is entitled to have one.

(5) Regulations may provide that subsections (3) and (4) do not apply—

(a) in such circumstances as may be prescribed, or

(b) to such parts of the register as may be prescribed.

(6) A fee determined by Monitor is payable for the copy or extract except—

(a) in such circumstances as may be prescribed, or

(b) in any case where Monitor considers it appropriate to provide the copy or extract free of charge.

Commencement Information

I169 S. 93 partly in force; s. 93 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I170 S. 93 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Licence conditions

94 Standard conditions

(1) Monitor must determine and publish the conditions to be included in each licence under this Chapter (referred to in this Chapter as "the standard conditions").

(2) Different standard conditions may be determined for different descriptions of licences.

(3) For the purposes of subsection (2) a description of licences may, in particular, be framed wholly or partly by reference to—

(a) the nature of the licence holder,

(b) the services provided under the licence, or

(c) the areas in which those services are provided.

(4) But different standard conditions must not be determined for different descriptions of licences to the extent that the description is framed by reference to the nature of the licence holder unless Monitor considers that at least one of requirements 1 and 2 is met.

(5) Requirement 1 is that—

(a) the standard conditions in question relate to the governance of licence holders, and

(b) it is necessary to determine different standard conditions in order to take account of differences in the status of different licence holders.

(6) Requirement 2 is that it is necessary to determine different standard conditions for the purpose of ensuring that the burdens to which different licence holders are subject as a result of holding a licence are broadly consistent.

(7) Before determining the first set of the standard conditions Monitor must consult the persons mentioned in subsection (8) on the conditions it is proposing to determine ("the draft standard conditions").

(8) Those persons are—

(a) the Secretary of State,

(b) the NHS Commissioning Board Authority,

(c) every Primary Care Trust,

(d) the Care Quality Commission, and

(e) such other persons as are likely to be affected by the inclusion of the conditions in licences under this Chapter as Monitor considers appropriate.

(9) Monitor must also publish the draft standard conditions.

(10) The Secretary of State may direct Monitor not to determine that the standard conditions will be the draft standard conditions.

(11) If, at the time Monitor discharges the function under subsection (7), the day specified by the Secretary of State for the purposes of section 14A of the National Health Service Act 2006 has passed or section 9 or 181 has come into force—

(a) in the case of section 14A of the National Health Service Act 2006, the reference in subsection (8)(c) to every Primary Care Trust is to be read as a reference to every clinical commissioning group;

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(b) in the case of section 9, the reference in subsection (8)(b) to the NHS Commissioning Board Authority is to be read as a reference to the National Health Service Commissioning Board;

(c) in the case of section 181, the reference in subsection (8)(d) to the Care Quality Commission is to be read as including a reference to its Healthwatch England committee.

Commencement Information

I171 S. 94 partly in force; s. 94 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I172 S. 94 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

I173 S. 94(1)-(6) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

I174 S. 94(7)-(10)(11)(b)(c) in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

95 Special conditions

(1) Monitor may—

(a) with the consent of the applicant, include a special condition in a licence under this Chapter, and

(b) with the consent of the licence holder, modify a special condition of a licence.

(2) Before including a special condition or making such modifications Monitor must give notice to—

(a) the applicant or the licence holder (as the case may be),

(b) the Secretary of State,

(c) the National Health Service Commissioning Board,

(d) such clinical commissioning groups as are likely to be affected by the proposed inclusion or modifications, and

(e) the Care Quality Commission and its Healthwatch England committee.

(3) Monitor must also publish the notice under subsection (2).

(4) The notice under subsection (2) must—

(a) state that Monitor proposes to include the special condition or make the modifications and set out its or their proposed effect,

(b) set out Monitor's reasons for the proposal, and

(c) specify the period ("the notice period") within which representations with respect to the proposal may be made to Monitor.

(5) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (3).

(6) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Commencement Information

I175 S. 95 in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)** (with art. 7)

I176 S. 95(1)(a)(2)-(5) in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)** (with art. 5)

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I177 S. 95(1)(b)(6) in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

96 Limits on Monitor's functions to set or modify licence conditions

(1) This section applies to the following functions of Monitor—

(a) the duty to determine the standard conditions to be included in each licence under this Chapter or in licences of a particular description (see section 94);

(b) the powers to include a special condition in a licence and to modify such a condition (see section 95);

(c) the power to modify the standard conditions applicable to all licences, or to licences of a particular description (see section 100).

(2) Monitor may only exercise a function to which this section applies—

(a) for the purpose of regulating the price payable for the provision of health care services for the purposes of the NHS;

(b) for the purpose of preventing anti-competitive behaviour in the provision of health care services for those purposes which is against the interests of people who use such services;

(c) for the purpose of protecting and promoting the right of patients to make choices with respect to treatment or other health care services provided for the purposes of the NHS;

(d) for the purpose of ensuring the continued provision of health care services for the purposes of the NHS;

(e) for the purpose of enabling health care services provided for the purposes of the NHS to be provided in an integrated way where Monitor considers that this would achieve one or more of the objectives referred to in subsection (3);

(f) for the purpose of enabling the provision of health care services provided for the purposes of the NHS to be integrated with the provision of health-related services or social care services where Monitor considers that this would achieve one or more of the objectives referred to in subsection (3);

(g) for the purpose of enabling co-operation between providers of health care services for the purposes of the NHS where Monitor considers that this would achieve one or more of the objectives referred to in subsection (3);

(h) for purposes connected with the governance of persons providing health care services for the purposes of the NHS;

(i) for purposes connected with Monitor's functions in relation to the register of NHS foundation trusts required to be maintained under section 39 of the National Health Service Act 2006;

(j) for purposes connected with the operation of the licensing regime established by this Chapter;

(k) for such purposes as may be prescribed for the purpose of enabling Monitor to discharge its duties under section 62.

(3) The objectives referred to in subsection (2)(e), (f) and (g) are—

(a) improving the quality of health care services provided for the purposes of the NHS (including the outcomes that are achieved from their provision) or the efficiency of their provision,

(b) reducing inequalities between persons with respect to their ability to access those services, and

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(c) reducing inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(4) Monitor must not exercise a function to which this section applies in a way which it considers would result in a particular licence holder or holders of licences of a particular description being put at an unfair advantage or disadvantage in competing with others in the provision of health care services for the purposes of the NHS as a result of—

(a) being in the public or (as the case may be) private sector, or

(b) some other aspect of its or their status.

(5) In subsection (2)(f), "health-related services" and "social care services" each have the meaning given in section 62(11).

Commencement Information

I178 S. 96 partly in force; s. 96 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I179 S. 96 in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

I180 S. 96(1)(a)(b)(2)-(5) in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

I181 S. 96(1)(c) in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

97 Conditions: supplementary

(1) The standard or special conditions of a licence under this Chapter may, in particular, include conditions—

(a) requiring the licence holder to pay to Monitor such fees of such amounts as Monitor may determine in respect of the exercise by Monitor of its functions under this Chapter,

(b) requiring the licence holder to comply with any requirement imposed on it by Monitor under Chapter 6 (financial assistance in special administration cases),

(c) requiring the licence holder to do, or not to do, specified things or things of a specified description (or to do, or not to do, any such things in a specified manner) within such period as may be specified in order to prevent anti-competitive behaviour in the provision of health care services for the purposes of the NHS which is against the interests of people who use such services,

(d) requiring the licence holder to give notice to the **[**F25CMA**]** before entering into an arrangement under which, or a transaction in consequence of which, the licence holder's activities, and the activities of one or more other businesses, cease to be distinct activities,

(e) requiring the licence holder to provide Monitor with such information as Monitor considers necessary for the purposes of the exercise of its functions under this Part,

(f) requiring the licence holder to publish such information as may be specified or as Monitor may direct,

(g) requiring the licence holder to charge for the provision of health care services for the purposes of the NHS in accordance with the national tariff (see section 116),

(h) requiring the licence holder to comply with other rules published by Monitor about the charging for the provision of health care services for the purposes of the NHS,

Status: *This version of this Act contains provisions that are prospective.*
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(i) requiring the licence holder—

(i) to do, or not to do, specified things or things of a specified description (or to do, or not to do, any such things in a specified manner) within such period as may be specified in order to ensure the continued provision of one or more of the health care services that the licence holder provides for the purposes of the NHS,

(ii) to give Monitor notice (of such period as may be determined by or under the licence) of the licence holder's intention to cease providing a health care service for the purposes of the NHS, and

(iii) if Monitor so directs, to continue providing that service for a period determined by Monitor,

(j) about the use or disposal by the licence holder of assets used in the provision of health care services for the purposes of the NHS in order to ensure the continued provision of one or more of the health care services that the licence holder provides for those purposes, and

(k) about the making by the licence holder of investment in relation to the provision of health care services for the purposes of the NHS in order to ensure the continued provision of one or more of the health care services that the licence holder provides for those purposes.

(2) In subsection (1) "specified" means specified in a condition.

(3) Monitor must not include a condition under subsection (1)(c) that requires the licence holder (A) to provide another licence holder with access to facilities of A.

(4) A condition under subsection (1)(d)—

(a) may be included only in the licence of an NHS foundation trust or a body which (or part of which) used to be an NHS trust established under section 25 of the National Health Service Act 2006, and

(b) ceases to have effect at the end of the period of five years beginning with the day on which it is included in the licence.

(5) The references in subsection (1)(d) to the activities of a licence holder or other business include a reference to part of the activities concerned.

(6) The references in subsections (1)(d) and (5) to the activities of a business include a reference to the activities of an NHS foundation trust in so far as its activities would not otherwise be the activities of a business.

(7) A condition of a licence under this Chapter may provide that it is to have effect, or cease to have effect, at such times and in such circumstances as may be determined by or under the conditions.

Textual Amendments

F25 Word in s. 97(1)(d) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 193** (with art. 3)

Commencement Information

I182 S. 97 partly in force; s. 97 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I183 S. 97 in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

I184 S. 97 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

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98 Conditions relating to the continuation of the provision of services etc.

(1) The things which a licence holder may be required to do by a condition under section 97(1)(i)(i) include, in particular—

(a) providing information to the commissioners of services to which the condition applies and to such other persons as Monitor may direct,

(b) allowing Monitor to enter premises owned or controlled by the licence holder and to inspect the premises and anything on them, and

(c) co-operating with such persons as Monitor may appoint to assist in the management of the licence holder's affairs, business and property.

(2) A commissioner of services to which a condition under section 97(1)(i), (j) or (k) applies must co-operate with persons appointed under subsection (1)(c) in their provision of the assistance that they have been appointed to provide.

(3) Where a licence includes a condition under section 97(1)(i), (j) or (k), Monitor must carry out an ongoing assessment of the risks to the continued provision of services to which the condition applies.

(4) Monitor must publish guidance—

(a) for commissioners of a service to which a condition under section 97(1)(i), (j) or (k) applies about the exercise of their functions in connection with the licence holders who provide the service, and

(b) for such licence holders about the conduct of their affairs, business and property at a time at which such a condition applies.

(5) A commissioner of services to which a condition under section 97(1)(i), (j), or (k) applies must have regard to guidance under subsection (4)(a).

(6) Monitor may revise guidance under subsection (4) and, if it does so, must publish the guidance as revised.

(7) Before publishing guidance under subsection (4) or (6), Monitor must obtain the approval of—

(a) the Secretary of State, and

(b) the National Health Service Commissioning Board.

Commencement Information

I185 S. 98 partly in force; s. 98 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I186 S. 98 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

I187 S. 98(1)(2) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

I188 S. 98(4)(7) in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)** (with art. 8)

99 Notification of commissioners where continuation of services at risk

(1) This section applies where Monitor—

(a) takes action in the case of a licence holder in reliance on a condition in the licence under section 97(1)(i), (j) or (k), and

(b) does so because it is satisfied that the continued provision for the purposes of the NHS of health care services to which that condition applies is being put at

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significant risk by the configuration of certain health care services provided for those purposes.

(2) In subsection (1), a reference to the provision of services is a reference to their provision by the licence holder or any other provider.

(3) Monitor must as soon as reasonably practicable notify the National Health Service Commissioning Board and such clinical commissioning groups as Monitor considers appropriate—

(a) of the action it has taken, and

(b) of its reasons for being satisfied as mentioned in subsection (1)(b).

(4) Monitor must publish for each financial year a list of the notifications under this section that it has given during that year; and the list must include for each notification a summary of Monitor's reasons for being satisfied as mentioned in subsection (1)(b).

(5) The Board and clinical commissioning groups, having received a notification under this section, must have regard to it in arranging for the provision of health care services for the purposes of the NHS.

Commencement Information

I189 S. 99 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

100 Modification of standard conditions

(1) Monitor may, subject to the requirements of this section, modify the standard conditions applicable to all licences under this Chapter or to licences of a particular description.

(2) Before making any such modifications Monitor must give notice to—

(a) each relevant licence holder,

(b) the Secretary of State,

(c) the National Health Service Commissioning Board,

(d) every clinical commissioning group, and

(e) the Care Quality Commission and its Healthwatch England committee.

(3) Monitor must also publish the notice under subsection (2).

(4) The notice under subsection (2) must—

(a) state that Monitor proposes to make the modifications,

(b) set out the proposed effect of the modifications,

(c) set out Monitor's reasons for the proposal, and

(d) specify the period (“the notice period”) within which representations with respect to the proposal may be made to Monitor.

(5) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (3).

(6) Monitor may not make any modifications under this section unless—

(a) no relevant licence holder has made an objection to Monitor about the proposal within the notice period, or

(b) subsection (7) applies to the case.

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(7) This subsection applies where—

(a) one or more relevant licence holders make an objection to Monitor about the proposal within the notice period,

(b) the objection percentage is less than the percentage prescribed for the purposes of this paragraph, and

(c) the share of supply percentage is less than the percentage prescribed for the purposes of this paragraph.

(8) In subsection (7)—

(a) the "objection percentage" is the proportion (expressed as a percentage) of the relevant licence holders who objected to the proposals;

(b) the "share of supply percentage" is the proportion (expressed as a percentage) of the relevant licence holders who objected to the proposals, weighted according to their share of the supply in England of such services as may be prescribed.

(9) Regulations prescribing a percentage for the purposes of subsection (7)(c) may include provision prescribing the method to be used for determining a licence holder's share of the supply in England of the services concerned.

(10) Where Monitor modifies the standard conditions applicable to all licences or (as the case may be) to licences of a particular description under this section, Monitor—

(a) may also make such incidental or consequential modifications as it considers necessary or expedient of any other conditions of a licence which is affected by the modifications,

(b) must make (as nearly as may be) the same modifications of those conditions for the purposes of their inclusion in all licences or (as the case may be) licences of that description granted after that time, and

(c) must publish the modifications.

(11) In this section and section 101, "relevant licence holder"—

(a) in relation to proposed modifications of the standard conditions applicable to all licences, means any licence holder, and

(b) in relation to proposed modifications of the standard conditions applicable to licences of a particular description, means a holder of a licence of that description.

(12) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Commencement Information

I190 S. 100 partly in force; s. 100 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I191 S. 100 in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

101 Modification references to the [F26CMA]

(1) Subsection (2) applies where—

(a) Monitor has given notice under section 95(2) of a proposal to include a special condition in a licence or modify such a condition, and

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(b) the applicant or (as the case may be) licence holder concerned has refused consent to the inclusion of the condition or the making of the modifications.

(2) Monitor may make a reference to the **[**F27CMA**]** which is so framed as to require **[**F28the CMA**]** to investigate and report on the questions—

(a) whether any matters which relate to the provision, or proposed provision, of a health care service for the purposes of the NHS by the applicant or (as the case may be) licence holder concerned and which are specified in the reference, operate, or may be expected to operate, against the public interest, and

(b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by the inclusion of a special condition in the applicant's licence or by modifications of a special condition of the licence holder's licence.

(3) Subsection (4) applies where—

(a) Monitor has given notice under section 100(2) of a proposal to make modifications to the standard conditions applicable to all licences under this Chapter, or to licences of a particular description, and

(b) section 100 operates to prevent Monitor from making the modifications.

(4) Monitor may make a reference to the **[**F29CMA**]** which is so framed as to require **[**F30the CMA**]** to investigate and report on the questions—

(a) whether any matters which relate to the provision of health care services for the purposes of the NHS by the relevant licence holders, and which are specified in the reference, operate, or may be expected to operate, against the public interest, and

(b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the standard conditions applicable to all licences under this Chapter, or to licences of a particular description.

[F31(4A) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of changes following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by paragraph 10 of Schedule 10).**]**

(5) Schedule 10 (which makes further provision about references to the **[**F32CMA**]**) has effect in relation to a reference under subsection (2) or (4); and, for that purpose, the relevant persons are—

(a) in paragraphs 3, 6(6) and 7(6)—

(i) the applicant or licence holder concerned or (as the case may be) relevant licence holders,

(ii) the National Health Service Commissioning Board, and

(iii) such clinical commissioning groups as are likely to be affected by matters to which the reference relates,

(b) in paragraph 5(6), the applicant or licence holder concerned or (as the case may be) relevant licence holders, and

(c) in paragraph 8(10)—

(i) the applicant or licence holder concerned or (as the case may be) relevant licence holders,

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(ii) Monitor,

(iii)

(iv) such clinical commissioning groups as are likely to be affected by the proposal concerned.

(6) In investigating the question under subsection (2)(a) or (4)(a) the **[**[F32]CMA**]** must have regard to—

(a) the matters in respect of which Monitor has duties under section 62, and

(b) the matters to which Monitor must have regard by virtue of section 66.

(7) Where the standard conditions applicable to all licences or (as the case may be) to licences of a particular description are modified pursuant to a reference made under subsection (4), Monitor—

(a) may also make such incidental or consequential modifications as it considers necessary or expedient of any other conditions of a licence which is affected by the modifications,

(b) must make (as nearly as may be) the same modifications of those conditions for the purposes of their inclusion in all licences or (as the case may be) licences of that description granted after that time, and

(c) must publish any modifications made under this subsection.

(8) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Textual Amendments

F26 Word in s. 101 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 128(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F27 Word in s. 101(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 128(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F28 Words in s. 101(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 128(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F29 Word in s. 101(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 128(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F30 Words in s. 101(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 128(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F31 S. 101(4A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 128(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F32 Word in s. 101(5)(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 128(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I192 S. 101 in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

I193 S. 101(1)(2) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)** (with art. 9)

I194 S. 101(5)(6) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)** (with art. 9)

I195 S. 101(8) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)** (with art. 9)

102 Modification of conditions by order under other enactments

(1) This section applies where the **[**[F33]CMA**]** or Secretary of State (the "relevant authority") makes a relevant order.

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the National Health Service Commissioning Board, and

(2) A relevant order may modify—

(a) the conditions of a particular licence, or

(b) the standard conditions applicable to all licences under this Chapter or to licences of a particular description.

(3) The modifications which may be made by a relevant order are those which the relevant authority considers necessary or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(4) In this section "relevant order" means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where one or more of the enterprises which have, or may have, ceased to be distinct enterprises were engaged in the provision of health care services for the purposes of the NHS;

(b) an order under any of those provisions of that Act where one or more of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of health care services for the purposes of the NHS;

(c) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market **[**[F34]or markets**]** in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to—

(i) the commissioning by the National Health Service Commissioning Board or a clinical commissioning group of health care services for the purposes of the NHS, or

(ii) the provision of those services.

(5) The modification under subsection (2)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

(6) Where the relevant authority modifies the standard conditions applicable to all licences or (as the case may be) to licences of a particular description under this section, the relevant authority—

(a) may, after consultation with Monitor, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any other conditions of any licence which is affected by the modifications,

(b) must also make (as nearly as may be) the same modifications of those conditions for the purposes of their inclusion in all licences or (as the case may be) licences of that description granted after that time, and

(c) must publish any modifications it makes under paragraph (b).

(7) Expressions used in subsection (4) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.

(8) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Textual Amendments

F33 Word in s. 102(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 129**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F34 Words in s. 102(4)(c) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 194** (with art. 3)

Commencement Information

I196 S. 102 partly in force; s. 102 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I197 S. 102 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

103 Standard condition as to transparency of certain criteria

(1) The standard conditions applicable to any licence under this Chapter must include a condition requiring the licence holder to—

(a) set transparent eligibility and selection criteria, and

(b) apply those criteria in a transparent way to persons who, having a choice of persons from whom to receive health care services for the purposes of the NHS, choose to receive them from the licence holder.

(2) "Eligibility and selection criteria", in relation to a licence holder, means criteria for determining—

(a) whether a person is eligible, or is to be selected, to receive health care services provided by the licence holder for the purposes of the NHS, and

(b) if the person is selected, the manner in which the services are provided to the person.

(3) The following powers must not be exercised so as to omit the condition mentioned in subsection (1) from any licence under this Chapter—

(a) the powers conferred on Monitor by sections 100, 101(7) and paragraph 7(2) of Schedule 10 to modify the standard conditions applicable to all licences, or to licences of a particular description,

(b) the power conferred on the **[**F35CMA**]** by paragraph 8(5) of that Schedule to modify those conditions, and

(c) the powers conferred by section 102 on the **[**F36CMA**]** and Secretary of State to modify those conditions or the conditions of a particular licence.

Textual Amendments

F35 Word in s. 103(3)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 130(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F36 Word in s. 103(3)(c) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 130(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I198 S. 103 in force at 1.4.2013 for specified purposes by S.I. 2013/671, **art. 2(3)**

I199 S. 103 in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

I200 S. 103(1)(2) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

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Enforcement

104 Power to require documents and information

(1) Monitor may require a person mentioned in subsection (2) to provide it with any information, documents, records or other items which it considers it necessary or expedient to have for the purposes of any of its regulatory functions.

(2) The persons are—

(a) an applicant for a licence under this Chapter,

(b) a licence holder,

(c) a person who has provided, or is providing, a health care service for the purposes of the NHS in accordance with an exemption by virtue of section 83 from the requirement to hold a licence under this Chapter,

(d) a person who has provided, or is providing, a health care service for the purposes of the NHS in breach of that requirement,

(e) the National Health Service Commissioning Board, and

(f) a clinical commissioning group.

(3) The power in subsection (1) includes, in relation to information, documents or records kept by means of a computer, power to require the provision of the information, documents or records in legible form.

(4) For the purposes of subsection (1) Monitor's regulatory functions are its functions under—

(a) this Chapter,

(b) Chapters 4 to 6,

(c) Chapter 5 of Part 2 of the National Health Service Act 2006 (NHS foundation trusts), and

(d) Chapter 5A of that Part of that Act (trust special administration).

Commencement Information

I201 S. 104(1)(2)(a)(f)(3)(4)(a)(d) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)** (with art. 9)

I202 S. 104(2)(b)(4)(c) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

I203 S. 104(2)(c)(d) in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

I204 S. 104(2)(e) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I205 S. 104(4)(b) in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I206 S. 104(4)(b) in force at 1.12.2013 for specified purposes by S.I. 2013/2896, **art. 2(1)**(2)

I207 S. 104(4)(b) in force at 1.4.2014 for specified purposes by S.I. 2014/39, **art. 2(3)**

105 Discretionary requirements

(1) Monitor may impose one or more discretionary requirements on a person if Monitor is satisfied that the person—

(a) has provided, or is providing, a health care service for the purposes of the NHS in breach of the requirement to hold a licence under this Chapter (see section 81),

(b) is a licence holder who has provided, or is providing, a health care service for the purposes of the NHS in breach of a condition of the licence, or

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(c) is in breach of a requirement imposed by Monitor under section 104.

(2) In this Chapter, "discretionary requirement" means—

(a) a requirement to pay a monetary penalty to Monitor of such amount as Monitor may determine (referred to in this Chapter as a "variable monetary penalty"),

(b) a requirement to take such steps within such period as Monitor may specify, to secure that the breach in question does not continue or recur (referred to in this Chapter as a "compliance requirement"), or

(c) a requirement to take such steps within such period as Monitor may specify, to secure that the position is, so far as possible, restored to what it would have been if the breach in question was not occurring or had not occurred (referred to in this Chapter as a "restoration requirement").

(3) Monitor must not impose discretionary requirements on a person on more than one occasion in relation to the same breach.

(4) A variable monetary penalty must not exceed 10% of the turnover in England of the person on whom it is imposed, such amount to be calculated in the prescribed manner.

(5) If the whole or any part of a variable monetary penalty is not paid by the time it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838; but the total interest must not exceed the amount of the penalty.

Commencement Information

I208 S. 105 partly in force; s. 105 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I209 S. 105(1)(a) in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

I210 S. 105(1)(b)(c)(2)(b)(c)(3) in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

I211 S. 105(2)(a)(4)(5) in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

106 Enforcement undertakings

(1) Monitor may accept an enforcement undertaking from a person if Monitor has reasonable grounds to suspect that the person—

(a) has provided, or is providing, a health care service for the purposes of the NHS in breach of the requirement to hold a licence under this Chapter,

(b) is a licence holder who has provided, or is providing, a health care service for the purposes of the NHS in breach of a condition of the licence, or

(c) is in breach of a requirement imposed by Monitor under section 104.

(2) In this Chapter, "enforcement undertaking" means an undertaking from a person to take such action of a kind mentioned in subsection (3) as may be specified in the undertaking within such period as may be so specified.

(3) The specified action must be—

(a) action to secure that the breach in question does not continue or recur,

(b) action to secure that the position is, so far as possible, restored to what it would have been if the breach in question was not occurring or had not occurred,

(c) action (including the payment of a sum of money) to benefit—

(i) any other licence holder affected by the breach, or

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(ii) any commissioner of health care services for the purposes of the NHS which is affected by the breach, or

(d) action of such a description as may be prescribed.

(4) Where Monitor accepts an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—

(a) Monitor may not impose on that person any discretionary requirement which it would otherwise have power to impose by virtue of section 105 in respect of the breach to which the undertaking relates, and

(b) if the breach to which the undertaking relates falls within subsection (1)(b), Monitor may not revoke that person's licence under section 89(b).

(5) Where a person from whom Monitor has accepted an enforcement undertaking has failed to comply fully with the undertaking but has complied with part of it, Monitor must take the partial compliance into account in deciding whether—

(a) to impose a discretionary requirement on the person in respect of the breach to which the undertaking relates, or

(b) if the breach to which the undertaking relates falls within subsection (1)(b), to revoke the person's licence under section 89(b).

Commencement Information

I212 S. 106 partly in force; s. 106 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I213 S. 106(1)(a) in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

I214 S. 106(1)(b)(c)(2)-(5) in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

107 Further provision about enforcement powers

Schedule 11 (Part 1 of which makes further provision about discretionary requirements and Part 2 of which makes further provision about enforcement undertakings) has effect.

Commencement Information

I215 S. 107 in force at 1.7.2013 for specified purposes by S.I. 2013/671, **art. 2(3)**

I216 S. 107 in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

108 Guidance as to use of enforcement powers

(1) Monitor must publish guidance about how it intends to exercise its functions under sections 105 and 106 and Schedule 11.

(2) Monitor may revise the guidance and, if it does so, must publish the guidance as revised.

(3) Monitor must consult such persons as it considers appropriate before publishing or revising the guidance.

(4) Guidance relating to Monitor's functions under section 105 must include information about—

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(a) the circumstances in which Monitor is likely to impose a discretionary requirement,

(b) the circumstances in which Monitor may not impose a discretionary requirement,

(c) the matters likely to be taken into account by Monitor in determining the amount of any variable monetary penalty to be imposed (including, where relevant, any discounts for voluntary reporting of breaches in respect of which a penalty may be imposed), and

(d) rights to make representations and rights of appeal.

(5) Monitor must have regard to the guidance or (as the case may be) revised guidance in exercising its functions under sections 105 and 106 and Schedule 11.

Commencement Information

I217 S. 108(1)-(4) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

I218 S. 108(1)-(4) in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

I219 S. 108(5) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

109 Publication of enforcement action

(1) Monitor must include information about the following in its annual report—

(a) the cases in which a discretionary requirement has been imposed during the financial year to which the report relates, and

(b) the cases in which an enforcement undertaking has been accepted during that financial year.

(2) But Monitor must not include information which it is satisfied is—

(a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of the person to whom it relates;

(b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person's interests.

(3) The reference in subsection (1)(a) to cases in which a discretionary requirement has been imposed does not include a reference to a case where a discretionary requirement has been imposed but overturned on appeal.

Commencement Information

I220 S. 109 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

110 Notification of enforcement action

(1) As soon as reasonably practicable after imposing a discretionary requirement or accepting an enforcement undertaking Monitor must notify the following of that fact—

(a) the National Health Service Commissioning Board,

(b) such clinical commissioning groups as are likely to be affected by the imposition of the requirement or the acceptance of the undertaking, and

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(c) any person exercising regulatory functions in relation to the person on whom the discretionary requirement was imposed or from whom the enforcement undertaking was accepted.

(2) In subsection (1) "regulatory functions" has the same meaning as in the Legislative and Regulatory Reform Act 2006 (see section 32 of that Act).

Commencement Information
I221 S. 110 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

Transitional provision

[F37]111 Imposition of licence conditions on NHS foundation trusts

. . . . . .

Textual Amendments
F37 S. 111 repealed (coming into force as soon as there are no NHS foundation trusts in relation to which it has effect as a result of orders made under s. 112(1)-(4) of the amending Act or as soon as there are no such trusts in existence) by Health and Social Care Act 2012 (c. 7), ss. 112(5), 306(4); S.I. 2013/671, art. 2(3); and as amended (1.4.2015) by Health and Social Care Act 2012 (c. 7), ss. 82(2)(3), 127(1); S.I. 2015/993, art. 2(v) (with transitional provisions in S.I. 2015/995)

Commencement Information
I222 S. 111 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

[F38]112 Duration of transitional period

. . . . . .

Textual Amendments
F38 S. 112 repealed (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 114(1)**, 306(4); S.I. 2013/671, art. 2(3)

Commencement Information
I223 S. 112 partly in force; s. 112 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I224 S. 112 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

[F39]113 Orders under section 112: criteria for deciding applicable trusts

. . . . . .

Textual Amendments
F39 S. 113 repealed (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 114(1)**, 306(4); S.I. 2013/671, art. 2(3)

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Commencement Information
I225 S. 113 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

[F40]114 Repeal of sections 112 and 113

. . . . . .

Textual Amendments
F40 S. 114 repealed (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 114(2)**, 306(4); S.I. 2013/671, art. 2(3)

Commencement Information
I226 S. 114 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

CHAPTER 4

PRICING

115 Price payable by commissioners for NHS services

(1) If a health care service is specified in the national tariff (as to which, see section 116), the price payable for the provision of that service for the purposes of the NHS is (subject to sections 124 and 125) such price as is determined in accordance with the national tariff on the basis of the price (referred to in this Chapter as "the national price") specified in the national tariff for that service.

(2) If a health care service is not specified in the national tariff, the price payable for the provision of that service for the purposes of the NHS is such price as is determined in accordance with the rules provided for in the national tariff for that purpose.

Commencement Information
I227 S. 115 in force at 1.4.2014 by S.I. 2014/39, **art. 2(3)**

116 The national tariff

(1) Monitor must publish a document, to be known as "the national tariff", which specifies—

(a) certain health care services which are or may be provided for the purposes of the NHS,

(b) the method used for determining the national prices of those services,

(c) the national price of each of those services, and

(d) the method used for deciding whether to approve an agreement under section 124 and for determining an application under section 125 (local modifications of prices).

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(2) The national tariff may provide for rules under which the commissioner of a health care service specified in the national tariff and the providers of that service may agree to vary—

(a) the specification of the service under subsection (1)(a), or

(b) the national price of the service.

(3) Where a variation is agreed in accordance with rules provided for under subsection (2), the commissioner of the service in question must maintain and publish a written statement of—

(a) the variation, and

(b) such other variations as have already been agreed in accordance with rules provided for under that subsection in the case of that service.

(4) The national tariff may also—

(a) specify variations to the national price for a service by reference to circumstances in which the service is provided or other factors relevant to the provision of the service,

(b) provide for rules for determining the price payable for the provision for the purposes of the NHS of health care services which are not specified under subsection (1)(a), and

(c) provide for rules relating to the making of payments to the provider of a health care service for the provision of that service.

(5) Rules provided for under subsection (4)(b) may specify health care services which are not specified under subsection (1)(a).

(6) The national tariff may also provide for rules for determining, where a health care service is specified in more than one way under subsection (1)(a) or in more than one way in rules provided for under subsection (4)(b), which specification of the service is to apply in any particular case or cases of any particular description.

(7) The national tariff may include guidance as to—

(a) the application of the method specified under subsection (1)(d),

(b) the application of rules provided for under subsection (2), (4)(b) or (6),

(c) the discharge of the duty imposed by subsection (3), or

(d) the application of variations specified under subsection (4)(a),

and a commissioner of a health care service for the purposes of the NHS must have regard to guidance under this subsection.

(8) Different methods may be specified under subsection (1)(b) for different descriptions of health care service.

(9) The national tariff may, in the case of a specified health care service or health care services of a specified description, specify different national prices or different variations under subsection (4)(a) in relation to different descriptions of provider.

(10) A description for the purposes of subsection (9) may not be framed by reference to—

(a) whether the provider is in the public or (as the case may be) private sector, or

(b) some other aspect of the status of the provider.

(11) The national tariff may not specify a national price for a health care service provided pursuant to the public health functions of the Secretary of State, or of a local authority, under the National Health Service Act 2006.

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(12) The national tariff has effect for such period as is specified in the national tariff (or, where a new edition of the national tariff takes effect before the end of that period, until that new edition takes effect).

(13) In exercising its functions under this Chapter, Monitor must (in addition to the matters specified in section 66) have regard to the objectives and requirements for the time being specified in the mandate published under section 13A of the National Health Service Act 2006.

Commencement Information

I228 S. 116 in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I229 S. 116 in force at 1.12.2013 in so far as not already in force by S.I. 2013/2896, **art. 2(1)**(2)

117 The national tariff: further provision

(1) The ways in which a health care service may be specified in the national tariff under section 116(1)(a), or in rules provided for in the national tariff under section 116(4)(b), include in particular—

(a) specifying it by reference to its components,

(b) specifying it as a service (a "bundle") that comprises two or more health care services which together constitute a form of treatment,

(c) specifying it as a service in a group of standardised services.

(2) In the case of a service specified in the national tariff under section 116(1)(a), the national tariff must—

(a) if the service is specified in accordance with subsection (1)(a), specify a national price for each component of the service;

(b) if it is specified in accordance with subsection (1)(b), specify a national price for the bundle;

(c) if it is specified in accordance with subsection (1)(c), specify a single price as the national price for each service in the group.

(3) In the case of a service specified in rules provided for in the national tariff under section 116(4)(b), the rules may—

(a) if the service is specified in accordance with subsection (1)(a), make provision for determining the price payable for each component of the service;

(b) if it is specified in accordance with subsection (1)(b), make provision for determining the price payable for the bundle;

(c) if it is specified in accordance with subsection (1)(c), make provision for determining the price payable for each service in the group.

(4) Where the commissioner of a health care service for the purposes of the NHS agrees to pay a price for the provision of the service other than the price that is payable by virtue of this Chapter, Monitor may direct the commissioner to take such steps within such period as Monitor may specify to secure that the position is, so far as practicable, restored to what it would have been if the commissioner had agreed to pay the price payable by virtue of this Chapter.

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(5) Where the commissioner of a health care service fails to comply with rules provided for under section 116(2), (4) or (6), Monitor may direct the commissioner to take such steps within such period as Monitor may specify—

(a) to secure that the failure does not continue or recur;

(b) to secure that the position is, so far as practicable, restored to what it would have been if the failure was not occurring or had not occurred.

Commencement Information

I230 S. 117 partly in force; s. 117 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I231 S. 117(1)-(3) in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I232 S. 117(1)-(3) in force at 1.12.2013 in so far as not already in force by S.I. 2013/2896, **art. 2(1)**(2)

I233 S. 117(4)(5) in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

118 Consultation on proposals for the national tariff

(1) Before publishing the national tariff, Monitor must send a notice to—

(a) each clinical commissioning group,

(b) each relevant provider, and

(c) such other persons as it considers appropriate.

(2) Monitor must also publish the notice.

(3) The notice must specify—

(a) the health care services which Monitor proposes to specify in the national tariff,

(b) the method or methods it proposes to use for determining the national prices of those services,

(c) the prices, determined in each case by using the applicable method specified under paragraph (b), that Monitor proposes as the national prices of those services, and

(d) the method it proposes to use for deciding whether to approve an agreement under section 124 and for determining an application under section 125 (local modifications of national prices).

(4) The notice may specify such rules as Monitor proposes to provide for in the national tariff under which the commissioner of a health care service and a provider of the service would be entitled to vary—

(a) the specification of the service in the national tariff, or

(b) the national price of the service.

(5) The notice may also specify—

(a) such variations (by reference to circumstances in which a service is provided or other factors relevant to its provision) as Monitor proposes to specify to the prices that it proposes as the national prices,

(b) such rules as Monitor proposes to provide for in the national tariff for determining the price payable for the provision for the purposes of the NHS of health care services not specified for the purposes of subsection (3)(a), and

(c) such rules as Monitor proposes to provide for in the national tariff for determining, where a health care service is specified in more than one way for

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the purposes of subsection (3)(a) or in more than one way in rules specified for the purposes of paragraph (b), which specification of the service is to apply in any particular case or cases of any particular description.

(6) The notice may include such guidance as Monitor proposes to provide for in the national tariff as to—

(a) the application of the method specified for the purposes of subsection (3)(d);

(b) the application of rules specified for the purposes of subsection (4) or (5)(b) or (c);

(c) the application of variations specified for the purposes of subsection (5)(a).

(7) The health care services specified for the purposes of subsection (3)(a) are only such services as the National Health Service Commissioning Board considers should be so specified and—

(a) as the Board and Monitor agree will be so specified, or

(b) in default of agreement, as are determined by arbitration as being services that will be so specified.

(8) A method specified for the purposes of subsection (3)(b) or (d) is only such method, and such guidance on the application of the method specified for the purposes of subsection (3)(d) as is included for the purposes of subsection (6) is only such guidance, as Monitor considers should be so specified and included and—

(a) as Monitor and the Board agree will be so specified and included, or

(b) in default of agreement, as is determined by arbitration as being the method that will be so specified and the guidance that will be so included.

(9) The prices specified for the purposes of subsection (3)(c) are only such prices as Monitor considers should be so specified and—

(a) as Monitor and the Board agree will be so specified, or

(b) in default of agreement, as are determined by arbitration as being the prices that will be so specified.

(10) Such variations as are specified for the purposes of subsection (5)(a), and such guidance on the application of those variations as is included for the purposes of subsection (6), are only such variations and such guidance as Monitor considers should be so specified and included and—

(a) as Monitor and the Board agree will be so specified and included, or

(b) in default of agreement, as are determined by arbitration as being the variations that will be so specified and the guidance that will be so included.

(11) Such rules as are specified for the purposes of subsection (4) or (5)(c), and such guidance on those rules as is included for the purposes of subsection (6), are only such rules and such guidance as the National Health Service Commissioning Board considers should be so specified and included and—

(a) as the Board and Monitor agree will be so specified and included, or

(b) in default of agreement, as are determined by arbitration as being the rules that will be so specified and the guidance that will be so included.

(12) Such rules as are specified for the purposes of subsection (5)(b), and such guidance on those rules as is included for the purposes of subsection (6), are only such rules and such guidance as Monitor considers should be so specified and included and—

(a) as Monitor and the Board agree will be so specified and included, or

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(b) in default of agreement, as are determined by arbitration as being the rules that will be so specified and the guidance that will be so included.

(13) A notice under this section must specify when the consultation period in relation to the proposals ends; and for that purpose, the consultation period is the period of 28 days beginning with the day after that on which the notice is published under subsection (2).

(14) In this section, a "relevant provider" is—

(a) a licence holder, or

(b) such other person, of such description as may be prescribed, as provides health care services for the purposes of the NHS.

Commencement Information

I234 S. 118 partly in force; s. 118 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I235 S. 118 in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I236 S. 118 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

119 Consultation: further provision

(1) For the purpose of securing that the prices payable for the provision of health care services for the purposes of the NHS are such as to result in a fair level of pay for providers of the services, the National Health Service Commissioning Board and Monitor must, in exercising functions under section 118, have regard to—

(a) differences in the costs incurred in providing health care services for the purposes of the NHS to persons of different descriptions, and

(b) differences between providers with respect to the range of health care services that they provide for those purposes.

(2) In exercising functions under section 118(7), the Board and Monitor must act with a view to securing the standardisation throughout England of the specification of health care services in the national tariff under section 116(1)(a).

(3) In exercising functions under section 118(12), Monitor and the Board must act with a view to securing the standardisation throughout England of the specification of health care services in rules provided for in the national tariff under section 116(4)(b).

(4) In carrying out the duty under subsection (2) or (3), the Board and Monitor must have regard to whether, or to what extent, standardisation is likely to have a significant adverse impact on the provision of health care services for the purposes of the NHS.

Commencement Information

I237 S. 119 in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I238 S. 119 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

120 Responses to consultation

(1) If Monitor receives objections from one or more clinical commissioning groups or relevant providers to a method it proposes under section 118(3)(b), Monitor may not publish the national tariff unless—

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(a) the conditions in subsection (2) are met, or

(b) where those conditions are not met, Monitor has made a reference to the **[**[F41]CMA**]**.

(2) The conditions referred to in subsection (1)(a) are that—

(a) the objection percentage for clinical commissioning groups is less than the prescribed percentage,

(b) the objection percentage for relevant providers is less than the prescribed percentage, and

(c) the share of supply percentage is less than such percentage as may be prescribed.

(3) In subsection (2)—

(a) the "objection percentage" is the proportion (expressed as a percentage) of clinical commissioning groups or (as the case may be) relevant providers who objected to the proposed method, and

(b) the "share of supply percentage" is the proportion (expressed as a percentage) of relevant providers who objected to the proposed method, weighted according to their share of the supply in England of such services as may be prescribed.

(4) A reference under subsection (1)(b) must require the **[**[F41]CMA**]** to determine whether the method proposed under section 118(3)(b) is appropriate.

(5) [F42]...Schedule 12 to this Act (procedure on a reference under this section) has effect.

[[F43](5A) Except where specified otherwise in Schedule 12, the functions of the CMA with respect to a reference under this section (including functions relating to the making of changes following a determination on a reference) are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.**]**

(6) Regulations prescribing a percentage for the purposes of subsection (2)(c) may include provision prescribing the method used for determining a relevant provider's share of the supply in England of the services concerned.

(7) In this section and section 121 and Schedule 12, "relevant provider" has the meaning given in section 118(14).

Textual Amendments

F41 Word in s. 120(1)(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 131(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F42 Words in s. 120(5) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 131(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F43 S. 120(5A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 131(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I239 S. 120 partly in force; s. 120 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I240 S. 120 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I241 S. 120 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

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121 Determination on reference under section 120

(1) In carrying out a determination on a reference under section 120, the **[**F44CMA**]** must have regard, to the same extent as is required of Monitor, to the matters to which Monitor must have regard in carrying out the functions of its to which the determination relates.

(2) In carrying out the determination, the **[**F44CMA**]** must also have regard to such representations as are made to it by clinical commissioning groups or relevant providers who made objections to Monitor in accordance with paragraph 2 of Schedule 12 about the method proposed under section 118(3)(b).

(3) In carrying out the determination, the **[**F44CMA**]**—

(a) may also have regard to matters to which Monitor was not able to have regard in the case to which the determination relates, but

(b) must not, in the exercise of the power under paragraph (a), have regard to a matter to which Monitor would not have been entitled to have regard in that case had it had the opportunity to do so.

(4) The **[**F45CMA**]** may determine that the method proposed under section 118(3)(b) is not appropriate only if it is satisfied that Monitor's decision to propose the method was wrong on one or more of the following grounds—

(a) that Monitor failed to have regard to the matters referred to in subsection (1),

(b) that the decision was based, wholly or partly, on an error of fact,

(c) that the decision was wrong in law.

(5) Where the **[**F45CMA**]** determines that the method proposed under section 118(3)(b) is appropriate, Monitor may use that method for the purposes of the national tariff accordingly.

(6) Where the **[**F45CMA**]** determines that the method proposed under section 118(3)(b) is not appropriate, it must remit the matter to Monitor for reconsideration and decision in accordance with such directions as the **[**F45CMA**]** may give.

(7) A direction under subsection (6) may, in particular, require Monitor to make such changes to the method in question as are specified in the direction.

(8) A determination on a reference under section 120—

(a) must be contained in an order made by the **[**F46CMA**]**,

(b) must set out the reasons for the determination, and

(c) takes effect at the time specified in the order or determined in accordance with provision made in the order.

(9) The **[**F46CMA**]** must give notice of a determination on a reference under section 120 to—

(a) Monitor,

(b) the National Health Service Commissioning Board, and

(c) such clinical commissioning groups or relevant providers as made representations in accordance with paragraph 2 of Schedule 12.

(10) The **[**F46CMA**]** must also publish the determination; but it must exclude from what it publishes information which it is satisfied is—

(a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;

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(b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person's interests.

Textual Amendments

F44 Words in s. 121(1)-(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 132(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F45 Words in s. 121(4)-(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 132(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F46 Words in s. 121(8)-(10) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 132(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I242 S. 121 partly in force; s. 121 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I243 S. 121 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I244 S. 121 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

122 Changes following determination on reference under section 120

(1) Where the **[**F47CMA**]** remits a matter to Monitor under subsection (6) of section 121, Monitor must make such changes to the method to which the matter relates as it considers necessary, having regard to the reasons specified for the purposes of subsection (8)(b) of that section.

(2) Monitor must give the **[**F47CMA**]** and the National Health Service Commissioning Board a notice specifying—

(a) the changes it proposes to make, and

(b) its reasons for proposing to make them.

(3) Monitor must make the changes specified in the notice unless it is given a direction under section 123 before the end of the period of 28 days beginning with the day after that on which it gave the notice.

(4) If Monitor is given a direction under that section before the end of that period, it must make such of the changes as are not specified in the direction.

Textual Amendments

F47 Words in s. 122(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 133**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I245 S. 122 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I246 S. 122 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

123 Power to veto changes proposed under section 122

(1) The **[**F48CMA**]** may, within the period of 28 days beginning with the day after that on which it is given a notice under section 122, direct Monitor—

(a) not to make the changes specified in the notice, or

(b) not to make such of those changes as may be specified in the direction.

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(2) Monitor must comply with a direction under this section.

(3) The Secretary of State may, within that period and on the application of the **[**[F49]CMA**]**, direct that the period for giving a direction under this section (and, accordingly, the period referred to in section 122(3)) is to be extended by 14 days.

(4) The **[**[F50]CMA**]** may give a direction under this section only in respect of such of the changes specified in the notice under section 122 as it considers are not necessary in consequence of its determination on the reference.

(5) If the **[**[F51]CMA**]** gives a direction under this section, it—

(a) must give notice specifying the changes proposed by Monitor, the terms of the direction and the reasons for giving it, and

(b) must itself make such changes to the method to which the reference relates as it considers necessary in consequence of its determination on the reference.

(6) In exercising its function under subsection (5)(b), the **[**[F51]CMA**]** must have regard to the matters to which Monitor must have regard when determining the method to which the reference relates.

(7) Before making changes under subsection (5)(b), the **[**[F51]CMA**]** must give notice to Monitor and the National Health Service Commissioning Board specifying—

(a) the changes it proposes to make,

(b) its reasons for proposing to make them, and

(c) the period within which representations on the proposed changes may be made.

(8) The period specified for the purposes of subsection (7)(c) must not be less than 28 days beginning with the day on which the notice is given.

Textual Amendments

F48 Words in s. 123(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 134(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F49 Word in s. 123(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 134(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F50 Word in s. 123(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 134(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F51 Words in s. 123(5)-(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 134(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I247 S. 123 partly in force; s. 123 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I248 S. 123 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I249 S. 123 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

124 Local modifications of prices: agreements

(1) The commissioner and the provider of a health care service may agree that the price payable to the provider for the provision of the service for the purposes of the NHS in such circumstances or areas as may be determined in accordance with the agreement is

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the price determined in accordance with the national tariff for that service as modified in accordance with the agreement.

(2) An agreement under this section must specify the date on which the modification is to take effect; and a date specified for that purpose may be earlier than the date of the agreement (but not earlier than the date on which the national tariff took effect).

(3) An agreement under this section has effect only if it is approved by Monitor.

(4) An agreement submitted for approval under subsection (3) must be supported by such evidence as Monitor may require.

(5) Monitor may approve an agreement under this section only if, having applied the method specified under section 116(1)(d), it is satisfied that, without a modification to the price determined in accordance with the national tariff for that service, it would be uneconomic for the provider to provide the service for the purposes of the NHS.

(6) Where an agreement is approved under subsection (3), Monitor must send a notice to the Secretary of State and such clinical commissioning groups, providers and other persons as it considers appropriate.

(7) Monitor must also publish the notice.

(8) The notice must specify—

(a) the modification, and

(b) the date on which it takes effect.

(9) If the Secretary of State considers that the modification gives or may give rise (or, where it has yet to take effect, would or might give rise) to liability for breach of an EU obligation, the Secretary of State may give a direction to that effect; and the modification is (or is to be) of no effect in so far as it is subject to the direction.

Commencement Information

I250 S. 124 partly in force; s. 124 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I251 S. 124 in force at 1.3.2014 in so far as not already in force by S.I. 2014/39, **art. 2(2)** (with art. 3(a))

125 Local modifications of prices: applications

(1) Monitor may, on an application by a provider of a health care service who has failed to reach an agreement under section 124 with the commissioner, decide that the price payable to the provider for the provision of the service for the purposes of the NHS in such circumstances or areas as Monitor may determine is to be the price determined in accordance with the national tariff for that service as modified in such way as Monitor may determine.

(2) An application under this section must be supported by such evidence as Monitor may require.

(3) Monitor may grant an application under this section only if, having applied the method under section 116(1)(d), it is satisfied that, without a modification to the price determined in accordance with the national tariff for that service, it would be uneconomic for the provider to provide the service for the purposes of the NHS.

(4) Subsections (5) to (8) apply where Monitor grants an application under this section.

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(5) The decision by Monitor on the application takes effect on such date as Monitor may determine; and a date determined for that purpose may be earlier than the date of the decision (but not earlier than the date on which the national tariff took effect).

(6) Monitor must send a notice of the decision to the Secretary of State and such clinical commissioning groups, providers and other persons as it considers appropriate.

(7) Monitor must also publish the notice.

(8) The notice must specify—

(a) the modification, and

(b) the date on which it takes effect.

(9) If the Secretary of State considers that the modification gives or may give rise (or, where it has yet to take effect, would or might give rise) to liability for breach of an EU obligation, the Secretary of State may give a direction to that effect; and the modification is (or is to be) of no effect in so far as it is subject to the direction.

Commencement Information

I252 S. 125 partly in force; s. 125 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I253 S. 125 in force at 1.3.2014 in so far as not already in force by S.I. 2014/39, **art. 2(2)** (with art. 3(b))

126 Applications under section 125: notification of commissioners

(1) This section applies where Monitor—

(a) receives an application under section 125, and

(b) is satisfied that the continued provision for the purposes of the NHS of health care services to which a condition in the applicant's licence under section 97(1)(i), (j) or (k) applies is being put at significant risk by the configuration of certain health care services provided for those purposes.

(2) In subsection (1), a reference to the provision of services is a reference to their provision by the applicant or any other provider.

(3) Monitor must as soon as reasonably practicable notify the National Health Service Commissioning Board and such clinical commissioning groups as Monitor considers appropriate—

(a) of its receipt of the application, and

(b) of its reasons for being satisfied as mentioned in subsection (1)(b).

(4) Monitor must publish for each financial year a list of the notifications under this section that it has given during that year; and the list must include for each notification a summary of Monitor's reasons for being satisfied as mentioned in subsection (1)(b).

(5) The Board and clinical commissioning groups, having received a notification under this section, must have regard to it in arranging for the provision of health care services for the purposes of the NHS.

Commencement Information

I254 S. 126 in force at 1.3.2014 by S.I. 2014/39, **art. 2(2)**

Status: *This version of this Act contains provisions that are prospective.*
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127 Correction of mistakes

(1) This section applies where the national tariff contains information that does not accord with—

(a) what Monitor and the National Health Service Commissioning Board agreed on the matter concerned, or

(b) where the matter was determined by arbitration, what was determined.

(2) Monitor must send a notice to—

(a) each clinical commissioning group,

(b) each relevant provider, and

(c) such other persons as Monitor considers appropriate.

(3) Monitor must also publish the notice.

(4) The notice must specify—

(a) the information that does not accord with what was agreed or determined,

(b) the correction required to make the information so accord, and

(c) the date on which the correction is to take effect.

(5) A date specified for the purposes of subsection (4)(c) may be earlier than the date of the notice.

(6) In this section, "relevant provider" has the meaning given in section 118(14).

Commencement Information

I255 S. 127 in force at 1.12.2013 by S.I. 2013/2896, **art. 2(1)**(2)

CHAPTER 5

HEALTH SPECIAL ADMINISTRATION

PROSPECTIVE

128 Health special administration orders

(1) In this Chapter "health special administration order" means an order which—

(a) is made by the court in relation to a relevant provider, and

(b) directs that the affairs, business and property of the provider are to be managed by one or more persons appointed by the court.

(2) An application to the court for a health special administration order may be made only by Monitor.

(3) A person appointed as mentioned in subsection (1)(b) is referred to in this Chapter as a "health special administrator".

(4) A health special administrator of a company—

(a) is an officer of the court, and

(b) in exercising functions in relation to the company, is the company's agent.

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(5) A person is not to be the health special administrator of a company unless the person is qualified to act as an insolvency practitioner in relation to the company.

(6) A health special administrator of a relevant provider must manage its affairs, business and property, and exercise the health special administrator's functions, so as to—

(a) achieve the objective set out in section 129 as quickly and as efficiently as is reasonably practicable,

(b) in seeking to achieve that objective, ensure that any regulated activity carried on in providing the services provided by the provider is carried on in accordance with any requirements or conditions imposed in respect of that activity by virtue of Chapter 2 of Part 1 of the Health and Social Care Act 2008,

(c) so far as is consistent with the objective set out in section 129, protect the interests of the creditors of the provider as a whole, and

(d) so far as is consistent with that objective and subject to those interests, protect the interests of the members of the provider as a whole.

(7) In relation to a health special administration order applying to a non-GB company, references in this Chapter to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.

(8) In this section—

(a) a reference to a person qualified to act as an insolvency practitioner in relation to a company is to be construed in accordance with Part 13 of the Insolvency Act 1986 (insolvency practitioners and their qualifications);

(b) "regulated activity" has the same meaning as in Part 1 of the Health and Social Care Act 2008 (see section 8 of that Act).

(9) In this Chapter—

"business" and "property" each have the same meaning as in the Insolvency Act 1986 (see section 436 of that Act);

"company" includes a company not registered under the Companies Act 2006;

"court", in relation to a company, means the court—

(a) having jurisdiction to wind up the company, or

(b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies incorporated in, or having principal place of business in, Northern Ireland);

"member" is to be read in accordance with section 250 of the Insolvency Act 1986;

"non-GB company" means a company incorporated outside Great Britain;

"relevant provider" means a company which is providing services to which a condition included in the company's licence under section 97(1)(i), (j) or (k) applies;

"wholly-owned subsidiary" has the meaning given by section 1159 of the Companies Act 2006.

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PROSPECTIVE

129 Objective of a health special administration

(1) The objective of a health special administration is to secure—

(a) the continued provision of such of the health care services provided for the purposes of the NHS by the company subject to the health special administration order, at such level, as the commissioners of those services determine by applying criteria specified in health special administration regulations (see section 130), and

(b) that it becomes unnecessary, by one or both of the means set out in subsection (2), for the health special administration order to remain in force for that purpose.

(2) Those means are—

(a) the rescue as a going concern of the company subject to the health special administration order, and

(b) one or more transfers falling within subsection (3).

(3) A transfer falls within this subsection if it is a transfer as a going concern—

(a) to another person, or

(b) as respects different parts of the undertaking of the company subject to the health special administration order, to two or more other persons,

of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the health special administration.

(4) The means by which a transfer falling within subsection (3) may be effected include in particular—

(a) a transfer of the undertaking of the company subject to the health special administration order, or of part of its undertaking, to a wholly-owned subsidiary of that company, and

(b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).

(5) The objective of a health special administration may be achieved by transfers to the extent only that—

(a) the rescue as a going concern of the company subject to the health special administration order is not reasonably practicable or is not reasonably practicable without such transfers,

(b) the rescue of the company as a going concern will not achieve that objective or will not do so without such transfers,

(c) such transfers would produce a result for the company's creditors as a whole that is better than the result that would be produced without them, or

(d) such transfers would, without prejudicing the interests of its creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without them.

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130 Health special administration regulations

(1) Regulations (referred to in this Chapter as "health special administration regulations") must make further provision about health special administration orders.

(2) Health special administration regulations may apply with or without modifications—

(a) any provision of Part 2 of the Insolvency Act 1986 (administration) or any related provision of that Act, and

(b) any other enactment which relates to insolvency or administration or makes provision by reference to anything that is or may be done under that Act.

(3) Health special administration regulations may, in particular, provide that the court may make a health special administration order in relation to a relevant provider if it is satisfied, on a petition by the Secretary of State under section 124A of the Insolvency Act 1986 (petition for winding up on grounds of public interest), that it would be just and equitable (disregarding the objective of the health special administration) to wind up the provider in the public interest.

(4) Health special administration regulations may make provision about—

(a) the application of procedures under the Insolvency Act 1986 in relation to relevant providers, and

(b) the enforcement of security over property of relevant providers.

(5) Health special administration regulations may, in particular, make provision about the publication and maintenance by Monitor of a list of relevant providers.

(6) Health special administration regulations may in particular—

(a) require Monitor to publish guidance for commissioners about the application of the criteria referred to in section 129(1)(a);

(b) confer power on Monitor to revise guidance published by virtue of paragraph (a) and require it to publish guidance so revised;

(c) require Monitor, before publishing guidance by virtue of paragraph (a) or (b), to obtain the approval of the Secretary of State and the National Health Service Commissioning Board;

(d) require commissioners, when applying the criteria referred to in section 129(1)(a), to have regard to such matters as Monitor may specify in guidance published by virtue of paragraph (a) or (b);

(e) require the National Health Service Commissioning Board to make arrangements for facilitating agreement between commissioners in their exercise of their function under section 129(1)(a);

(f) confer power on the Board, where commissioners fail to reach agreement in pursuance of arrangements made by virtue of paragraph (e), to exercise their function under section 129(1)(a);

(g) provide that, in consequence of the exercise of the power conferred by virtue of paragraph (f), the function under section 129(1)(a), so far as applying to the commissioners concerned, is to be regarded as discharged;

(h) require a health special administrator to carry out in accordance with the regulations consultation on the action which the administrator recommends should be taken in relation to the provider concerned.

(7) Health special administration regulations may modify this Chapter or any enactment mentioned in subsection (8) in relation to any provision made by virtue of this Chapter.

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(8) The enactments are—

(a) the Insolvency Act 1986, and

(b) any other enactment which relates to insolvency or administration or makes provision by reference to anything that is or may be done under that Act.

(9) The power to make rules under section 411 of the Insolvency Act 1986 (company insolvency rules) applies for the purpose of giving effect to provision made by virtue of this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act.

(10) For that purpose—

(a) the power to make rules in relation to England and Wales is exercisable by the Lord Chancellor with the concurrence of the Secretary of State and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice;

(b) the power to make rules in relation to Scotland is exercisable by the Secretary of State;

(c) references in section 411 of that Act to those Parts are to be read as including a reference to this Chapter.

(11) Before making health special administration regulations the Secretary of State must consult—

(a) Monitor, and

(b) such other persons as the Secretary of State considers appropriate.

Commencement Information

I256 S. 130 partly in force; s. 130 in force for specified purposes at Royal Assent, see s. 306(1)(d)

131 Transfer schemes

(1) Health special administration regulations may make provision about transfer schemes to achieve the objective of a health special administration (see section 129).

(2) Health special administration regulations may, in particular, include provision—

(a) for the making of a transfer scheme to be subject to the consent of Monitor and the person to whom the transfer is being made,

(b) for Monitor to have power to modify a transfer scheme with the consent of parties to the transfers effected by the scheme, and

(c) for modifications made to a transfer scheme by virtue of paragraph (b) to have effect from such time as Monitor may specify (which may be a time before the modifications were made).

(3) Health special administration regulations may, in particular, provide that a transfer scheme may include provision—

(a) for the transfer of rights and liabilities under or in connection with a contract of employment from a company subject to a health special administration order to another person,

(b) for the transfer of property, or rights and liabilities other than those mentioned in paragraph (a), from a company subject to a health special administration order to another person,

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(c) for the transfer of property, rights and liabilities which would not otherwise be capable of being transferred or assigned,

(d) for the transfer of property acquired, and rights and liabilities arising, after the making of the scheme,

(e) for the creation of interests or rights, or the imposition of liabilities, and

(f) for the transfer, or concurrent exercise, of functions under enactments.

Commencement Information

I257 S. 131 partly in force; s. 131 in force for specified purposes at Royal Assent, see s. 306(1)(d)

132 Indemnities

Health special administration regulations may make provision about the giving by Monitor of indemnities in respect of—

(a) liabilities incurred in connection with the discharge by health special administrators of their functions, and

(b) loss or damage sustained in that connection.

Commencement Information

I258 S. 132 partly in force; s. 132 in force for specified purposes at Royal Assent, see s. 306(1)(d)

133 Modification of this Chapter under Enterprise Act 2002

(1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of provision made by virtue of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.

(2) Those sections are—

(a) sections 248 and 277 (amendments consequential on that Act), and

(b) section 254 (power to apply insolvency law to foreign companies).

Commencement Information

I259 S. 133 partly in force; s. 133 in force for specified purposes at Royal Assent, see s. 306(1)(d)

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CHAPTER 6

FINANCIAL ASSISTANCE IN SPECIAL ADMINISTRATION CASES

Establishment of mechanisms

134 Duty to establish mechanisms for providing financial assistance

(1) Monitor must establish, and secure the effective operation of, one or more mechanisms for providing financial assistance in cases where a provider of health care services for the purposes of the NHS (referred to in this Chapter as a "provider") is subject to—

(a) a health special administration order (within the meaning of Chapter 5), or

(b) an order under section 65D(2) of the National Health Service Act 2006 (trust special administration for NHS foundation trusts).

(2) Mechanisms that Monitor may establish under this section include, in particular—

(a) mechanisms for raising money to make grants or loans or to make payments in consequence of indemnities given by Monitor by virtue of section 132 or under section 65D(12) of the National Health Service Act 2006;

(b) mechanisms for securing that providers arrange, or are provided with, insurance facilities.

(3) Monitor may secure that a mechanism established under this section operates so as to enable it to recover the costs it incurs in establishing and operating the mechanism.

(4) Monitor may establish different mechanisms for different providers or providers of different descriptions.

(5) Monitor does not require permission under any provision of the Financial Services and Markets Act 2000 as respects activities carried out under this Chapter.

(6) An order under section 306 providing for the commencement of this Chapter may require Monitor to comply with the duty to establish under subsection (1) before such date as the order specifies.

Commencement Information
I260 S. 134 partly in force; s. 134 in force for specified purposes at Royal Assent, see s. 306(1)(d)

PROSPECTIVE

135 Power to establish fund

(1) Monitor may, for the purposes of section 134, establish and maintain a fund.

(2) In order to raise money for investment in a fund it establishes under this section, Monitor may impose requirements on providers or commissioners.

(3) Monitor must appoint at least two managers for a fund it establishes under this section.

(4) A manager of a fund may be an individual, a firm or a body corporate.

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(5) Monitor must not appoint an individual as manager of a fund unless it is satisfied that the individual has the appropriate knowledge and experience for managing investments.

(6) Monitor must not appoint a firm or body corporate as manager of a fund unless it is satisfied that arrangements are in place to secure that any individual who will exercise functions of the firm or body corporate as manager will, at the time of doing so, have the appropriate knowledge and experience for managing investments.

(7) Monitor must not appoint an individual, firm or body corporate as manager of a fund unless the individual, firm or body is an authorised or exempt person within the meaning of the Financial Services and Markets Act 2000.

(8) Monitor must secure the prudent management of any fund it establishes under this section.

PROSPECTIVE

Applications for financial assistance

136 Applications

(1) Monitor may, on an application by a special administrator, provide financial assistance to the special administrator by using a mechanism established under section 134.

(2) An application under this section must be in such form, and must be supported by such evidence or other information, as Monitor may require (and a requirement under this subsection may be imposed after the receipt, but before the determination, of the application).

(3) If Monitor grants an application under this section, it must notify the applicant of—
(a) the purpose for which the financial assistance is being provided, and
(b) the other conditions to which its provision is subject.

(4) The special administrator must secure that the financial assistance is used only—
(a) for the purpose notified under subsection (3)(a), and
(b) in accordance with the conditions notified under subsection (3)(b).

(5) Financial assistance under this section may be provided only in the period during which the provider in question is in special administration.

(6) If Monitor refuses an application under this section, it must notify the applicant of the reasons for the refusal.

(7) Monitor must, on a request by an applicant whose application under this section has been refused, reconsider the application; but no individual involved in the decision to refuse the application may be involved in the decision on the reconsideration of the application.

(8) For the purposes of reconsidering an application, Monitor may request information from the applicant.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(9) Monitor must notify the applicant of its decision on reconsidering the application; and—

(a) if Monitor grants the application, it must notify the applicant of the matters specified in subsection (3), and

(b) if Monitor refuses the application, it must notify the applicant of the reasons for the refusal.

(10) In this Chapter—

(a) "special administrator" means—

(i) a person appointed as a health special administrator under Chapter 5, or

(ii) a person appointed as a trust special administrator under section 65D(2) of the National Health Service Act 2006, and

(b) references to being in special administration are to be construed accordingly.

137 Grants and loans

(1) Monitor may not provide financial assistance under section 136 in the form of a grant or loan unless it is satisfied that—

(a) it is necessary for the provider—

(i) to be able to continue to provide one or more of the health care services that it provides for the purposes of the NHS, or

(ii) to be able to secure a viable business in the long term, and

(b) no other source of funding which would enable it do so and on which it would be reasonable for it to rely is likely to become available to it.

(2) The terms of a grant or loan must include a term that the whole or a specified part of the grant or loan becomes repayable in the event of a breach by the provider or special administrator of the terms of the grant or loan.

(3) Subject to that, where Monitor makes a grant or loan under section 136, it may do so in such manner and on such terms as it may determine.

(4) Monitor may take such steps as it considers appropriate (including steps to adjust the amount of future payments towards the mechanism established under section 134 to raise funds for grants or loans under section 136) to recover overpayments in the provision of a grant or loan under that section.

(5) The power to recover an overpayment under subsection (4) includes a power to recover interest, at such rate as Monitor may determine, on the amount of the overpayment for the period beginning with the making of the overpayment and ending with its recovery.

Charges on commissioners

138 Power to impose charges on commissioners

(1) The Secretary of State may by regulations confer power on Monitor to require commissioners to pay charges relating to such of Monitor's functions that relate to securing the continued provision of health care services for the purposes of the NHS.

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(2) The regulations must provide that the amount of a charge imposed by virtue of this section is to be such amount—

(a) as may be prescribed, or

(b) as is determined by reference to such criteria, and by using such method, as may be prescribed.

(3) The regulations must—

(a) prescribe to whom the charge is to be paid;

(b) prescribe when the charge becomes payable;

(c) where the amount of the charge is to be determined in accordance with subsection (2)(b), require Monitor to carry out consultation in accordance with the regulations before imposing the charge;

(d) provide for any amount that is not paid by the time prescribed for the purposes of paragraph (b) to carry interest at the rate for the time being specified in section 18 of the Judgments Act 1838;

(e) provide for any unpaid balance and accrued interest to be recoverable summarily as a civil debt (but for this not to affect any other method of recovery).

(4) Where the person that the regulations prescribe for the purposes of subsection (3)(a) is a provider, the regulations may confer power on Monitor to require the provider to pay Monitor the amount of the charge in question in accordance with the regulations.

(5) Before making regulations under this section, the Secretary of State must consult—

(a) Monitor, and

(b) the National Health Service Commissioning Board.

(6) Regulations under this section may apply with modifications provision made by sections 141 to 143 in relation to charges imposed by virtue of this section.

Commencement Information

I261 S. 138 partly in force; s. 138 in force for specified purposes at Royal Assent, see s. 306(1)(d)

Levy on providers

PROSPECTIVE

139 Imposition of levy

(1) The power under section 135(2) includes, in particular, power to impose a levy on providers for each financial year.

(2) Before deciding whether to impose a levy under this section for the coming financial year, Monitor must estimate—

(a) the amount that will be required for the purpose of providing financial assistance in accordance with this Chapter,

(b) the amount that will be collected from commissioners by way of charges imposed by virtue of section 138 during that year, and

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(c) the amount that will be standing to the credit of the fund at the end of the current financial year.

(3) Before the start of a financial year in which Monitor proposes to impose a levy under this section, it must determine—

(a) the factors by reference to which the rate of the levy is to be assessed,

(b) the time or times by reference to which those factors are to be assessed, and

(c) the time or times during the year when the levy, or an instalment of it, becomes payable.

(4) Where the determinations under subsection (3) reflect changes made to the factors by reference to which the rate of the levy is to be assessed, the notice under section 143(1)(b) must include an explanation of those changes.

(5) A levy under this section may be imposed at different rates for different providers.

140 Power of Secretary of State to set limit on levy and charges

(1) Before the beginning of each financial year, the Secretary of State may, with the approval of the Treasury, specify by order—

(a) the maximum amount that Monitor may raise from levies it imposes under section 139 for that year, and

(b) the maximum amount that it may raise from charges it imposes by virtue of section 138 for that year.

(2) Where the Secretary of State makes an order under this section, Monitor must secure that the levies and charges for that year are at a level that Monitor estimates will, in each case, raise an amount not exceeding the amount specified for that case in the order.

Commencement Information

I262 S. 140 partly in force; s. 140 in force for specified purposes at Royal Assent, see s. 306(1)(d)

PROSPECTIVE

141 Consultation

(1) This section applies where Monitor is proposing to impose a levy under section 139 for the coming financial year and—

(a) has not imposed a levy under that section for the current financial year or any previous year,

(b) has been imposing the levy for the current financial year but proposes to make relevant changes to it for the coming financial year, or

(c) has been imposing the levy for the current financial year and the financial year preceding it, but has not been required to serve a notice under this section in respect of the levy for either of those years.

(2) A change to a levy is relevant for the purposes of subsection (1)(b) if it is a change to the factors by reference to which the rate of the levy is to be assessed.

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(3) Before making the determinations under section 139(3) in respect of the levy, Monitor must send a notice to—

(a) the Secretary of State,

(b) the National Health Service Commissioning Board,

(c) each clinical commissioning group,

(d) each potentially liable provider, and

(e) such other persons as it considers appropriate.

(4) Monitor must publish a notice that it sends under subsection (3).

(5) In a case within subsection (1)(a) or (c), the notice must state—

(a) the factors by reference to which Monitor proposes to assess the rate of the levy,

(b) the time or times by reference to which it proposes to assess those factors, and

(c) the time or times during the coming financial year when it proposes that the levy, or an instalment of it, will become payable.

(6) In a case within subsection (1)(b), the notice must specify the relevant changes Monitor proposes to make.

(7) A notice under this section must specify when the consultation period in relation to the proposals ends; and for that purpose, the consultation period is the period of 28 days beginning with the day on which the notice is published under subsection (4).

(8) In this section and section 142 a "potentially liable provider" means a provider on whom Monitor is proposing to impose the levy for the coming financial year (regardless of the amount (if any) that the provider would be liable to pay as a result of the proposal).

142 Responses to consultation

(1) If Monitor receives objections from one or more potentially liable providers to its proposals, it may not give notice under section 143(1)(b) unless—

(a) the conditions in subsection (2) are met, or

(b) where those conditions are not met, Monitor has made a reference to the **[**[F52]CMA**]**.

(2) The conditions referred to in subsection (1)(a) are that—

(a) one or more potentially liable providers object to the proposals within the consultation period, and

(b) the objection percentage and the share of supply percentage are each less than the prescribed percentage.

(3) In subsection (2)—

(a) the "objection percentage" is the proportion (expressed as a percentage) of the potentially liable providers who objected to the proposals, and

(b) the "share of supply percentage" is the proportion (expressed as a percentage) of the potentially liable providers who objected to the proposals, weighted according to their share of the supply in England of such services as may be prescribed.

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(4) A reference under subsection (1)(b) must be so framed as to require the **[**F53CMA**]** to investigate and report on the questions—

(a) whether in making the proposals, Monitor failed to give sufficient weight to the matters in section 66,

(b) if so, whether that failure operates, or may be expected to operate, against the public interest, and

(c) if so, whether the effects adverse to the public interest which that failure has or may be expected to have could be remedied or prevented by changes to the proposals.

[F54(4A) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of changes following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by paragraph 10 of Schedule 10).**]**

(5) Schedule 10 (which makes further provision about references to the **[**F55CMA**]**) has effect in relation to a reference under subsection (1)(b); and for that purpose—

(a) paragraph 1 is to be ignored,

(b) in paragraph 5(2), the reference to six months is to be read as a reference to two months,

(c) in paragraph 5(4), the reference to six months is to be read as a reference to one month,

(d) in paragraph 7, sub-paragraphs (4) to (7) and (9) are to be ignored (and, in consequence of that, in sub-paragraph (8), the words from the beginning to "sub-paragraph (4)(c)" are also to be ignored), and

(e) the references to relevant persons are to be construed in accordance with subsection (6).

(6) The relevant persons referred to in Schedule 10 are—

(a) in paragraphs 3, 5(6) and 6(6)—

(i) the National Health Service Commissioning Board, and

(ii) the potentially liable providers who objected to the proposals, and

(b) in paragraph 8(10)—

(i) Monitor, and

(ii) the potentially liable providers who objected to the proposals.

(7) In investigating the question under subsection (4)(a), the **[**F56CMA**]** must have regard to the matters in relation to which Monitor has duties under this Chapter.

(8) Regulations prescribing a percentage for the purposes of subsection (2)(b) may include provision prescribing the method used for determining a provider's share of the supply in England of the services concerned.

Textual Amendments

F52 Word in s. 142(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 135(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F53 Word in s. 142(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 135(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F54 S. 142(4A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 135(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
F55 Word in s. 142(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 135(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
F56 Word in s. 142(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 135(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information
I263 S. 142 partly in force; s. 142 in force for specified purposes at Royal Assent, see s. 306(1)(d)

PROSPECTIVE

143 Amount payable

(1) Monitor must—
(a) calculate the amount which each provider who is to be subject to a levy under section 139 for a financial year is to be liable to pay in respect of that year, and
(b) notify the provider of that amount and the date or dates on which it, or instalments of it, will become payable.

(2) If the provider is to be subject to the levy for only part of the financial year, it is to be liable to pay only the amount which bears to the amount payable for the whole financial year the same proportion as the part of the financial year for which the provider is to be subject to the levy bears to the whole financial year.

(3) The amount which a provider is liable to pay may be zero.

(4) Subsection (5) applies if, during a financial year in which Monitor is imposing a levy under section 139, it becomes satisfied that the risk of a provider who is subject to the levy going into special administration has changed by reference to what it was—
(a) at the start of the year, or
(b) if Monitor has already exercised the power under subsection (5) in relation to the levy in the case of that provider, at the time it did so.

(5) Monitor may notify the provider that Monitor proposes to adjust the amount that the provider is liable to pay so as to reflect the change; and the notice must specify the amount of the proposed adjustment.

(6) Following the expiry of the period of 28 days beginning with the day after that on which Monitor sends the notice, it may make the adjustment.

(7) In a case within subsection (2), subsection (4) has effect as if references to the financial year were references to the part of the financial year for which the provider is to be subject to the levy.

(8) Where a provider who reasonably believes that Monitor has miscalculated the amount notified to the provider under subsection (1) or (5) requests Monitor to recalculate the amount, Monitor must—
(a) comply with the request, and
(b) send the provider written notice of its recalculation.

(9) Subsection (8) does not apply to a request to recalculate an amount in respect of a financial year preceding the one in which the request is made.

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(10) If the whole or part of the amount which a person is liable to pay is not paid by the date by which it is required to be paid, the unpaid balance carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838; and the unpaid balance and accrued interest are recoverable summarily as a civil debt (but this does not affect any other method of recovery).

Supplementary

144 Investment principles and reviews

(1) Monitor must prepare and publish a statement of the principles that govern its decisions, or decisions made on its behalf, about making investments for the purposes of this Chapter.

(2) Monitor must—

(a) in each financial year, review the statement,

(b) if it considers necessary in light of the review, revise the statement, and

(c) if it revises the statement, publish the revised statement.

(3) As soon as reasonably practicable after the end of each financial year, Monitor must undertake and publish a review of the operation during that year of—

(a) the procedure for health special administration under Chapter 5,

(b) the procedure for trust special administration for NHS foundation trusts under Chapter 5A of Part 2 of the National Health Service Act 2006, and

(c) such mechanisms as have been established under section 134.

(4) The purposes of the review under subsection (3)(c) are—

(a) to assess the operation of the mechanisms concerned,

(b) to assess the accuracy of the estimates given by Monitor in relation to the operation of the mechanisms,

(c) to assess what improvements can be made to the process for making estimates in relation to the operation of the mechanisms, and

(d) to review the extent of the protection which the mechanisms are required to provide.

(5) Where a fund established under section 135 has been in operation for the whole or part of the year concerned, the review published under this section must specify—

(a) the income of the fund during that year, and

(b) the expenditure from the fund during that year.

(6) Monitor must exclude from a review published under this section information which it is satisfied is—

(a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;

(b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person's interests.

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Commencement Information

I264 S. 144(3)(b)(6) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

145 Borrowing

(1) Monitor may—

(a) borrow from a deposit-taker such sums as it may from time to time require for exercising its functions under this Chapter;

(b) give security for sums that it borrows.

(2) But Monitor may not borrow if the effect would be—

(a) to take the aggregate amount outstanding in respect of the principal of sums borrowed by it over such limit as the Secretary of State may by order specify, or

(b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.

(3) In this section, "deposit-taker" means—

(a) a person who has permission under **[**F57Part 4A**]** of the Financial Services and Markets Act 2000, or

(b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits.

(4) The definition of "deposit-taker" in subsection (3) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000,

(b) any relevant order under that section, and

(c) Schedule 2 to that Act.

Textual Amendments

F57 Words in s. 145(3)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 137** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Commencement Information

I265 S. 145 partly in force; s. 145 in force for specified purposes at Royal Assent, see s. 306(1)(d)

146 Shortfall or excess of available funds, etc.

(1) The Secretary of State may provide financial assistance to Monitor if the Secretary of State is satisfied that—

(a) there are insufficient funds available from a mechanism established under section 134, or

(b) the mechanism is otherwise unable to operate effectively.

(2) If the Secretary of State is satisfied that the level of funds available from a mechanism established under section 134 exceeds the level that is necessary, the Secretary of State may direct Monitor to transfer the excess to the Secretary of State.

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(3) If the Secretary of State is satisfied that a mechanism established under section 134 has become dormant, or if a mechanism so established is being wound up, the Secretary of State may direct Monitor to transfer to the Secretary of State such funds as are available from the mechanism.

Commencement Information

I266 S. 146 partly in force; s. 146 in force for specified purposes at Royal Assent, see s. 306(1)(d)

CHAPTER 7

MISCELLANEOUS AND GENERAL

147 Secretary of State's duty as respects variation in provision of health services

After section 12D of the National Health Service Act 2006 insert—

"Miscellaneous

12E Secretary of State's duty as respects variation in provision of health services

(1) The Secretary of State must not exercise the functions mentioned in subsection (2) for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

(a) whether the persons in question are in the public or (as the case may be) private sector, or

(b) some other aspect of their status.

(2) The functions mentioned in this subsection are the functions of the Secretary of State under—

(a) sections 6E and 13A, and

(b) section 75 of the Health and Social Care Act 2012 (requirements as to procurement, patient choice and competition)."

Commencement Information

I267 S. 147 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I268 S. 147 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

148 Service of documents

(1) A notice required under this Part to be given or sent to or served on a person ("R") may be given or sent to or served on R—

(a) by being delivered personally to R,

(b) by being sent to R—

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(i) by a registered post service, as defined by section 125(1) of the Postal Services Act 2000, or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) subject to section 149, by being sent to R by an electronic communication.

(2) Where a notice is sent as mentioned in subsection (1)(b), it is, unless the contrary is proved, to be taken to have been received on the third day after the day on which it is sent.

(3) Where a notice is sent as mentioned in subsection (1)(c) in accordance with section 149, it is, unless the contrary is proved, to be taken to have been received on the next working day after the day on which it is transmitted.

(4) In subsection (3) "working day" means a day other than—

(a) a Saturday or a Sunday;

(b) Christmas Day or Good Friday; or

(c) a day which is a bank holiday in England under the Banking and Financial Dealings Act 1971.

(5) A notice required under this Part to be given or sent to or served on a body corporate or a firm is duly given, sent or served if it is given or sent to or served on the secretary or clerk of that body or a partner of that firm.

(6) For the purposes of section 7 of the Interpretation Act 1978 in its application to this section, the proper address of a person is—

(a) in the case of a person who holds a licence under Chapter 3 who has notified Monitor of an address for service, that address, and

(b) in any other case, the address determined in accordance with subsection (7).

(7) That address is—

(a) in the case of a secretary or clerk of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partner of a firm, the address of the principal office of the firm, and

(c) in any other case, the last known address of the person.

(8) In this section and in section 149—

"electronic communication" has the same meaning as in the Electronic Communications Act 2000;

"notice" includes any other document.

(9) This section is subject to paragraph 4(3) of Schedule 8 (delivery of notice from Secretary of State of suspension of non-executive member of Monitor).

Commencement Information

I269 S. 148(1)-(5)(6)(b)(7)-(9) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

I270 S. 148(6)(a) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

Status: *This version of this Act contains provisions that are prospective.*
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149 Electronic communications

(1) If a notice required or authorised by this Part to be given or sent by or to a person or to be served on a person is sent by an electronic communication, it is to be treated as given, sent or served only if the requirements of subsection (2) or (3) are met.

(2) If the person required or authorised to give, send or serve the notice is Monitor or the **[**F58CMA**]**—

(a) the person to whom the notice is given or sent or on whom it is served must have indicated to Monitor or (as the case may be) **[**F59the CMA**]** the person's willingness to receive notices by an electronic communication and provided an address suitable for that purpose, and

(b) the notice must be sent to or given or served at the address so provided.

(3) If the person required or authorised to give, send or serve the notice is not Monitor or the **[**F60CMA**]**, the notice must be given, sent or served in such manner as Monitor may require.

(4) An indication given for the purposes of subsection (2) may be given generally for the purposes of notices required or authorised to be given, sent or served by Monitor or (as the case may be) the **[**F60CMA**]** under this Part or may be limited to notices of a particular description.

(5) Monitor must publish such requirements as it imposes under subsection (3).

Textual Amendments

F58 Word in s. 149(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 136(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F59 Words in s. 149(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 136(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F60 Words in s. 149(3)(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 136(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I271 S. 149 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

150 Interpretation, transitional provision and consequential amendments

(1) In this Part—

"anti-competitive behaviour" has the meaning given in section 64 and references to preventing anti-competitive behaviour are to be read in accordance with subsection (2) of that section;

[F61"the CMA" means the Competition and Markets Authority;**]**

"commissioner", in relation to a health care service, means the person who arranges for the provision of the service (and "commission" is to be construed accordingly);

"enactment" includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);

"facilities" has the same meaning as in the National Health Service Act 2006 (see section 275 of that Act);

"financial year" means a period of 12 months ending with 31 March;

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"health care" and "health care service" each have the meaning given in section 64;

"the NHS" has the meaning given in that section;

"prescribed" means prescribed in regulations;

"service" includes facility.

(2) Until section 9 comes into force, the references in this Part to the National Health Service Commissioning Board (other than the reference in section 94(11)(b)) are to be read as references to the NHS Commissioning Board Authority.

(3) Until the day specified by Secretary of State for the purposes of section 14A of the National Health Service Act 2006, the references in this Part to a clinical commissioning group (other than the reference in section 94(11)(a)) are to be read as references to a Primary Care Trust.

(4) Until section 181 comes into force, the following provisions in this Part are to be read as if the words "and its Healthwatch England committee" were omitted—

(a) section 83(4)(c);

(b) section 84(5)(a)(iii);

(c) section 95(2)(e);

(d) section 100(2)(e).

(5) Schedule 13 (which contains minor and consequential amendments) has effect.

Textual Amendments

F61 Words in s. 150(1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 137**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I272 S. 150 partly in force; s. 150 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I273 S. 150(1)(3) in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

I274 S. 150(5) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**

I275 S. 150(5) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**

I276 S. 150(5) in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 4

NHS FOUNDATION TRUSTS & NHS TRUSTS

Governance and management

151 Governors

(1) In paragraph 7 of Schedule 7 to the National Health Service Act 2006 (public benefit corporation to have governors)—

(a) in sub-paragraph (1), for "a board of governors" substitute "a council of governors", and

(b) in sub-paragraphs (2), (3) and (4), for "the board" substitute "the council".

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(2) Omit paragraph 9(3) of that Schedule (requirement for at least one member of council of governors to be appointed by PCT).

(3) For paragraph 9(7) of that Schedule (partnership organisations) substitute—

"(7) Any organisation specified in the constitution for the purposes of this sub-paragraph may appoint one or more members of the council (but no more than the number specified for those purposes in the constitution)."

(4) After paragraph 10 of that Schedule insert—

"10A The general duties of the council of governors are—

(a) to hold the non-executive directors individually and collectively to account for the performance of the board of directors, and

(b) to represent the interests of the members of the corporation as a whole and the interests of the public."

(5) After paragraph 10A of that Schedule insert—

"10B A public benefit corporation must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such."

(6) After paragraph 10B of that Schedule insert—

"10C For the purpose of obtaining information about the corporation's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the corporation's or directors' performance), the council of governors may require one or more of the directors to attend a meeting."

(7) In paragraph 23(4) of that Schedule (persons eligible for appointment as auditor by governors), in sub-paragraph (c), for "the regulator" substitute "the Secretary of State".

(8) In paragraph 26(2) of that Schedule (information that must be given in annual reports etc.), after paragraph (a) insert—

"(aa) information on any occasions in the period to which the report relates on which the council of governors exercised its power under paragraph 10C,".

(9) In consequence of subsection (1)—

(a) in sections 33(4)(a) (in each place it appears), 35(2)(c) and (5)(c), 39(3)(a), 59(1), (2)(b) and (5) and 60(1) of that Act, for "board of governors" substitute "council of governors",

(b) in section 60(2) and (3) and paragraphs 8 to 14, 17, 18, 20, 21, 23, 27 and 28 of Schedule 7 to that Act, for "the board" (in each place it appears) substitute "the council",

(c) for the cross-heading preceding paragraph 7 of that Schedule substitute "Council of Governors",

(d) in the cross-heading preceding paragraph 28 of that Schedule, for "board" substitute "council", and

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(e) in paragraphs 4(2) and 5(1) of Schedule 10 to that Act, for "board of governors" substitute "council of governors".

Commencement Information

I277 S. 151(1)(9) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I278 S. 151(2)-(6)(8) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

152 Directors

(1) After paragraph 18 of Schedule 7 to the National Health Service Act 2006 insert—

"18A The general duty of the board of directors, and of each director individually, is to act with a view to promoting the success of the corporation so as to maximise the benefits for the members of the corporation as a whole and for the public."

(2) After paragraph 18A of that Schedule insert—

"18B (1) The duties that a director of a public benefit corporation has by virtue of being a director include in particular—

(a) a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the corporation;

(b) a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

(2) The duty referred to in sub-paragraph (1)(a) is not infringed if—

(a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

(b) the matter has been authorised in accordance with the constitution.

(3) The duty referred to in sub-paragraph (1)(b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(4) In sub-paragraph (1)(b), "third party" means a person other than—

(a) the corporation, or

(b) a person acting on its behalf."

(3) After paragraph 18B of that Schedule insert—

"18C (1) If a director of a public benefit corporation has in any way a direct or indirect interest in a proposed transaction or arrangement with the corporation, the director must declare the nature and extent of that interest to the other directors.

(2) If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

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(3) Any declaration required by this paragraph must be made before the corporation enters into the transaction or arrangement.

(4) This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

(5) A director need not declare an interest—

(a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

(b) if, or to the extent that, the directors are already aware of it;

(c) if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered—

(i) by a meeting of the board of directors, or

(ii) by a committee of the directors appointed for the purpose under the constitution."

(4) After paragraph 18C of that Schedule insert—

"18D (1) Before holding a meeting, the board of directors must send a copy of the agenda of the meeting to the council of governors.

(2) As soon as practicable after holding a meeting, the board of directors must send a copy of the minutes of the meeting to the council of governors."

(5) After paragraph 18D of that Schedule insert—

"18E (1) The constitution must provide for meetings of the board of directors to be open to members of the public.

(2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons."

Commencement Information

I279 S. 152 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

153 Members

(1) In section 61 of the National Health Service Act 2006 (representative membership), the existing text becomes subsection (1) and, in that subsection, for "An authorisation may require an NHS foundation trust to" substitute "An NHS foundation trust must".

(2) After that subsection insert—

"(2) In deciding which areas are to be areas for public constituencies, or in deciding whether there is to be a patients' constituency, an NHS foundation trust must have regard to the need for those eligible for such membership to be representative of those to whom the trust provides services."

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Commencement Information

I280 S. 153 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

154 Accounts: initial arrangements

(1) In paragraph 24 of Schedule 7 to the National Health Service Act 2006 (accounts: general), for sub-paragraph (1) substitute—

"(1) A public benefit corporation must keep proper accounts and proper records in relation to the accounts.

(1A) The regulator may with the approval of the Secretary of State give directions to the corporation as to the content and form of its accounts."

(2) In sub-paragraph (3) of that paragraph, in paragraph (b) for "any records" substitute "the records".

(3) In paragraph 25 of that Schedule (annual accounts), in sub-paragraph (1), for "the Treasury" substitute "the Secretary of State".

(4) After sub-paragraph (1) of that paragraph insert—

"(1A) The regulator may with the approval of the Secretary of State direct a public benefit corporation—

(a) to prepare accounts in respect of such period or periods as may be specified in the direction;

(b) that any accounts prepared by it by virtue of paragraph (a) are to be audited in accordance with such requirements as may be specified in the direction."

(5) In sub-paragraph (2) of that paragraph—

(a) after "annual accounts" insert "or in preparing any accounts by virtue of sub-paragraph (1A)(a)",

(b) for "the Treasury" substitute "the Secretary of State", and

(c) for "information to be given in" substitute "content and form of".

(6) In sub-paragraph (3) of that paragraph, after "annual accounts" insert ", or of any accounts to be prepared by it by virtue of sub-paragraph (1A)(a),".

(7) In sub-paragraph (4) of that paragraph, in paragraph (b)—

(a) omit "once it has done so,", and

(b) at the end insert "within such period as the regulator may direct".

(8) After that sub-paragraph insert—

"(4A) The corporation must send to the regulator within such period as the regulator may direct—

(a) a copy of any accounts prepared by the corporation by virtue of sub-paragraph (1A)(a), and

(b) a copy of any report of an auditor on them prepared by virtue of sub-paragraph (1A)(b)."

Status: *This version of this Act contains provisions that are prospective.*
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Commencement Information

I281 S. 154 partly in force; s. 154 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I282 S. 154 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)**

PROSPECTIVE

155 Accounts: variations to initial arrangements

(1) In paragraph 24 of Schedule 7 to the National Health Service Act 2006 (accounts: general), in sub-paragraph (1A), for "The regulator may with the approval of the Secretary of State" substitute "The Secretary of State may with the approval of the Treasury".

F62(2) . . . . . .

(3) In paragraph 25 of that Schedule (annual accounts), in sub-paragraph (1), for "the regulator may with the approval of the Secretary of State" substitute "the Secretary of State may with the approval of the Treasury".

(4) In sub-paragraph (1A) of that paragraph, for "The regulator may with the approval of the Secretary of State" substitute "The Secretary of State may with the approval of the Treasury".

(5) In sub-paragraph (2) of that paragraph, for "the regulator with the approval of the Secretary of State" substitute "the Secretary of State with the approval of the Treasury".

(6) In sub-paragraphs (3), (4) and (4A) of that paragraph, for "the regulator", in each place it appears, substitute "the Secretary of State".

(7) This section applies to such financial year as is specified in the order under section 306 that brings the preceding provisions of this section into force (and to the subsequent financial years); accordingly, this section does not affect the application of paragraphs 24 and 25 of Schedule 7 to the National Health Service Act 2006 (as amended by section 154) to the financial years preceding the specified financial year.

(8) In subsection (7), "financial year" has the meaning given in section 275(1) of the National Health Service Act 2006.

Textual Amendments

F62 S. 155(2) repealed (1.4.2015) by Local Audit and Accountability Act 2014 (c. 2), s. 49(1), **Sch. 12 para. 123(h)**; S.I. 2015/841, art. 3(x)

156 Annual report and forward plan

(1) In sub-paragraph (2) of paragraph 26 of Schedule 7 to the National Health Service Act 2006 (information that must be included in annual report), after paragraph (aa) (inserted by section 151(8)) insert—

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"(ab) information on the corporation's policy on pay and on the work of the committee established under paragraph 18(2) and such other procedures as the corporation has on pay,

(ac) information on the remuneration of the directors and on the expenses of the governors and the directors,".

(2) After that sub-paragraph insert—

"(2A) Before imposing a requirement under sub-paragraph (2)(b) that the regulator considers is sufficiently significant to justify consultation, the regulator must consult such persons as it considers appropriate."

(3) The Secretary of State may by order—

(a) amend sub-paragraph (2) of paragraph 26 of that Schedule so as to substitute for paragraph (b) the following—

"(b) such other information as may be prescribed.", and

(b) repeal sub-paragraph (2A) of that paragraph.

(4) In paragraph 27(1) of that Schedule (duty to send forward plan to regulator), for "the regulator" substitute "the Secretary of State".

(5) Omit section 39(2)(e) of that Act (requirement for copy of forward plan to be on register).

(6) In paragraph 22(1) of Schedule 7, omit paragraph (e) (duty to make forward plan available to the public).

Commencement Information

I283 S. 156 partly in force; s. 156 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I284 S. 156(1)(2) in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

I285 S. 156(5)(6) in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

157 Meetings

(1) After paragraph 27 of Schedule 7 to the National Health Service Act 2006 insert—

27A (1) A public benefit corporation must hold an annual meeting of its members.

(2) The meeting must be open to members of the public.

(3) At least one member of the board of directors of the corporation must attend the meeting and present the following documents to the members at the meeting—

(a) the annual accounts,

(b) any report of the auditor on them,

(c) the annual report.

(4) Where an amendment is made to the constitution in relation to the powers or duties of the council of governors of a public benefit corporation (or otherwise with respect to the role that the council has as part of the corporation)—

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(a) at least one member of the council of governors must attend the next meeting to be held under this paragraph and present the amendment, and

(b) the corporation must give the members an opportunity to vote on whether they approve the amendment.

(5) If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the corporation must take such steps as are necessary as a result."

(2) In paragraph 28 of that Schedule (meeting of council of governors to consider annual accounts and reports), the existing text of which becomes sub-paragraph (1), after that sub-paragraph insert—

"(2) Nothing in sub-paragraph (1) prevents the council of governors from holding a general meeting more than once a year."

(3) After that paragraph insert—

28A "**Combined meetings of members and governors**

A public benefit corporation may hold a meeting which combines a meeting under paragraph 27A with a meeting under paragraph 28."

Commencement Information

I286 S. 157 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

158 Voting

(1) After paragraph 29 of Schedule 7 to the National Health Service Act 2006 insert—

30 (1) Regulations may amend this Chapter so as to add, vary or omit provision relating to voting by members of the council of governors of a public benefit corporation that is an NHS foundation trust, by its directors or by its members.

(2) The power under sub-paragraph (1) is exercisable only in relation to provision in this Chapter that was inserted, or otherwise provided for, by Part 4 of the Health and Social Care Act 2012."

(2) In section 64(3) of that Act (regulations under Chapter 5 of Part 2 of that Act that are subject to affirmative procedure), after paragraph (a) (but before the "or" following it) insert—

"(aa) regulations under paragraph 30(1) of Schedule 7,".

Commencement Information

I287 S. 158 partly in force; s. 158 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I288 S. 158 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)**

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Foundation trust status

159 Authorisation

(1) In section 30(1) of the National Health Service Act 2006 (definition of NHS foundation trust), for "which is authorised under this Chapter to provide" substitute "the function of which is to provide in accordance with this Chapter".

(2) Omit section 33(2)(a) of that Act (requirement for application for authorisation to describe goods and services to be provided).

(3) In section 35(2) of that Act (matters as to which the regulator must be satisfied before giving authorisation), for paragraph (e) substitute—

"(e) the applicant will be able to provide goods and services for the purposes of the health service in England,".

(4) After section 35(3) of that Act (things the regulator must consider before deciding whether it is satisfied as to the matters in section 35(2)) insert—

"(3A) The regulator must not give an authorisation unless it is notified by the Care Quality Commission that it is satisfied that the applicant is complying with (so far as applicable) the requirements mentioned in section 12(2) of the Health and Social Care Act 2008 in relation to the regulated activity or activities the applicant carries on.

(3B) In subsection (3A), "regulated activity" has the same meaning as in section 8 of the Health and Social Care Act 2008."

(5) Omit section 35(4) and (7) of that Act (power to give authorisation on terms the regulator considers appropriate).

(6) Omit section 38 of that Act (variation of authorisation).

(7) Omit section 39(2)(b) of that Act (requirement for copy of authorisation to be on register).

(8) Omit section 49 of that Act (authorisation to require trust to allow regulator to enter and inspect trust's premises).

(9) Omit paragraph 22(1)(b) of Schedule 7 to that Act (requirement for copy of authorisation to be available for public inspection).

Commencement Information
I289 S. 159(1)-(3)(5)-(9) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

160 Bodies which may apply for foundation trust status

(1) Omit section 34 of the National Health Service Act 2006 (application for authorisation by body other than NHS trust).

(2) In section 35(1) of that Act (bodies which may be given authorisation), omit paragraph (b) (public benefit corporations) and the preceding "or".

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(3) Omit section 36(2) of that Act (public benefit corporation to become NHS foundation trust on being given authorisation).

(4) Despite subsection (1)—

(a) section 34(1) to (4) of that Act continues to have effect in the case of an application which, immediately before the commencement of that subsection, is pending determination, and

(b) section 34(5) to (7) of that Act continues to have effect in the case of an existing public benefit corporation.

(5) Despite subsection (2), section 35(1)(b) of that Act continues to have effect in the case of an existing public benefit corporation which, immediately before the commencement of that subsection, has not been given an authorisation under section 35.

(6) Despite subsection (3), section 36(2) of that Act continues to have effect in the case of an existing public benefit corporation.

(7) In subsections (4) to (6), "existing public benefit corporation" means a public benefit corporation—

(a) incorporated under section 34 of that Act and in existence immediately before the commencement of this section, or

(b) incorporated under that section by virtue of subsection (4).

Commencement Information

I290 S. 160 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

161 Amendment of constitution

(1) In section 37 of the National Health Service Act 2006 (amendments of constitution), the existing text of which becomes subsection (1), for "with the approval of the regulator" substitute "only if—

(a) more than half of the members of the council of governors of the trust voting approve the amendments, and

(b) more than half of the members of the board of directors of the trust voting approve the amendments."

(2) After that subsection insert—

"(2) Amendments made under this section take effect as soon as the conditions in subsection (1)(a) and (b) are satisfied.

(3) But an amendment is of no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7.

(4) The trust must inform the regulator of amendments made under this section; but the regulator's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7."

(3) Subsections (1) and (2) do not apply in the case of amendments in respect of which, immediately before the commencement of this section, Monitor has yet to decide

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whether or not to give approval under section 37 of the National Health Service Act 2006.

Commencement Information

I291 S. 161 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

162 Panel for advising governors

After section 39 of the National Health Service Act 2006 insert—

"**39A Panel for advising governors**

(1) The regulator may appoint a panel of persons to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—

(a) to act in accordance with its constitution, or

(b) to act in accordance with provision made by or under this Chapter.

(2) A governor may refer a question to the panel only if more than half of the members of the council of governors voting approve the referral.

(3) The panel—

(a) may regulate its own procedure, and

(b) may establish such procedures, and make such other arrangements, as it considers appropriate for the purpose of determining questions referred to it under this section.

(4) The panel may decide whether, or to what extent, to carry out an investigation on a question referred to it under this section.

(5) The panel may for that purpose, or for the purpose of carrying out such an investigation, request information or advice.

(6) Where the panel has carried out such an investigation, it must publish a report of its determination of the question referred to it.

(7) If a person refuses to comply with a request made under subsection (5), the report under subsection (6) may refer to the refusal.

(8) On any proceedings before a court or tribunal relating to a question referred to the panel under this section, the court may take the panel's report of its determination of the question into account.

(9) The regulator—

(a) must pay expenses properly incurred by the panel, and

(b) must make administrative support available to the panel.

(10) Regulations may make provision as to—

(a) eligibility for membership of the panel;

(b) the number of persons that may be appointed as members;

(c) the terms of appointment of members;

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(d) circumstances in which a person ceases to be a member or may be suspended."

Commencement Information

I292 S. 162 partly in force; s. 162 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I293 S. 162 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Finance

163 Financial powers etc.

(1) At the end of section 40 of the National Health Service Act 2006 (power of Secretary of State to give financial assistance to NHS foundation trusts), insert—

"(5) As soon as is practicable after the end of each financial year, the Secretary of State must prepare a report on the exercise of the power under subsection (1).

(6) In relation to each exercise of the power under that subsection during the year to which the report relates, the report must specify the amount of the loan, issue of public dividend capital, grant or other payment and—

(a) in the case of a loan, the amount (if any) outstanding at the end of the year and the other terms on which the loan was made,

(b) in the case of an issue of public dividend capital, the terms on which it was issued (or, where a decision under section 42(3) is made in relation to it during that year, the terms so decided as those on which it is treated as having been issued), and

(c) in the case of a grant or other payment, the terms on which it was made.

(7) In relation to each loan made under that subsection during a previous financial year but not repaid by the beginning of the year to which the report relates, the report must specify—

(a) the amount outstanding at the beginning of the year,

(b) the amount (if any) outstanding at the end of the year, and

(c) the other terms on which the loan was made.

(8) A report under subsection (5) must, in relation to each NHS foundation trust, specify—

(a) the amount of the public dividend capital of that trust at the end of the year to which the report relates, and

(b) the conditions on which it is held.

(9) The Secretary of State must publish a report under subsection (5)."

(2) Omit section 41 of that Act (prudential borrowing code).

(3) In section 42 of that Act (public dividend capital), omit subsection (4) (dividend payable by NHS foundation trust to be same as that payable by NHS trust).

(4) Omit subsection (5) of that section (requirement for Secretary of State to consult the regulator).

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(5) At the end of that section insert—

"(7) The terms which may be decided under subsection (3) include terms to which the exercise of any power of an NHS foundation trust to do any of the following will be subject as a consequence—

(a) providing goods or services,

(b) borrowing or investing money,

(c) providing financial assistance,

(d) acquiring or disposing of property,

(e) entering into contracts, or making other arrangements, to do anything referred to in paragraphs (a) to (d),

(f) applying for dissolution (whether or not when also applying for the establishment of one or more other trusts),

(g) applying to acquire another body."

(6) After that section insert—

"**42A Criteria for making loans etc.**

(1) The Secretary of State must publish guidance on the powers conferred by sections 40 and 42.

(2) The guidance on the power to make a loan under section 40(1) must in particular—

(a) explain that, in exercising the power, the Secretary of State will apply the principle that a loan should be made only where there is a reasonable expectation that it will be repaid in accordance with the terms on which it is made;

(b) include other criteria that the Secretary of State will apply when determining whether to exercise the power and, if so, the terms on which to make the loan.

(3) The guidance on that power must also explain—

(a) the process for applying for a loan under section 40(1);

(b) the consequences of failing to comply with terms on which a loan is made under that provision.

(4) The guidance on the power to decide terms under section 42(3) must, in particular, include the criteria that the Secretary of State will apply when deciding the terms.

(5) The guidance on that power must also explain the consequences of failing to comply with the terms decided.

(6) In preparing guidance under this section, the Secretary of State must have regard (among other things) to any generally accepted principles used by financial institutions to determine whether to make loans to bodies corporate and the terms on which to make loans to them.

(7) Before publishing the guidance, the Secretary of State must consult—

(a) the Treasury,

(b) the regulator, and

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(c) such other persons as the Secretary of State considers appropriate."

(7) Omit section 45 of that Act (disposal of protected property).

(8) Omit section 46(2) and (3) of that Act (limitation on power of NHS foundation trusts to borrow money).

(9) For section 50 of that Act (fees) substitute—

"**50 Fees**

An NHS foundation trust must pay to the regulator such fee as the regulator may determine in respect of its exercise of functions under—

(a) section 39;

(b) section 39A."

Commencement Information

I294 S. 163(1) in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I295 S. 163(2)(7)-(9) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

I296 S. 163(3)-(6) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Functions

164 Goods and services

(1) In section 43 of the National Health Service Act 2006 (authorised services), for subsections (1) and (2) substitute—

"(1) The principal purpose of an NHS foundation trust is the provision of goods and services for the purposes of the health service in England.

(2) An NHS foundation trust may provide goods and services for any purposes related to—

(a) the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

(b) the promotion and protection of public health.

(2A) An NHS foundation trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes."

(2) In subsection (3) of that section (power to carry on other activities in order to generate additional income)—

(a) for "The" substitute "An",

(b) for "subsection (1)" substitute "subsection (2)", and

(c) omit ", subject to any restrictions in the authorisation,".

(3) After that subsection insert—

"(3A) Each annual report prepared by an NHS foundation trust must give information on the impact that income received by the trust otherwise than

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from the provision of goods and services for the purposes of the health service in England has had on the provision by the trust of goods and services for those purposes.

(3B) Each document prepared by an NHS foundation trust under paragraph 27 of Schedule 7 (forward plan) must include information about—

(a) the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and

(b) the income it expects to receive from doing so.

(3C) Where a document which is being prepared under paragraph 27 of Schedule 7 contains a proposal that an NHS foundation trust carry on an activity of a kind mentioned in subsection (3B)(a), the council of governors of the trust must—

(a) determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and

(b) notify the directors of the trust of its determination.

(3D) An NHS foundation trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation."

(4) Omit subsections (4) to (7) of that section (goods and services that may be authorised, etc.).

(5) For the title to that section substitute "Provision of goods and services".

(6) In paragraph 2 of Schedule 7 to that Act (constitution), the existing text of which becomes sub-paragraph (1), after that sub-paragraph insert—

"(2) If the corporation is an NHS foundation trust, the constitution must specify its principal purpose (as to which, see section 43(1))."

Commencement Information

I297 S. 164(1)-(3)(6) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I298 S. 164(4)(5) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

165 Private health care

(1) In section 44 of the National Health Service Act 2006 (private health care), omit—

(a) subsection (1) (restriction on provision of private health services),

(b) subsection (2) (cap on private income),

(c) subsection (2A) (special provision for mental health foundation trusts), and

(d) subsections (3) to (5) (interpretation etc.).

(2) For the title to that section substitute "Power to charge for accommodation etc.".

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(3) In consequence of subsection (1)(b) and (c), omit section 33 of the Health Act 2009.

Commencement Information
I299 S. 165 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

166 Information

For section 48 of the National Health Service Act 2006 (information) substitute—

"**48 Information**

(1) The Secretary of State may require an NHS foundation trust to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.

(2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require."

Commencement Information
I300 S. 166 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)** (with art. 10)

167 Significant transactions

"After section 51 of the National Health Service Act 2006 insert—

51A **Significant transactions**

(1) An NHS foundation trust may enter into a significant transaction only if more than half of the members of the council of governors of the trust voting approve entering into the transaction.

(2) "Significant transaction" means a transaction or arrangement of such description as may be specified in the trust's constitution.

(3) If an NHS foundation trust does not wish to specify any descriptions of transaction or arrangement for the purposes of subsection (2), the constitution of the trust must specify that it contains no such descriptions."

Commencement Information
I301 S. 167 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Mergers, acquisitions, separations and dissolution

168 Mergers

(1) In section 56 of the National Health Service Act 2006 (mergers), in subsection (1)—

(a) in paragraph (b), after "NHS trust" insert "established under section 25", and

(b) for the words from "authorisation" to the end substitute "the dissolution of the trusts and the establishment of a new NHS foundation trust."

(2) After that subsection insert—

"(1A) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust)."

(3) In subsection (2) of that section, omit—

(a) paragraph (c) (but not the "and" following it), and

(b) the words from "and must give" to the end.

(4) Omit subsection (3) of that section.

(5) For subsection (4) of that section substitute—

"(4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trusts and the establishment of the proposed new trust have been taken."

(6) Omit subsections (5) to (10) of that section.

(7) In subsection (11) of that section, for "On an authorisation being given under this section" substitute "On the grant of the application".

Commencement Information

I302 S. 168 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

169 Acquisitions

After section 56 of the National Health Service Act 2006 insert—

"**56A Acquisitions**

(1) An application may be made jointly by—

(a) an NHS foundation trust (A), and

(b) another NHS foundation trust or an NHS trust established under section 25 (B),

to the regulator for the acquisition by A of B.

(2) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust).

(3) The application must—

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(a) be supported by the Secretary of State if B is an NHS trust, and

(b) be accompanied by a copy of the proposed constitution of A, amended on the assumption that A acquires B.

(4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the acquisition have been taken.

(5) On the grant of the application, the proposed constitution has effect, but where a person who is specified as a director of A in the constitution has yet to be appointed as such, the directors of A may exercise that person's functions under the constitution."

Commencement Information

I303 S. 169 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

170 Separations

After section 56A of the National Health Service Act 2006 insert—

"**56B Separations**

(1) An application may be made to the regulator by an NHS foundation trust for the dissolution of the trust and the establishment of two or more new NHS foundation trusts.

(2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.

(3) The application must, by reference to each of the proposed new trusts—

(a) specify the property and liabilities proposed to be transferred to it;

(b) be accompanied by a copy of its proposed constitution.

(4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trust and the establishment of each of the proposed new trusts have been taken.

(5) On the grant of the application, the proposed constitution of each of the new trusts has effect but, in the case of each of the new trusts, the proposed directors may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution."

Commencement Information

I304 S. 170 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

171 Dissolution

After section 57 of the National Health Service Act 2006 insert—

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"**57A Dissolution**

(1) An application may be made by an NHS foundation trust to the regulator for dissolution.

(2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.

(3) The regulator must grant the application if it is satisfied that—

(a) the trust has no liabilities, and

(b) such steps as are necessary to prepare for the dissolution have been taken.

(4) Where an application under this section is granted, the regulator must make an order—

(a) dissolving the trust in question, and

(b) transferring, or providing for the transfer of, the property of the trust (if any) to the Secretary of State."

Commencement Information

I305 S. 171 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

172 Supplementary

(1) In section 57 of the National Health Service Act 2006 (mergers: supplementary), in subsection (1)—

(a) for "an authorisation is given under section 56" substitute "an application is granted under section 56 or 56B", and

(b) at the end insert "or trusts".

(2) In subsection (2) of that section—

(a) for "such an authorisation is given, the Secretary of State" substitute "such an application is granted, the regulator", and

(b) in paragraph (a), after "dissolving the" insert "trust or", and

(c) in paragraph (b), at the end insert "or trusts".

(3) After that subsection insert—

"(2A) An order under section 56 or 56B is conclusive evidence of incorporation and conclusive evidence that the corporation is an NHS foundation trust."

(4) In subsection (3)(a) of that section, for "section 54(3)" substitute "section 54(4)".

(5) In subsection (4) of that section—

(a) for "section 56(1) and (2)" substitute "sections 56(2) and 56B(3)", and

(b) for "section 54(4)(a) to (c)" substitute "section 54(4)(a) or (c)".

(6) In subsection (5) of that section, after "section 56" insert "or 56A".

(7) Omit subsection (6) of that section.

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(8) For the title to that section substitute "Sections 56 to 56B: supplementary".

(9) For the cross-heading preceding section 56 of that Act substitute "Mergers, acquisitions and separations".

(10) In section 64 of that Act (orders and regulations under Chapter 5 of Part 2 of that Act), in subsection (4)—

(a) omit the "or" following paragraph (b), and

(b) after paragraph (c), insert ", or

(d) section 57A."

(11) After that subsection insert—

"(4A) The Statutory Instruments Act 1946 applies in relation to the power of the regulator to make an order under section 57 or 57A as if the regulator were a Minister of the Crown."

(12) In section 271(3)(b) of that Act (territorial limit of exercise of functions under Chapter 5), for "Part 1" substitute "Part 2".

Commencement Information

I306 S. 172(1)-(3)(5)(a) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

I307 S. 172(4)(5)(b)(6)-(12) in force at 1.4.2013 immediately before the coming into force of section 173 in accordance with art. 2(3) by S.I. 2013/671, **art. 2(2)**

Failure

173 Repeal of de-authorisation provisions

(1) Omit section 52C of the National Health Service Act 2006 (guidance etc. on de-authorisation notices).

(2) Omit sections 53 to 55 of, and Schedule 9 to, that Act (voluntary arrangements and dissolution); and in consequence of that—

(a) in section 57 of that Act (as amended by section 172 of this Act)—

(i) in subsection (3)(a), for "the persons mentioned in section 54(4)" substitute "another NHS foundation trust, an NHS trust established under section 25 or the Secretary of State",

(ii) omit subsection (3)(b), and

(iii) in subsection (4), for "any of the bodies mentioned in section 54(4)(a) or (c)" substitute "another NHS foundation trust or an NHS trust established under section 25",

(b) in section 64(4) of that Act (as amended by section 172 of this Act), omit paragraph (b), and

(c) omit section 18(2) to (6) and (11) of the Health Act 2009.

(3) Omit section 65E of the National Health Service Act 2006 (NHS foundation trusts: de-authorisation and appointment of administrator).

(4) Omit Schedule 8A to that Act (de-authorised NHS trusts and NHS foundation trusts).

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(5) Omit section 15 of the Health Act 2009 (which inserts sections 52A to 52E and Schedule 8A in the National Health Service Act 2006).

(6) In section 272 of the National Health Service Act 2006 (orders, regulations, rules and directions)—

(a) in subsection (5), omit paragraph (aa), and

(b) in subsection (6A), omit "52D(1), 52E(6),".

(7) In section 275(1) of that Act (interpretation), in the definition of "NHS trust"—

(a) omit ", subject to Schedule 8A,", and

(b) omit "52D(1) or".

(8) In section 206(1) of the National Health Service (Wales) Act 2006, in the definition of "NHS trust", omit "52D(1) or".

Commencement Information

I308 S. 173(1)(3)-(8) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

I309 S. 173(2) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

174 Trust special administrators

(1) In section 65A of the National Health Service Act 2006 (bodies to which trust special administration regime applies)—

(a) in subsection (1), for paragraphs (b) and (c) substitute—

"(b) any NHS foundation trust.", and

(b) omit subsection (2).

(2) For the title to section 65B of that Act substitute "NHS trusts: appointment of trust special administrator".

(3) In section 65D of that Act (NHS foundation trusts: regulator's notice), for subsections (1) to (3) substitute—

"(1) This section applies if the regulator is satisfied that an NHS foundation trust is, or is likely to become, unable to pay its debts.

(2) The regulator may make an order authorising the appointment of a trust special administrator to exercise the functions of the governors, chairman and directors of the trust.

(3) As soon as reasonably practicable after the making of an order under subsection (2), the Care Quality Commission must provide to the regulator a report on the safety and quality of the services that the trust provides under this Act."

(4) In subsection (4) of that section—

(a) for "giving a notice" substitute "making an order",

(b) after paragraph (a) insert—

"(aa) the Board,",

(c) omit paragraph (b),

(d) in paragraph (c), omit "goods or", and

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(e) after paragraph (c) insert ", and

(d) the Care Quality Commission."

(5) After that subsection insert—

"(5) An order under subsection (2) must specify the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the order is made.

(6) The regulator must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.

(7) If the regulator makes an order under subsection (2), it must—

(a) appoint a person as the trust special administrator with effect from the day specified in the order, and

(b) publish the name of the person appointed.

(8) A person appointed as a trust special administrator under this section holds and vacates office in accordance with the terms of the appointment.

(9) A person appointed as a trust special administrator under this section must manage the trust's affairs, business and property, and exercise the trust special administrator's functions, so as to achieve the objective set out in section 65DA as quickly and as efficiently as is reasonably practicable.

(10) When the appointment of a trust special administrator under this section takes effect, the trust's governors, chairman and executive and non-executive directors are suspended from office; and Chapter 5 of this Part, in its application to the trust, is to be read accordingly.

(11) But subsection (10) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust.

(12) The regulator may indemnify a trust special administrator appointed under this section in respect of such matters as the regulator may determine."

(6) For the title to that section substitute "NHS foundation trusts: appointment of trust special administrator".

(7) Omit the cross-heading preceding that section.

Commencement Information
I310 S. 174 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

175 Objective of trust special administration

(1) After section 65D of the National Health Service Act 2006 insert—

"**65DA Objective of trust special administration**

(1) The objective of a trust special administration is to secure—

(a) the continued provision of such of the services provided for the purposes of the NHS by the NHS foundation trust that is subject to

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an order under section 65D(2), at such level, as the commissioners of those services determine, and

(b) that it becomes unnecessary for the order to remain in force for that purpose.

(2) The commissioners may determine that the objective set out in subsection (1) is to apply to a service only if they are satisfied that the criterion in subsection (3) is met.

(3) The criterion is that ceasing to provide the service under this Act would, in the absence of alternative arrangements for its provision under this Act, be likely to—

(a) have a significant adverse impact on the health of persons in need of the service or significantly increase health inequalities, or

(b) cause a failure to prevent or ameliorate either a significant adverse impact on the health of such persons or a significant increase in health inequalities.

(4) In determining whether that criterion is met, the commissioners must (in so far as they would not otherwise be required to do so) have regard to—

(a) the current and future need for the provision of the service under this Act,

(b) whether ceasing to provide the service under this Act would significantly reduce equality between those for whom the commissioner arranges for the provision of services under this Act with respect to their ability to access services so provided, and

(c) such other matters as may be specified in relation to NHS foundation trusts in guidance published by the regulator.

(5) The regulator may revise guidance under subsection (4)(c) and, if it does so, must publish the guidance as revised.

(6) Before publishing guidance under subsection (4)(c) or (5), the regulator must obtain the approval of—

(a) the Secretary of State;

(b) the Board.

(7) The Board must make arrangements for facilitating agreement between commissioners in determining the services provided by the trust under this Act to which the objective set out in subsection (1) is to apply.

(8) Where commissioners fail to reach agreement in pursuance of arrangements under subsection (7), the Board may make the determination (and the duty imposed by subsection (1)(a), so far as applying to the commissioners concerned, is to be regarded as discharged).

(9) In this section—

"commissioners" means the persons to which the trust provides services under this Act, and

"health inequalities" means the inequalities between persons with respect to the outcomes achieved for them by the provision of services that are provided as part of the health service."

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(2) If, at any time before section 9 comes into force, Monitor obtains the approval of the NHS Commissioning Board Authority to publish guidance under section 65DA(4)(c) or (5) of the National Health Service Act 2006, that approval is to be treated for the purposes of subsection (6)(b) of that section as approval obtained from the National Health Service Commissioning Board.

Commencement Information
I311 S. 175 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

176 Procedure etc.

(1) In section 65F of the National Health Service Act 2006 (administrator's draft report), in subsection (2)—

(a) before paragraph (a) insert—

"(za) the Board,", and

(b) omit paragraph (a) (but not the following "and").

(2) At the end of that section insert—

"(4) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.

(5) In the case of an NHS foundation trust, the administrator may not provide the draft report to the regulator under subsection (1)—

(a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report would achieve the objective set out in section 65DA, or

(b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.

(6) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—

(a) give a notice of the reasons for its decision to the administrator and to the regulator;

(b) publish the notice;

(c) lay a copy of it before Parliament.

(7) In subsection (5), "commissioner" means a person to which the trust provides services under this Act."

(3) At the end of section 65G of that Act (consultation plan) insert—

"(4) In the case of an NHS foundation trust, the administrator may not make a variation to the draft report following the consultation period—

(a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report as so varied would achieve the objective set out in section 65DA, or

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(b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.

(5) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—

(a) give a notice of the reasons for its decision to the administrator and to the regulator;

(b) publish the notice;

(c) lay a copy of it before Parliament.

(6) In subsection (4), "commissioner" means a person to which the trust provides services under this Act."

(4) In section 65H of that Act (consultation requirements), in subsection (7)—

(a) before paragraph (a) insert—

"(za) the Board,",

(b) omit paragraph (a),

(c) in paragraph (b), omit ", if required by directions given by the Secretary of State", and

(d) after paragraph (c) insert ";

(d) any other person specified in a direction given by the Secretary of State."

(5) In subsection (8) of that section, omit paragraphs (a) to (d).

(6) In subsection (9) of that section—

(a) after "representatives of" insert "the Board and", and

(b) for "(7)(a) or (b)" substitute "(7)(b), (c) or (d)".

[[F63](7) At the end of that section insert—

"(12) For the purposes of this section in its application to the case of an NHS foundation trust—

(a) in subsection (7)(b), the words "goods or" are to be ignored, and

(b) in subsections (7)(c) and (d) and (10), the references to the Secretary of State are to be read as references to the regulator.

(13) In the case of an NHS foundation trust, the Secretary of State may direct the regulator as to persons from whom it should direct the administrator under subsection (10) to request or seek a response."**]**

(8) At the end of section 65I of that Act (administrator's final report) insert—

"(4) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator."

(9) At the end of section 65J of that Act (power to extend time limits for preparing reports and carrying out consultation) insert—

"(5) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator."

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Textual Amendments

F63 S. 176(7) omitted (27.3.2012 for specified purposes) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(1)(d)(4), **Sch. 14 para. 17(6)** (with s. 179(5)(b))

Commencement Information

I312 S. 176 partly in force; s. 176 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I313 S. 176 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

177 Action following final report

(1) In section 65K of the National Health Service Act 2006 (Secretary of State's decision on what action to take), in subsection (1), after "a final report under section 65I" insert "relating to an NHS trust"; and in consequence of that, for the title to that section substitute "Secretary of State's decision in case of NHS trust".

(2) After that section insert—

"**65KA Regulator's decision in case of NHS foundation trust**

(1) Within the period of 20 working days beginning with the day on which the regulator receives a final report under section 65I relating to an NHS foundation trust, the regulator must decide whether it is satisfied—

(a) that the action recommended in the final report would achieve the objective set out in section 65DA, and

(b) that the trust special administrator has carried out the administration duties.

(2) In subsection (1)(b), "administration duties" means the duties imposed on the administrator by—

(a) this Chapter,

(b) a direction under this Chapter, or

(c) the administrator's terms of appointment.

(3) If the regulator is satisfied as mentioned in subsection (1), it must as soon as reasonably practicable provide to the Secretary of State—

(a) the final report, and

(b) the report provided to the regulator by the Care Quality Commission under section 65D(3).

(4) If the regulator is not satisfied as mentioned in subsection (1), it must as soon as reasonably practicable give a notice of that decision to the administrator.

(5) Where the regulator gives a notice under subsection (4), sections 65F to 65J apply in relation to the trust to such extent, and with such modifications, as the regulator may specify in the notice.

(6) The regulator must as soon as reasonably practicable after giving a notice under subsection (4)—

(a) publish the notice;

(b) lay a copy of it before Parliament.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

65KB Secretary of State's response to regulator's decision

(1) Within the period of 30 working days beginning with the day on which the Secretary of State receives the reports referred to in section 65KA(3), the Secretary of State must decide whether the Secretary of State is satisfied—

(a) that the persons to which the NHS foundation trust in question provides services under this Act have discharged their functions for the purposes of this Chapter,

(b) that the trust special administrator has carried out the administration duties (within the meaning of section 65KA(1)(b)),

(c) that the regulator has discharged its functions for the purposes of this Chapter,

(d) that the action recommended in the final report would secure the continued provision of the services provided by the trust to which the objective set out in section 65DA applies,

(e) that the recommended action would secure the provision of services that are of sufficient safety and quality to be provided under this Act, and

(f) that the recommended action would provide good value for money.

(2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—

(a) give the trust special administrator a notice of the decision and of the reasons for it;

(b) give a copy of the notice to the regulator;

(c) publish the notice;

(d) lay a copy of it before Parliament.

65KC Action following Secretary of State's rejection of final report

(1) Within the period of 20 working days beginning with the day on which the trust special administrator receives a notice under section 65KB(2), the administrator must provide to the regulator the final report varied so far as the administrator considers necessary to secure that the Secretary of State is satisfied as mentioned in section 65KB(1).

(2) Where the administrator provides to the regulator a final report under subsection (1), section 65KA applies in relation to the report as it applies in relation to a final report under section 65I; and for that purpose, that section has effect as if—

(a) in subsection (1), for "20 working days" there were substituted "10 working days", and

(b) subsection (3)(b) were omitted.

(3) If the Secretary of State thinks that, in the circumstances, it is not reasonable for the administrator to be required to carry out the duty under subsection (1) within the period mentioned in that subsection, the Secretary of State may by order extend the period.

(4) If an order is made under subsection (3), the administrator must—

(a) publish a notice stating the date on which the period will expire, and

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(b) where the administrator is proposing to carry out consultation in response to the notice under section 65KB(2), publish a statement setting out the means by which the administrator will consult during the extended period.

65KD Secretary of State's response to re-submitted final report

(1) Within the period of 30 working days beginning with the day on which the Secretary of State receives a final report under section 65KA(3) as applied by section 65KC(2), the Secretary of State must decide whether the Secretary of State is, in relation to the report, satisfied as to the matters in section 65KB(1)(a) to (f).

(2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—
(a) publish a notice of the decision and the reasons for it;
(b) lay a copy of the notice before Parliament.

(3) Where the Secretary of State publishes a notice under subsection (2)(a), subsections (4) to (8) apply.

(4) If the notice states that the Board has failed to discharge a function—
(a) the Board is to be treated for the purposes of this Act as having failed to discharge the function, and
(b) the failure is to be treated for those purposes as significant (and section 13Z2 applies accordingly).

(5) If the notice states that a clinical commissioning group has failed to discharge a function—
(a) the group is to be treated for the purposes of this Act as having failed to discharge the function,
(b) the Secretary of State may exercise the functions of the Board under section 14Z21(2), (3)(a) and (8)(a), and
(c) the Board may not exercise any of its functions under section 14Z21.

(6) Where, by virtue of subsection (5)(b), the Secretary of State exercises the function of the Board under subsection (3)(a) of section 14Z21, subsection (9)(a) of that section applies but with the substitution for the references to the Board of references to the Secretary of State.

(7) If the notice states that the trust special administrator has failed to discharge the administration duties (within the meaning of section 65KA(1)(b))—
(a) the administration duties are to be treated for the purposes of this Act as functions of the regulator,
(b) the regulator is to be treated for the purposes of this Act as having failed to discharge those functions, and
(c) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).

(8) If the notice states that the regulator has failed to discharge a function—
(a) the regulator is to be treated for the purposes of this Act as having failed to discharge the function, and

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(b) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).

(9) Within the period of 60 working days beginning with the day on which the Secretary of State publishes a notice under subsection (2)(a), the Secretary of State must decide what action to take in relation to the trust.

(10) The Secretary of State must as soon as reasonably practicable—

(a) publish a notice of the decision and the reasons for it;

(b) lay a copy of the notice before Parliament."

(3) In section 65L of that Act (trusts coming out of administration), after subsection (2) insert—

"(2A) For the purposes of subsection (1) in its application to the case of an NHS foundation trust, the reference to section 65K is to be read as a reference to section 65KD(9); and this section also applies in the case of an NHS foundation trust if—

(a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) in relation to the trust, and

(b) the action recommended in the final report is to do something other than dissolve the trust.

(2B) For the purposes of subsection (2) in its application to the case of an NHS foundation trust—

(a) the reference to the Secretary of State is to be read as a reference to the regulator, and

(b) the reference to the chairman and directors of the trust is to be read as including a reference to the governors."

(4) Omit subsections (3) to (5) of that section.

(5) At the end of that section insert—

"(6) Subsection (7) applies in the case of an NHS foundation trust.

(7) If it appears to the regulator to be necessary in order to comply with Schedule 7, the regulator may by order—

(a) terminate the office of any governor or of any executive or non-executive director of the trust;

(b) appoint a person to be a governor or an executive or non-executive director of the trust."

(6) After that section insert—

"**65LA Trusts to be dissolved**

(1) This section applies if—

(a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1), and

(b) the action recommended in the final report is to dissolve the NHS foundation trust in question.

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(2) This section also applies if the Secretary of State decides under section 65KD(9) to dissolve the NHS foundation trust in question.

(3) The regulator may make an order—

(a) dissolving the trust, and

(b) transferring, or providing for the transfer of, the property and liabilities of the trust—

(i) to another NHS foundation trust or the Secretary of State, or

(ii) between another NHS foundation trust and the Secretary of State.

(4) An order under subsection (3) may include provision for the transfer of employees of the trust.

(5) The liabilities that may be transferred to an NHS foundation trust by virtue of subsection (3)(b) include criminal liabilities."

(7) For the cross-heading preceding section 65K substitute "Action by the Secretary of State and the regulator".

Commencement Information

I314 S. 177 partly in force; s. 177 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I315 S. 177 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

178 Sections 174 to 177: supplementary

(1) At the end of section 65M of the National Health Service Act 2006 (replacement of trust special administrator) insert—

"(3) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator."

(2) In section 65N of that Act (power to issue guidance), after subsection (2) insert—

"(2A) It must include guidance about the publication of—

(a) notices under section 65KC(4)(a);

(b) statements under section 65KC(4)(b)."

(3) At the end of that section insert—

"(4) For the purposes of this section in its application to cases of NHS foundation trusts, the reference in subsection (1) to the Secretary of State is to be read as a reference to the regulator."

(4) In section 65O of that Act (interpretation of Chapter 5A), in the definition of "trust special administrator", after "65B(6)(a)" insert ", section 65D(2)".

(5) In section 39 of that Act (register of NHS foundation trusts), in subsection (2), at the end insert ",

(g) a copy of any order made under section 65D, 65J, 65KC, 65L or 65LA,

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(h) a copy of any report laid under section 65D,
(i) a copy of any information published under section 65D,
(j) a copy of any draft report published under section 65F,
(k) a copy of any statement provided under section 65F,
(l) a copy of any notice published under section 65F, 65G, 65H, 65J, 65KA, 65KB, 65KC or 65KD,
(m) a copy of any statement published or provided under section 65G,
(n) a copy of any final report published under section 65I,
(o) a copy of any statement published under section 65J or 65KC,
(p) a copy of any information published under section 65M."

(6) In section 272 of that Act (orders etc.), in subsection (5), in paragraph (ab)—
(a) after "65B(1)," insert "65D(2),",
(b) omit "65E(1),",
(c) after "65J(2)," insert "65KC(3),", and
(d) for "65L(2), (4) or (5)" substitute "65L(2) or (7), 65LA(3)".

(7) After subsection (6) insert—

"(6ZA) The Statutory Instruments Act 1946 applies in relation to the power of the regulator to make an order under Chapter 5A as if the regulator were a Minister of the Crown."

(8) In subsection (6A) of that section—
(a) after "65B(1)," insert "65D(2),",
(b) omit "65E(1),",
(c) after "65J(2)," insert "65KC(3),",
(d) after "65L(2) or (4)" insert ", 65LA(3)", and
(e) for "(4)" substitute "(7)".

(9) In section 275(1) of that Act (interpretation), in the definition of "NHS trust", omit the words from "and" to the end.

(10) In paragraph 22(1) of Schedule 7 to that Act (documents which must be made available to the public free of charge), at the end insert ",
(g) a copy of any order made under section 65D, 65J, 65KC, 65L or 65LA,
(h) a copy of any report laid under section 65D,
(i) a copy of any information published under section 65D,
(j) a copy of any draft report published under section 65F,
(k) a copy of any statement provided under section 65F,
(l) a copy of any notice published under section 65F, 65G, 65H, 65J, 65KA, 65KB, 65KC or 65KD,
(m) a copy of any statement published or provided under section 65G,
(n) a copy of any final report published under section 65I,
(o) a copy of any statement published under section 65J or 65KC,
(p) a copy of any information published under section 65M."

(11) In section 206(1) of the National Health Service (Wales) Act 2006, in the definition of "NHS trust", omit the words from "(including" to the end.

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Commencement Information

I316 S. 178 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)** (with art. 13)

PROSPECTIVE

Abolition of NHS trusts

179 Abolition of NHS trusts in England

(1) The NHS trusts established under section 25 of the National Health Service Act 2006 are abolished.

(2) Chapter 3 of Part 2 of that Act (NHS trusts) is repealed.

(3) Where arrangements ("franchise arrangements") under which a person exercises (or is to exercise) the main functions of an NHS trust on behalf of the trust are in force immediately before the commencement of this section, the trust is to continue after that commencement to be constituted as an NHS trust until—

(a) it is dissolved or becomes, merges with or is acquired by an NHS foundation trust,

(b) where none of those events occurs before the end of the period of three years beginning with the day on which the franchise arrangements come to an end, the end of that period, or

(c) where other franchise arrangements come into force before the end of that period, the end of the period of three years beginning with the day on which those other franchise arrangements or any subsequent franchise arrangements come to an end.

(4) In subsection (3)(c), the reference to subsequent franchise arrangements is a reference to franchise arrangements which come into force before the end of the period of three years beginning with the day on which the preceding franchise arrangements come to an end.

(5) For the purposes of subsection (3)—

(a) Chapter 3 of Part 2 of the National Health Service Act 2006 is, despite subsection (2), to continue to have effect,

(b) the amendments made by Schedule 14 are not to have effect (and subsection (6) is to be read accordingly), and

(c) the amendments made by paragraph 9 of Schedule 21 are not to have effect (and section 297 is to be read accordingly).

(6) Schedule 14 (which contains consequential amendments) has effect.

180 Repeal of provisions on authorisation for NHS foundation trusts

(1) Omit section 33 of the National Health Service Act 2006 (application by NHS trust for authorisation).

(2) Omit section 35 of that Act (authorisation of NHS foundation trust).

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(3) Omit section 36(1), (3) and (4) of that Act (NHS trust to become NHS foundation trust on being given authorisation but retain liabilities); in consequence of that, omit section 88 of this Act (licences to provide health care services: NHS foundation trusts).

(4) For the title to section 36 of that Act substitute "Status etc. of NHS foundation trusts".

(5) For the cross-heading preceding section 33 of that Act substitute "Status etc. of NHS foundation trusts".

(6) Omit paragraph 19 of Schedule 7 to that Act and the preceding cross-heading (initial directors of former NHS trust).

(7) Despite the preceding provisions of this section, sections 33, 35 and 36(1), (3) and (4) of, and paragraph 19 of Schedule 7 to, that Act, and section 88(1) and (2) of this Act, continue to have effect in the case of an NHS trust continuing in existence by virtue of section 179(3).

(8) The repeal by subsection (3) of section 36(4) of that Act does not affect the continuity of anything continuing by virtue of that provision immediately before the commencement of this section.

PART 5

PUBLIC INVOLVEMENT AND LOCAL GOVERNMENT

CHAPTER 1

PUBLIC INVOLVEMENT

Healthwatch England

181 Healthwatch England

(1) The Health and Social Care Act 2008 is amended as follows.

(2) In Schedule 1 (the Care Quality Commission: constitution, etc.), in paragraph 6, after sub-paragraph (1) insert—

"(1A) A committee of the Commission known as "the Healthwatch England committee" is to be appointed in accordance with regulations.

(1B) The purpose of the Healthwatch England committee is to provide the Commission or other persons with advice, information or other assistance in accordance with provision made by or under this or any other Act."

(3) After sub-paragraph (5) insert—

"(5A) Regulations under sub-paragraph (1A) must make provision requiring a person who has power to appoint a member of the Healthwatch England committee to secure that a majority of the members of the committee are not members of the Commission.

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(5B) Regulations under sub-paragraph (1A) may specify other results which a person who has power to appoint a member of the committee must secure.

(5C) Regulations under sub-paragraph (1A) may, in particular, make provision as to—

(a) eligibility for appointment;

(b) procedures for selecting or proposing persons for appointment.

(5D) Regulations under sub-paragraph (1A) may, in particular, make provision as to—

(a) the removal or suspension of members of the committee;

(b) the payment of remuneration and allowances to members."

(4) In Chapter 3 of Part 1 (quality of health and social care), before section 46 and the preceding cross-heading insert—

"Healthwatch England and Local Healthwatch organisations

45A **Functions to be exercised by Healthwatch England**

(1) The Commission has the functions set out in subsections (2) to (5), but must arrange for the Healthwatch England committee to exercise the functions on its behalf.

(2) The function in this subsection is to provide Local Healthwatch organisations with general advice and assistance in relation to—

(a) the making of arrangements under section 221(1) of the Local Government and Public Involvement in Health Act 2007 (local care services);

(b) the making of arrangements in pursuance of arrangements made under section 221(1) of that Act (see section 222(2B) of that Act);

(c) the carrying-on of activities specified in section 221(2) of that Act.

(3) The function in this subsection is a power to make recommendations of a general nature to English local authorities about the making of arrangements under section 221(1) of that Act.

(4) The function in this subsection is a power, where the Healthwatch England committee is of the opinion that the activities specified in section 221(2) of that Act are not being carried on properly in an English local authority's area, to give the authority concerned written notice of its opinion.

(5) The function in this subsection is to provide the persons mentioned in subsection (6) with information and advice on—

(a) the views of people who use health or social care services and of other members of the public on their needs for and experiences of health and social care services, and

(b) the views of Local Healthwatch organisations and of other persons on the standard of provision of health and social care services and on whether or how the standard could or should be improved.

(6) The persons referred to in subsection (5) are—

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(a) the Secretary of State;
(b) the National Health Service Commissioning Board;
(c) Monitor;
(d) English local authorities.

(7) A person provided with advice under subsection (5) must inform the Healthwatch England committee in writing of its response or proposed response to the advice.

(8) The Healthwatch England committee may provide the Commission with information and advice on the matters mentioned in subsection (5)(a) and (b); and the Commission must inform the committee in writing of its response or proposed response to the advice.

(9) The Commission must publish details of arrangements it makes under subsection (1) (including details of payments of remuneration or other amounts); and inclusion of the details in a report under section 83 is not to be regarded as a discharge of the duty imposed by this subsection.

(10) In performing functions under this section, the Healthwatch England committee must have regard to such aspects of government policy as the Secretary of State may direct.

45B **Conflicts of interest**

(1) In making arrangements under section 45A(1), the Commission must have regard to any conflicts guidance issued by the Secretary of State.

(2) In exercising functions on behalf of the Commission, the Healthwatch England committee must have regard to any conflicts guidance issued by the Secretary of State.

(3) In this section, "conflicts guidance" means guidance about managing conflicts between—
(a) the exercise of functions by the Commission, and
(b) the exercise of functions by the Healthwatch England committee on the Commission's behalf.

45C **Reports**

(1) As soon as possible after the end of each financial year, the Healthwatch England committee—
(a) must make a report to the Commission (whether or not in writing) on the matters mentioned in section 45A(5)(a) and (b), and
(b) must publish a report on the way in which it has exercised during the year the functions exercisable by it.

(2) The committee must—
(a) lay before Parliament a copy of each report made under subsection (1)(b), and
(b) send a copy of each such report to the Secretary of State and to every Local Healthwatch organisation.

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(3) The committee may publish other reports at such times, and on such matters relating to health or social care, as it thinks appropriate.

(4) Where a recommendation is made to the committee under section 221(2)(h) of the Local Government and Public Involvement in Health Act 2007 (reports under subsection (3)), the committee must have regard to the recommendation.

(5) Before publishing a report under subsection (1)(b) or (3), the committee must, so far as practicable, exclude any matter which relates to the private affairs of an individual the publication of which, in the committee's opinion, would or might seriously and prejudicially affect that individual's interests.

(6) In this section, "financial year" means—

(a) the period beginning with the date on which the committee is appointed and ending with the following 31 March, and

(b) each successive period of 12 months ending with 31 March."

(5) In section 82 (failure by Commission to discharge functions), after subsection (1) insert—

"(1A) The Secretary of State may give a direction to the Healthwatch England committee if the Secretary of State considers that the committee—

(a) is failing or has failed to discharge a function under section 45A or any other function it is required to discharge, or

(b) is failing or has failed properly to discharge a function under that section or any other function it is required to discharge,

and that the failure is significant."

(6) In subsection (2) of that section—

(a) after "(1)" insert "or (1A)", and

(b) after "the Commission" insert "or (as the case may be) the committee".

(7) In subsection (2A) of that section (inserted by section 294), after "(1)" insert "or (1A)".

(8) In subsection (3) of that section—

(a) after "the Commission" insert "or the committee", and

(b) after "(1)" insert "or (1A)".

(9) In subsection (4) of that section (inserted by section 294), after "(1)" insert ", (1A)".

(10) For the title to that section substitute "Failure by the Commission or Healthwatch England in discharge of functions".

(11) In section 83 (reports for each financial year etc), after subsection (1) insert—

"(1A) The reference in subsection (1)(a) to the Commission's functions does not include a reference to its functions under section 45A."

(12) After subsection (2) of that section insert—

"(2A) The reports under subsection (1)(b) and (c) must, in particular, set out (and identify as such) the contents of the report made by the Healthwatch England committee under section 45C(1)(a) in respect of the year concerned."

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(13) In each of the following provisions, at the end of the entry for the Care Quality Commission insert "and the Healthwatch England committee"—

(a) Part 2 of Schedule 1 to the Public Records Act 1958,

(b) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, and

(c) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

(14) The Healthwatch England committee is to be treated for the purposes of section 2(1) of the Public Bodies (Admission to Meetings) Act 1960 as a body that includes all the members of the Care Quality Commission.

Commencement Information

I317 S. 181 partly in force; s. 181 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I318 S. 181(1)-(3) in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)** (with art. 7)

I319 S. 181(4) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 7)

I320 S. 181(4)(5) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I321 S. 181(5) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 7)

I322 S. 181(6)-(14) in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)** (with art. 7)

Local Healthwatch organisations

182 Activities relating to local care services

(1) Section 221 of the Local Government and Public Involvement in Health Act 2007 (health services and social services) is amended as follows.

(2) In subsection (2)—

(a) in each of paragraphs (a) to (c), before "people" insert "local", and

(b) omit the "and" preceding paragraph (d).

(3) At the end of that paragraph, insert "and to the Healthwatch England committee of the Care Quality Commission."

(4) After that paragraph insert—

"(e) providing advice and information about access to local care services and about choices that may be made with respect to aspects of those services;

(f) reaching views on the matters mentioned in subsection (3) and making those views known to the Healthwatch England committee of the Care Quality Commission;

(g) making recommendations to that committee to advise the Commission about special reviews or investigations to conduct (or, where the circumstances justify doing so, making such recommendations direct to the Commission);

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(h) making recommendations to that committee to publish reports under section 45C(3) of the Health and Social Care Act 2008 about particular matters; and

(i) giving that committee such assistance as it may require to enable it to carry out its functions effectively, efficiently and economically."

(5) In subsection (3), after "(2)(b)" insert "and (f)".

(6) After that subsection insert—

"(3A) A person to whom views are made known or reports or recommendations are made under subsection (2)(d) must, in exercising any function relating to care services, have regard to the views, reports or recommendations."

(7) After subsection (3A) insert—

"(3B) Each local authority must ensure that only one set of arrangements under subsection (1) in relation to its area is in force at any one time."

(8) In subsection (6), after the definition of "local care services" insert—

""local people", in relation to a local authority, means—

(a) people who live in the local authority's area,

(b) people to whom care services are being or may be provided in that area,

(c) people from that area to whom care services are being provided in any place, and

who are (taken together) representative of the people mentioned in paragraphs (a) to (c);".

(9) In the title to section 221, omit ": local involvement networks".

(10) For the cross-heading preceding that section substitute "Local arrangements".

(11) After section 45C of the Health and Social Care Act 2008 (inserted by section 181(4)), insert—

"**45D Granting licence to use trade mark**

(1) The Commission may grant a Local Healthwatch organisation a licence authorising the use, in relation to the carrying-on of activities under arrangements made under section 221(1) of the Local Government and Public Involvement in Health Act 2007, of a registered trade mark of which the Commission is the proprietor.

(2) A licence under this section may not provide for the grant of a sub-licence by the licensee other than a sub-licence authorising the use of the mark by a Local Healthwatch contractor in relation to the carrying-on of activities under Local Healthwatch arrangements.

(3) In this section—

"Local Healthwatch arrangements" has the meaning given by section 222 of the Local Government and Public Involvement in Health Act 2007,

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"Local Healthwatch contractor" has the meaning given by section 223 of that Act, and

"registered trade mark" and "use" have the same meaning as in the Trade Marks Act 1994."

Commencement Information

I323 S. 182 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

183 Local authority arrangements

(1) Section 222 of the Local Government and Public Involvement in Health Act 2007 (arrangements under section 221 of that Act) is amended as follows.

(2) For subsection (2) substitute—

"(2) The arrangements must be made with a body corporate which—

(a) is a social enterprise, and

(b) satisfies such criteria as may be prescribed by regulations made by the Secretary of State.

(2A) For so long as the arrangements are in force, the body with which they are made—

(a) has the function of carrying on in A's area the activities specified in section 221(2), and

(b) is to be known as the "Local Healthwatch organisation" for A's area.

(2B) But the arrangements may authorise the Local Healthwatch organisation to make, in pursuance of those arrangements, arrangements ("Local Healthwatch arrangements") with a person (other than A) for that person—

(a) to assist the organisation in carrying on in A's area some or all of the activities, or

(b) (subject to provision made under section 223(2)(e)) to carry on in A's area some (but not all) of the activities on the organisation's behalf."

(3) In subsection (3), for the words from the beginning to "who is not" substitute "None of the following is capable of being a Local Healthwatch organisation".

(4) For subsection (4) substitute—

"(4) The arrangements must secure the result that Local Healthwatch arrangements will not be made with a body of a description specified in subsection (3) or with the National Health Service Commissioning Board."

(5) For subsection (5) substitute—

"(5) The arrangements may (in particular) make provision as respects co-operation between the Local Healthwatch organisation for the area and one or more other Local Healthwatch organisations."

(6) After subsection (7) insert—

"(7A) A must exercise its functions under this Part so as to secure that the arrangements—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) operate effectively, and

(b) represent value for money.

(7B) A must publish a report of its findings in seeking to secure the objective mentioned in subsection (7A)."

(7) For subsection (8) substitute—

"(8) For the purposes of this section, a body is a social enterprise if—

(a) a person might reasonably consider that it acts for the benefit of the community in England, and

(b) it satisfies such criteria as may be prescribed by regulations made by the Secretary of State.

(9) Regulations made by the Secretary of State may provide that activities of a prescribed description are to be treated as being, or as not being, activities which a person might reasonably consider to be activities carried on for the benefit of the community in England.

(10) In subsections (8) and (9), "community" includes a section of the community; and regulations made by the Secretary of State may make provision about what does, does not or may constitute a section of the community."

(8) For the title to section 222 substitute "Local Healthwatch organisations".

(9) After section 222 insert—

"**222A Local authority arrangements: conflicts of interest**

(1) In making arrangements under section 221(1), a local authority must have regard to any conflicts guidance issued by the Secretary of State.

(2) Arrangements under section 221(1) must require the Local Healthwatch organisation, in exercising its function of carrying on the activities specified in section 221(2) or in making Local Healthwatch arrangements, to have regard to any conflicts guidance issued by the Secretary of State.

(3) In this section, "conflicts guidance" means guidance about managing conflicts between—

(a) the making of arrangements under section 221(1), and

(b) the carrying-on of the activities specified in section 221(2).

(4) In this section, "Local Healthwatch arrangements" has the meaning given by section 222."

Commencement Information

I324 S. 183 partly in force; s. 183 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I325 S. 183 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

184 Local arrangements: power to make further provision

(1) Section 223 of the Local Government and Public Involvement in Health Act 2007 (power to make further provision about local authority arrangements) is amended as follows.

(2) In subsection (1), for "require prescribed provision to be included in local involvement network arrangements" substitute "include prescribed provision".

(3) After that subsection insert—

"(1A) The Secretary of State may make regulations which provide that local authority arrangements must require Local Healthwatch arrangements to include prescribed provision."

(4) In subsection (2)—

(a) for "must require local involvement network arrangements to include" substitute "must include or (as the case may be) must require Local Healthwatch arrangements to include",

(b) in paragraphs (a), (c) and (d), for "a local involvement network" substitute "a Local Healthwatch organisation or a Local Healthwatch contractor", and

(c) after paragraph (d) insert ";

(e) prescribed provision relating to the activities which a Local Healthwatch contractor may not carry on on a Local Healthwatch organisation's behalf;

(f) prescribed provision relating to the obtaining by a Local Healthwatch organisation of a licence under section 45D of the Health and Social Care Act 2008 and the grant by the organisation to a Local Healthwatch contractor of a sub-licence;

(g) prescribed provision relating to the use by a Local Healthwatch organisation or a Local Healthwatch contractor of the trade mark to which a licence under that section relates;

(h) prescribed provision relating to the infringement of the trade mark to which a licence under that section relates;

(i) prescribed provision relating to the imposition of a requirement on a Local Healthwatch organisation to act with a view to securing that its Local Healthwatch contractors (taken together) are representative of—

(i) people who live in the local authority's area,

(ii) people to whom care services are being or may be provided in that area, and

(iii) people from that area to whom care services are being provided in any place."

(5) After subsection (2) insert—

"(2A) The provision which may be prescribed in relation to a Local Healthwatch contractor includes provision that relates to the contractor—

(a) only in so far as it assists the Local Healthwatch organisation in the carrying-on of activities specified in section 221(2);

(b) only in so far as it carries on such activities on the organisation's behalf.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2B) Regulations under this section may make provision which applies to all descriptions of Local Healthwatch contractor, which applies to all those descriptions subject to specified exceptions or which applies only to such of those descriptions as are prescribed."

(6) In subsection (3)—

(a) before the definition of "a local involvement network" insert—

""care services" has the meaning given by section 221;",

(b) omit the definition of "a local involvement network",

(c) for the definition of "local involvement network arrangements" substitute—

""Local Healthwatch arrangements" has the meaning given by section 222;",

(d) after that definition insert—

""Local Healthwatch contractor", in relation to a Local Healthwatch organisation, means a person with whom the organisation makes Local Healthwatch arrangements;", and

(e) after the definition of "prescribed provision" insert ";

trade mark", and "use" and "infringement" in relation to a trade mark, each have the same meaning as in the Trade Marks Act 1994."

Commencement Information

I326 S. 184 partly in force; s. 184 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I327 S. 184 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

185 Independent advocacy services

(1) After section 223 of the Local Government and Public Involvement in Health Act 2007 insert—

"**223A Independent advocacy services**

(1) Each local authority must make such arrangements as it considers appropriate for the provision of independent advocacy services in relation to its area.

(2) In this section, "independent advocacy services" means services providing assistance (by way of representation or otherwise) to persons making or intending to make—

(a) a complaint under a procedure operated by a health service body or independent provider;

(b) a complaint under section 113(1) or (2) of the Health and Social Care (Community Health and Standards) Act 2003;

(c) a complaint to the Health Service Commissioner for England;

(d) a complaint to the Public Services Ombudsman for Wales which relates to a Welsh health body;

(e) a complaint under section 73C(1) of the National Health Service Act 2006;

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(f) a complaint to a Local Commissioner under Part 3 of the Local Government Act 1974 about a matter which could be the subject of a complaint under section 73C(1) of the National Health Service Act 2006; or

(g) a complaint of such description as the Secretary of State may by regulations prescribe which relates to the provision of services as part of the health service and—

(i) is made under a procedure of a description prescribed in the regulations, or

(ii) gives rise, or may give rise, to proceedings of a description prescribed in the regulations.

(3) Each local authority may make such other arrangements as it considers appropriate for the provision of services in relation to its area providing assistance to individuals in connection with complaints relating to the provision of services as part of the health service.

(4) Arrangements under this section may not provide for a person to make arrangements for the provision of services by a Local Healthwatch organisation.

(5) In making arrangements under this section, a local authority must have regard to the principle that the provision of services under the arrangements or arrangements made in pursuance of the arrangements should, so far as practicable, be independent of any person who is—

(a) the subject of a relevant complaint; or

(b) involved in investigating or adjudicating on such a complaint.

(6) A local authority may make payments to—

(a) a person providing services under arrangements under this section;

(b) a person arranging for the provision of services in pursuance of arrangements under this section;

(c) a person providing services under arrangements made in pursuance of arrangements under this section.

(7) The Secretary of State may by regulations make provision requiring a person providing services under arrangements under this section or arrangements made in pursuance of the arrangements to have cover against the risk of a claim in negligence arising out of the provision of the services.

(8) The Secretary of State may give directions to a local authority about the exercise of its functions under this section.

(9) A direction under subsection (8) may be varied or revoked.

(10) In this section—

"the health service" has the same meaning as in the National Health Service Act 2006;

"health service body" means—

(a) in relation to England, a body which, under section 2(1) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England;

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(b) in relation to Wales, a Welsh health service body (within the meaning of the Public Services Ombudsman (Wales) Act 2005);

"independent provider" means—

(a) in relation to England, a person who, under section 2B(1) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England;

(b) in relation to Wales, a person who is an independent provider in Wales (within the meaning of the Public Services Ombudsman (Wales) Act 2005);

"Welsh health body" means—

(a) a Local Health Board,

(b) an NHS trust managing a hospital or other establishment or facility in Wales,

(c) a Special Health Authority not discharging functions only or mainly in England,

(d) an independent provider in Wales (within the meaning of the Public Services Ombudsman (Wales) Act 2005),

(e) a family health service provider in Wales (within the meaning of that Act), or

(f) a person with functions conferred under section 113(2) of the Health and Social Care (Community Health and Standards) Act 2003."

(2) Omit section 248 of the National Health Service Act 2006 (arrangements by the Secretary of State for the provision of independent advocacy arrangements).

(3) In section 134 of the Mental Health Act 1983 (correspondence of patients), in subsection (3A)(b)(ii), for "section 248 of the National Health Service Act 2006" substitute "section 223A of the Local Government and Public Involvement in Health Act 2007".

(4) In section 59 of the Safeguarding Vulnerable Groups Act 2006 (vulnerable adults), in subsection (10)(e), for "section 248 of the National Health Service Act 2006 (c. 41)" substitute "section 223A of the Local Government and Public Involvement in Health Act 2007".

Commencement Information

I328 S. 185 partly in force; s. 185 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I329 S. 185 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

186 Requests, rights of entry and referrals

(1) Section 224 of the Local Government and Public Involvement in Health Act 2007 (duties of services-providers to respond to requests for information etc.) is amended as follows.

(2) In subsection (1), in paragraphs (a) and (b), for "a local involvement network" substitute "a Local Healthwatch organisation or a Local Healthwatch contractor".

(3) For subsection (3) substitute—

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"(3) For the purposes of subsection (1), something is done by a Local Healthwatch organisation if it is done by that organisation—

(a) in the carrying-on, under arrangements made under section 221(1), of activities specified in section 221(2), or

(b) in compliance with a requirement imposed by virtue of section 223(2)(i).

(3A) For the purposes of subsection (1), something is done by a Local Healthwatch contractor if it is done by that contractor in the carrying-on, under Local Healthwatch arrangements, of activities specified in section 221(2)."

(4) After subsection (4) insert—

"(5) In this section—

"Local Healthwatch arrangements" has the meaning given by section 222;

"Local Healthwatch contractor" has the meaning given by section 223."

(5) In the title to that section, for "local involvement networks" substitute "Local Healthwatch organisations or contractors".

(6) Section 225 of that Act (duties of services-providers to allow entry to premises) is amended as follows.

(7) In subsection (2), in paragraph (f), and in subsection (5), for "a local involvement network" substitute "a Local Healthwatch organisation or a Local Healthwatch contractor".

(8) In subsection (4), in paragraph (a), after "section 221(1)" insert "or Local Healthwatch arrangements".

(9) After subsection (5) insert—

"(5A) In this section—

"Local Healthwatch arrangements" has the meaning given by section 222;

"Local Healthwatch contractor" has the meaning given by section 223."

(10) Omit subsection (6).

(11) For the title to that section substitute "Duties of services-providers to allow entry by Local Healthwatch organisations or contractors".

(12) Section 226 of that Act (referrals of social care matters) is amended as follows.

(13) In subsections (1) and (5), for "a local involvement network" substitute "a Local Healthwatch organisation or a Local Healthwatch contractor".

(14) For subsection (7) substitute—

"(7) For the purposes of this section, something is done by a Local Healthwatch organisation if it is done by that organisation in the carrying-on, under arrangements made under section 221(1), of activities specified in section 221(2).

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(7A) For the purposes of this section, something is done by a Local Healthwatch contractor if it is done by that contractor in the carrying-on, under Local Healthwatch arrangements, of activities specified in section 221(2).”

(15) In subsection (8), before the definition of “overview and scrutiny committee” insert—

““Local Healthwatch arrangements” has the meaning given by section 222;

“Local Healthwatch contractor” has the meaning given by section 223;”.

(16) For the title to that section substitute “Referrals of social care matters”.

Commencement Information
I330 S. 186 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

187 Annual reports

(1) Section 227 of the Local Government and Public Involvement in Health Act 2007 (annual reports) is amended as follows.

(2) In subsection (2), omit “by a local authority with another person (“H”)”.

(3) In that subsection, in paragraph (a)—

(a) in sub-paragraph (i)—

(i) omit “, for each local involvement network,”,

(ii) for “the network”, in the first place it appears, substitute “the Local Healthwatch organisation”,

(iii) for “the network”, in the second place it appears, substitute “the organisation”,

(iv) after “carried on” insert “under the arrangements or arrangements made”,

(b) omit sub-paragraph (ii), and

(c) omit sub-paragraph (iii) and the preceding “and”.

(4) In subsection (3)—

(a) after paragraph (a) insert “and”,

(b) in paragraph (b)—

(i) omit the words from “, if it is” to “(2)(a)(ii)),”, and

(ii) in sub-paragraph (i), for “H in respect of the network” substitute “the Local Healthwatch organisation in its capacity as such, and the amounts spent by its Local Healthwatch contractors in their capacity as such,”, and

(c) omit paragraph (c) and the preceding “and”.

(5) In subsection (4)—

(a) after paragraph (a) insert—

“(aa) the National Health Service Commissioning Board;

(ab) each clinical commissioning group, whose area or any part of whose area falls within the area of the local authority;”;

(b) after paragraph (ca) insert—

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"(cb) the Healthwatch England committee of the Care Quality Commission;", and

(c) omit paragraph (d) (but not the following "and").

(6) In subsection (5)—

(a) in paragraph (a)—

(i) omit the words from the beginning to "(2)(a)(ii)),",

(ii) for "the network" substitute "the Local Healthwatch organisation", and

(iii) after "carried on" insert "under the arrangements made under section 221(1) or arrangements made", and

(b) omit paragraph (b) and the "and" preceding it.

(7) Omit subsections (6) to (8).

(8) In subsection (9), after the definition of "financial year" insert—

""Local Healthwatch contractor" has the meaning given by section 223;".

(9) For the title to section 227 substitute "Local Healthwatch organisations: annual reports".

Commencement Information

I331 S. 187 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

188 Transitional arrangements

(1) This section applies where arrangements made under section 221 of the Local Government and Public Involvement in Health Act 2007 before the commencement of this Chapter provide for the arrangements to come to an end at a time that falls after that commencement.

(2) The Secretary of State may make a scheme providing for the transfer from the person with whom the local authority in question made the arrangements of property, rights and liabilities to the Local Healthwatch organisation for the authority's area.

(3) A scheme under this section may make provision for rights and liabilities relating to an individual's contract of employment; and the scheme may, in particular, make provision which is the same as or similar to provision in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

(4) A scheme under this section may provide for the transfer of property, rights or liabilities—

(a) whether or not they would otherwise be capable of being transferred;

(b) irrespective of any requirement for consent that would otherwise apply.

(5) A scheme under this section may create rights, or impose liabilities, in relation to property, rights or liabilities transferred.

(6) A scheme under this section may provide for things done by or in relation to the transferor for the purposes of or in connection with anything transferred to be—

(a) treated as done by or in relation to the transferee or its employees;

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) continued by or in relation to the transferee or its employees.

(7) A scheme under this section may in particular make provision about continuation of legal proceedings.

(8) A scheme under this section may include provision requiring the local authority to pay compensation to the transferor; and for that purpose the scheme may—

(a) impose a duty on the local authority to determine the amount of the compensation;

(b) confer power on the Secretary of State to do so.

(9) A scheme under this section may include supplementary, incidental and consequential provision.

(10) Omit section 228 of the Local Government and Public Involvement in Health Act 2007 (previous transitional arrangements).

Commencement Information

I332 S. 188 partly in force; s. 188 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I333 S. 188 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

189 Consequential provision

(1) In the Schedule to the Public Bodies (Admission to Meetings) Act 1960, after paragraph (bk) (as inserted by paragraph 2 of Schedule 13) insert—

"(bl) Local Healthwatch organisations, as regards the carrying-on of activities specified in section 221(1) of the Local Government and Public Involvement in Health Act 2007 (local care services);".

(2) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975, at the appropriate place insert— " Director of a Local Healthwatch organisation. "

(3) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, at the appropriate place insert— " Director of a Local Healthwatch organisation. "

(4) In Part 2 of Schedule 1 to the Freedom of Information Act 2000 (local government), after paragraph 35D insert—

"35E A Local Healthwatch organisation, in respect of information held in connection with—

(a) arrangements made under section 221(1) of the Local Government and Public Involvement in Health Act 2007, or

(b) arrangements made in pursuance of arrangements made under section 221(1) of that Act."

(5) In section 65H of the National Health Service Act 2006 (NHS foundation trust special administration provisions: consultation requirements), in subsection (8), for subsection (e) substitute—

"(e) a Local Healthwatch organisation;".

(6) In section 4 of the Health and Social Care Act 2008 (matters to which the Care Quality Commission must have regard)—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) in subsection (1)(c)—

(i) for "local involvement networks" substitute "Local Healthwatch organisations or Local Healthwatch contractors", and

(ii) omit "in their areas"; and

(b) for subsection (3) substitute—

"(3) In subsection (1)(c), "Local Healthwatch contractor" has the meaning given by section 223 of the Local Government and Public Involvement in Health Act 2007."

Commencement Information

I334 S. 189 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

CHAPTER 2

LOCAL GOVERNMENT

Scrutiny functions of local authorities

190 Scrutiny functions of local authorities

(1) Section 244 of the National Health Service Act 2006 is amended as follows.

(2) In subsection (2)—

(a) omit "an overview and scrutiny committee of",

(b) for "the committee" (in each place where it occurs) substitute "the authority",

(c) for "local NHS bodies" (in each place where it occurs) substitute "relevant NHS bodies or relevant health service providers",

(d) for "local NHS body" (in each place where it occurs except paragraph (f)) substitute "relevant NHS body or relevant health service provider",

(e) omit the words in brackets in paragraph (c), and

(f) in subsection (f) for "any officer of a local NHS body" substitute "any member or employee of a relevant NHS body, or a relevant health service provider or member or employee of a relevant health service provider,".

(3) After subsection (2) insert—

"(2ZA) If (by virtue of subsection (2)(c)) regulations make provision as to matters on which relevant NHS bodies or relevant health service providers must consult the authority, the regulations may also make provision—

(a) as to circumstances in which the authority may refer any of those matters to the Secretary of State, the regulator or the Board;

(b) conferring powers on the Secretary of State to give directions to the Board in relation to a matter referred to the Secretary of State by virtue of regulations under paragraph (a);

(c) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter so referred;

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(d) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter referred to the Board by virtue of regulations under paragraph (a);

(e) conferring powers on the Secretary of State to give directions to the Board as to the exercise of its powers by virtue of regulations under paragraph (c) or (d).

(2ZB) The powers that may be conferred under any of paragraphs (b) to (d) of subsection (2ZA) include powers to require the person to whom the direction is given—

(a) to consult (or consult further) with the authority on the matter in question;

(b) to determine the matter in a particular way;

(c) to take, or not to take, any other steps in relation to the matter.

(2ZC) If (by virtue of subsection (2ZA)(a)) regulations make provision for an authority to refer a matter to the Secretary of State, the regulator or the Board, the regulations may also provide for any provision of section 101 of the Local Government Act 1972—

(a) not to apply in relation to the discharge by the authority of that function, or

(b) to apply in relation to its discharge with such modifications as may be prescribed.

(2ZD) Any functions conferred on a local authority by regulations under this section are not to be the responsibility of an executive of the authority under executive arrangements (within the meaning of Part 1A of the Local Government Act 2000).

(2ZE) Regulations under this section may authorise a local authority to arrange for its functions under the regulations to be discharged by an overview and scrutiny committee of the authority."

(4) For subsection (3) substitute—

"(3) For the purposes of subsections (2) and (2ZA)—

"relevant NHS body", in relation to an authority to which this section applies, means an NHS body, other than a Special Health Authority, which is prescribed for those purposes in relation to the authority;

"relevant health service provider", in relation to an authority to which this section applies, means a body or person which—

(a) provides services in pursuance of arrangements made—

(i) by the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1,

(ii) by a local authority for the purpose of the exercise of its functions under or by virtue of section 2B or 6C(1) or Schedule 1, or

(iii) by the Board, a clinical commissioning group or a local authority by virtue of section 7A, and

(b) is prescribed, or is of a description prescribed, for those purposes in relation to the authority."

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) After subsection (3) insert—

"(3A) In subsection (2)(f) "member"—

(a) in relation to a clinical commissioning group, includes a person who is not a member of the group but is a member of a committee or sub-committee of it;

(b) in relation to a relevant health service provider which is a body corporate, includes a person who is not a member of the body but is a director of it;

(c) in relation to an NHS trust, means a director of the trust;

(d) in relation to an NHS foundation trust, means a director or governor of the trust.

(3B) For the purposes of subsection (2)(f)—

(a) a member of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as a member of the group or (as the case may be) relevant health service provider, and

(b) an employee of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as an employee of the group or (as the case may be) relevant health service provider."

(6) In subsection (5), for "this section, section 245 and section 246" substitute "this section and section 245".

(7) For the heading to section 244 substitute "Review and scrutiny by local authorities".

(8) For the title to Chapter 3 of Part 12 of the National Health Service Act 2006 substitute "Review and scrutiny by local authorities".

(9) Until the coming into force of paragraph 19 of Schedule 3 to the Localism Act 2011, section 21 of the Local Government Act 2000 (overview and scrutiny committees) is amended as follows—

(a) in subsection (2)(f)—

(i) omit "section 244 of the National Health Service Act 2006 or",

(ii) for "either of those sections" substitute "that section",

(iii) for "the Act concerned" substitute "that Act", and

(iv) for "the section concerned" substitute "that section",

(b) omit subsection (2A)(a) and (b), and

(c) in subsection (4) at the end insert "or under section 244(2ZE) of the National Health Service Act 2006."

(10) In section 9F of the Local Government Act 2000 (overview and scrutiny committees) (as inserted by Schedule 2 to the Localism Act 2011)—

(a) omit subsection (2)(f),

(b) omit subsection (3)(a) and (b), and

(c) in subsection (5) omit the word "or" following paragraph (a) and after paragraph (b) insert "or

(c) any functions which may be conferred on it by virtue of regulations under section 244(2ZE) of the National Health Service Act 2006 (local authority scrutiny of health matters)."

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information

I335 S. 190 partly in force; s. 190 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I336 S. 190(1)-(8)(10) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

191 Amendments consequential on section 190

(1) Section 245 of the National Health Service Act 2006 (joint overview and scrutiny committees) is amended in accordance with subsections (2) to (4).

(2) In subsection (1) for the words from "relevant functions" to the end of the subsection substitute " "relevant functions" means functions under regulations under section 244(2) to (2ZC)."

(3) In subsection (2)(c), in each of sub-paragraphs (i) and (ii), for "relevant functions of the committee" substitute "relevant functions exercisable by the committee".

(4) After subsection (4) insert—

"(4A) The regulations may provide that, where a relevant function in relation to a local authority is exercisable by a joint overview and scrutiny committee by virtue of arrangements under regulations under subsection (2)(a), the local authority may not discharge the function."

(5) Omit subsections (5) and (9).

(6) Section 246 of that Act (exempt information) is amended in accordance with subsections (7) to (9).

(7) In subsection (1) for the words from "a meeting of" to the end of the subsection substitute "a meeting of a local authority or a committee of a local authority which is an item relating to functions of the authority under regulations under section 244(2) to (2ZC)."

(8) In subsection (5) for "overview and scrutiny committees" substitute "local authorities".

(9) In the heading to section 246 for "Overview and scrutiny committees" substitute "Business relating to functions of local authorities by virtue of section 244".

(10) Section 247 of that Act (application to the City of London) is amended in accordance with subsections (11) to (13).

(11) For subsection (1) substitute—

"(1) This section applies to a committee of the Common Council appointed to exercise functions that the Council has under regulations under section 244(2) to (2ZC)."

(12) In subsection (2)—

(a) for the words from the beginning to "apply" substitute "Section 245(2)(b) and (c) applies", and

(b) omit the words from "and as if" to the end of the subsection.

(13) In subsection (4)—

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(a) for "subsections (2) to (3A)" substitute "subsections (3) and (3A)", and

(b) for the words from "in the case of the committee" to the end of the subsection substitute "in the case of a committee to which this section applies, references to functions under regulations under section 244(2) to (2ZC) which are exercisable by the committee."

(14) Omit section 247A (application to local authorities without overview and scrutiny committees).

(15) In consequence of the amendments made by subsections (2), (7), (11), (13)(a) and (14), paragraphs 75(2), 76, 77(2) and (5)(a) and 78 of Schedule 3 to the Localism Act 2011 are omitted.

Commencement Information

I337 S. 191 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Joint strategic needs assessments and strategies

192 Joint strategic needs assessments

(1) Section 116 of the Local Government and Public Involvement in Health Act 2007 (health and social care: joint strategic needs assessments) is amended as follows.

(2) In subsection (4), for paragraph (b) substitute—

"(b) each of its partner clinical commissioning groups,".

(3) In subsection (6)—

(a) for "for which a partner PCT acts" substitute "of a partner clinical commissioning group",

(b) for "the partner PCT" substitute "the partner clinical commissioning group", and

(c) after "a need" insert "or to be likely to be a need".

(4) In subsection (7)—

(a) in paragraph (a)(ii) for "the partner PCT" substitute "the partner clinical commissioning group or the National Health Service Commissioning Board", and

(b) in paragraph (b)(i) for "the partner PCT" substitute "the partner clinical commissioning group or the National Health Service Commissioning Board".

(5) In subsection (8)—

(a) for "each partner PCT" substitute "each of its partner clinical commissioning groups",

(b) after paragraph (b) (but before the "and" immediately following it) insert—

"(ba) involve the Local Healthwatch organisation for the area of the responsible local authority;

(bb) involve the people who live or work in that area;", and

(c) in paragraph (c) for "consult" substitute "involve".

(6) After subsection (8) insert—

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"(8A) In preparing an assessment under this section, the responsible local authority or a partner clinical commissioning group may consult any person it thinks appropriate."

(7) In subsection (9)—

(a) for the definition of "partner PCT" substitute—

""partner clinical commissioning group", in relation to a responsible local authority, means any clinical commissioning group whose area coincides with or falls wholly or partly within the area of the authority;", and

(b) in the definition of "relevant district council", in paragraph (b)—

(i) for "a partner PCT" substitute "a partner clinical commissioning group", and

(ii) for "the area for which the partner PCT acts" substitute "the area of the clinical commissioning group.

Commencement Information

I338 S. 192 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

193 Joint health and wellbeing strategies

After section 116 of the Local Government and Public Involvement in Health Act 2007 insert—

"**116A Health and social care: joint health and wellbeing strategies**

(1) This section applies where an assessment of relevant needs is prepared under section 116 by a responsible local authority and each of its partner clinical commissioning groups.

(2) The responsible local authority and each of its partner clinical commissioning groups must prepare a strategy for meeting the needs included in the assessment by the exercise of functions of the authority, the National Health Service Commissioning Board or the clinical commissioning groups ("a joint health and wellbeing strategy").

(3) In preparing a strategy under this section, the responsible local authority and each of its partner clinical commissioning groups must, in particular, consider the extent to which the needs could be met more effectively by the making of arrangements under section 75 of the National Health Service Act 2006 (rather than in any other way).

(4) In preparing a strategy under this section, the responsible local authority and each of its partner clinical commissioning groups must have regard to—

(a) the mandate published by the Secretary of State under section 13A of the National Health Service Act 2006, and

(b) any guidance issued by the Secretary of State.

(5) In preparing a strategy under this section, the responsible local authority and each of its partner clinical commissioning groups must—

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(a) involve the Local Healthwatch organisation for the area of the responsible local authority, and

(b) involve the people who live or work in that area.

(6) The responsible local authority must publish each strategy prepared by it under this section.

(7) The responsible local authority and each of its partner clinical commissioning groups may include in the strategy a statement of their views on how arrangements for the provision of health-related services in the area of the local authority could be more closely integrated with arrangements for the provision of health services and social care services in that area.

(8) In this section and section 116B—

(a) "partner clinical commissioning group", in relation to a responsible local authority, has the same meaning as in section 116, and

(b) "health services", "health-related services" and "social care services" have the same meaning as in section 195 of the Health and Social Care Act 2012.

116B Duty to have regard to assessments and strategies

(1) A responsible local authority and each of its partner clinical commissioning groups must, in exercising any functions, have regard to—

(a) any assessment of relevant needs prepared by the responsible local authority and each of its partner clinical commissioning groups under section 116 which is relevant to the exercise of the functions, and

(b) any joint health and wellbeing strategy prepared by them under section 116A which is so relevant.

(2) The National Health Service Commissioning Board must, in exercising any functions in arranging for the provision of health services in relation to the area of a responsible local authority, have regard to—

(a) any assessment of relevant needs prepared by the responsible local authority and each of its partner clinical commissioning groups under section 116 which is relevant to the exercise of the functions, and

(b) any joint health and wellbeing strategy prepared by them under section 116A which is so relevant."

Commencement Information
I339 S. 193 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Wellbeing Boards: establishment

194 Establishment of Health and Wellbeing Boards

(1) A local authority must establish a Health and Wellbeing Board for its area.

(2) The Health and Wellbeing Board is to consist of—

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) subject to subsection (4), at least one councillor of the local authority, nominated in accordance with subsection (3),
(b) the director of adult social services for the local authority,
(c) the director of children's services for the local authority,
(d) the director of public health for the local authority,
(e) a representative of the Local Healthwatch organisation for the area of the local authority,
(f) a representative of each relevant clinical commissioning group, and
(g) such other persons, or representatives of such other persons, as the local authority thinks appropriate.

(3) A nomination for the purposes of subsection (2)(a) must be made—
(a) in the case of a local authority operating executive arrangements, by the elected mayor or the executive leader of the local authority;
(b) in any other case, by the local authority.

(4) In the case of a local authority operating executive arrangements, the elected mayor or the executive leader of the local authority may, instead of or in addition to making a nomination under subsection (2)(a), be a member of the Board.

(5) The Local Healthwatch organisation for the area of the local authority must appoint one person to represent it on the Health and Wellbeing Board.

(6) A relevant clinical commissioning group must appoint a person to represent it on the Health and Wellbeing Board.

(7) A person may, with the agreement of the Health and Wellbeing Board, represent more than one clinical commissioning group on the Board.

(8) The Health and Wellbeing Board may appoint such additional persons to be members of the Board as it thinks appropriate.

(9) At any time after a Health and Wellbeing Board is established, a local authority must, before appointing another person to be a member of the Board under subsection (2)(g), consult the Health and Wellbeing Board.

(10) A relevant clinical commissioning group must co-operate with the Health and Wellbeing Board in the exercise of the functions of the Board.

(11) A Health and Wellbeing Board is a committee of the local authority which established it and, for the purposes of any enactment, is to be treated as if it were a committee appointed by that authority under section 102 of the Local Government Act 1972.

(12) But regulations may provide that any enactment relating to a committee appointed under section 102 of that Act of 1972—
(a) does not apply in relation to a Health and Wellbeing Board, or
(b) applies in relation to it with such modifications as may be prescribed in the regulations.

(13) In this section—
(a) "enactment" includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);

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(b) "elected mayor", "executive arrangements" and "executive leader", in relation to a local authority, have the same meaning as in Part 1A of the Local Government Act 2000;

(c) "relevant clinical commissioning group", in relation to a local authority, means any clinical commissioning group whose area coincides with or falls wholly or partly within the area of the local authority.

(14) In this section and in sections 195 to 199, "local authority" means—

(a) a county council in England;

(b) a district council in England, other than a council for a district in a county for which there is a county council;

(c) a London borough council;

(d) the Council of the Isles of Scilly;

(e) the Common Council of the City of London in its capacity as a local authority.

Commencement Information

I340 S. 194 partly in force; s. 194 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I341 S. 194 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Wellbeing Boards: functions

195 Duty to encourage integrated working

(1) A Health and Wellbeing Board must, for the purpose of advancing the health and wellbeing of the people in its area, encourage persons who arrange for the provision of any health or social care services in that area to work in an integrated manner.

(2) A Health and Wellbeing Board must, in particular, provide such advice, assistance or other support as it thinks appropriate for the purpose of encouraging the making of arrangements under section 75 of the National Health Service Act 2006 in connection with the provision of such services.

(3) A Health and Wellbeing Board may encourage persons who arrange for the provision of any health-related services in its area to work closely with the Health and Wellbeing Board.

(4) A Health and Wellbeing Board may encourage persons who arrange for the provision of any health or social care services in its area and persons who arrange for the provision of any health-related services in its area to work closely together.

(5) Any reference in this section to the area of a Health and Wellbeing Board is a reference to the area of the local authority that established it.

(6) In this section—

"the health service" has the same meaning as in the National Health Service Act 2006;

"health services" means services that are provided as part of the health service in England;

"health-related services" means services that may have an effect on the health of individuals but are not health services or social care services;

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"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

Commencement Information

I342 S. 195 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

196 Other functions of Health and Wellbeing Boards

(1) The functions of a local authority and its partner clinical commissioning groups under sections 116 and 116A of the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act") are to be exercised by the Health and Wellbeing Board established by the local authority.

(2) A local authority may arrange for a Health and Wellbeing Board established by it to exercise any functions that are exercisable by the authority.

(3) A Health and Wellbeing Board may give the local authority that established it its opinion on whether the authority is discharging its duty under section 116B of the 2007 Act.

(4) The power conferred by subsection (2) does not apply to the functions of the authority by virtue of section 244 of the National Health Service Act 2006.

Commencement Information

I343 S. 196 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Wellbeing Boards: supplementary

197 Participation of NHS Commissioning Board

(1) Subsection (2) applies where a Health and Wellbeing Board is (by virtue of section 196(1)) preparing—

(a) an assessment of relevant needs under section 116 of the Local Government and Public Involvement in Health Act 2007, or

(b) a strategy under section 116A of that Act.

(2) The National Health Service Commissioning Board must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its preparation of the assessment or (as the case may be) the strategy.

(3) Subsection (4) applies where a Health and Wellbeing Board is considering a matter that relates to the exercise or proposed exercise of the commissioning functions of the National Health Service Commissioning Board in relation to the area of the authority that established the Health and Wellbeing Board.

(4) If the Health and Wellbeing Board so requests, the National Health Service Commissioning Board must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its consideration of the matter.

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(5) The person appointed under subsection (2) or (4) may, with the agreement of the Health and Wellbeing Board, be a person who is not a member or employee of the National Health Service Commissioning Board.

(6) In this section—

"commissioning functions", in relation to the National Health Service Commissioning Board, means the functions of the Board in arranging for the provision of services as part of the health service in England;

"the health service" has the same meaning as in the National Health Service Act 2006.

Modifications etc. (not altering text)

C3 S. 197(6) modified by 2006 c. 41, s. 13Z4(3) (as inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 23(1)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

Commencement Information

I344 S. 197 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

198 Discharge of functions of Health and Wellbeing Boards

Two or more Health and Wellbeing Boards may make arrangements for—

(a) any of their functions to be exercisable jointly;

(b) any of their functions to be exercisable by a joint sub-committee of the Boards;

(c) a joint sub-committee of the Boards to advise them on any matter related to the exercise of their functions.

Commencement Information

I345 S. 198 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

199 Supply of information to Health and Wellbeing Boards

(1) A Health and Wellbeing Board may, for the purpose of enabling or assisting it to perform its functions, request any of the following persons to supply it with such information as may be specified in the request—

(a) the local authority that established the Health and Wellbeing Board;

(b) any person who is represented on the Health and Wellbeing Board by virtue of section 194(2)(e) to (g) or (8);

(c) any person who is a member of a Health and Wellbeing Board by virtue of section 194(2)(g) or (8) but is not acting as a representative.

(2) A person who is requested to supply information under subsection (1) must comply with the request.

(3) Information supplied to a Health and Wellbeing Board under this section may be used by the Board only for the purpose of enabling or assisting it to perform its functions.

(4) Information requested under subsection (1) must be information that relates to—

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(a) a function of the person to whom the request is made, or

(b) a person in respect of whom a function is exercisable by that person.

Modifications etc. (not altering text)

C4 S. 199(4) modified by 2006 c. 41, s. 13Z4(3) (as inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 23(1)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

C5 S. 199(4) modified by 2006 c. 41, s. 14Z24(3) (as inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 26**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

Commencement Information

I346 S. 199 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Care Trusts

200 Care Trusts

(1) In section 77 of the National Health Service Act 2006 (Care Trusts), in subsection (1) —

(a) in paragraph (a), after "an NHS trust" insert "or a clinical commissioning group or an NHS foundation trust",

(b) omit the "and" preceding paragraph (b),

(c) in paragraph (b), for "the Secretary of State considers" substitute "the body and the local authority concerned consider",

(d) in that paragraph, for "a local authority" substitute "the local authority",

(e) after paragraph (b), insert ", and

(c) the requirements in subsection (1A) are satisfied,", and

(f) for "the Secretary of State may" substitute "the body and the local authority may jointly".

(2) After that subsection insert—

"(1A) The body and the local authority must, before designating the body as a Care Trust under this section—

(a) publish in the prescribed form and manner—

(i) the reasons why they consider that the proposed designation would be likely to have the result mentioned in subsection (1)(b), and

(ii) information about the proposed governance arrangements of the Care Trust, and

(b) consult on the proposed designation in accordance with regulations.

(1B) Where a body has been designated as a Care Trust under this section, the body and the local authority must notify prescribed persons of the designation."

(3) Omit subsections (2) and (3) of that section.

(4) In subsection (4) of that section—

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(a) for "The direction is that while the body is designated it" substitute "A body designated as a Care Trust under this section",
(b) for "specified in the direction" substitute "agreed",
(c) for "so specified" substitute "so agreed", and
(d) at the end insert "; and "agreed" means agreed by the body and the local authority".

(5) For subsection (5) of that section substitute—

"(5) Where a body is designated as a Care Trust under this section, the body and the local authority may jointly revoke that designation.

(5A) Before revoking a designation as a Care Trust under this section, the body and the local authority must consult on the proposed revocation of the designation in accordance with regulations.

(5B) Where the designation of a body as a Care Trust under this section has been revoked, the body and the local authority must notify prescribed persons of the revocation."

(6) After subsection (5B) of that section insert—

"(5C) Regulations under subsection (1A)(b) or (5A) may include provision requiring a body and a local authority to publish prescribed information following a consultation."

(7) After subsection (5C) of that section insert—

"(5D) Where a duty is imposed by or by virtue of this section on a body and a local authority, they may make arrangements for the function to be discharged—
(a) by both of them acting jointly,
(b) by each of them acting separately, or
(c) by one of them acting on behalf of both of them."

(8) Omit subsection (6) of that section.

(9) Omit subsection (7) of that section.

(10) In subsection (9) of that section—
(a) omit paragraph (a),
(b) omit paragraph (b),
(c) omit paragraph (c), and
(d) in paragraph (d), for "subsection (3)" substitute "subsection (4)".

(11) In subsection (10) of that section, after "NHS trust" insert "or clinical commissioning group or NHS foundation trust".

(12) In subsection (12) of that section, in the definition of "NHS functions" after "NHS trust" insert "or clinical commissioning group or NHS foundation trust".

(13) Subsections (1)(e) and (2) do not apply in relation to a Primary Care Trust or an NHS trust which has satisfied any requirement in relation to consultation imposed by virtue of subsection (9) of section 77 of the National Health Service Act 2006 before the commencement of those subsections.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(14) A Primary Care Trust or NHS trust which, after the commencement of subsection (5), has its designation as a Care Trust revoked must notify the Secretary of State of that revocation.

(15) Despite the repeal of subsection (6) of section 77 of the National Health Service Act 2006 by subsection (8), that subsection continues to have effect so far as it applies to the revocation of designations—

(a) in relation to Primary Care Trusts, until the commencement of section 34, and

(b) in relation to NHS trusts, until the commencement of section 179.

Commencement Information

I347 S. 200 partly in force; s. 200 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I348 S. 200 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

CHAPTER 3

THE HEALTH SERVICE COMMISSIONER FOR ENGLAND

201 Disclosure of reports etc. by the Health Service Commissioner

In section 14 of the Health Service Commissioners Act 1993 (reports etc. by the Commissioner), after subsection (2H) insert—

"(2I) Where the Commissioner is required by this section to send a report or statement of reasons to certain persons, the Commissioner may send the report or statement to such other persons as the Commissioner thinks appropriate."

Commencement Information

I349 S. 201 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

PART 6

PRIMARY CARE SERVICES

202 Medical services: minor amendments

(1) In section 86 of the National Health Service Act 2006 (persons eligible to enter into general medical services contracts), in subsection (3), in paragraphs (a) and (b), before "legally and beneficially" insert "both".

(2) In section 89 of that Act (general medical services contracts: required terms), in subsection (3), for "may make" substitute "must make".

(3) In section 93 of that Act (persons with whom arrangements may be made under section 92 of that Act for the provision of primary medical services), in the definition of "qualifying body" in subsection (3), before "legally and beneficially" insert "both".

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I350 S. 202 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

203 Persons eligible to enter into general dental services contracts

(1) Section 102 of the National Health Service Act 2006 (persons eligible to enter into general dental services contracts) is amended as follows.

(2) In subsection (1), in paragraph (c), for "individuals" substitute "persons".

(3) After that subsection insert ",

(d) a limited liability partnership where the conditions in subsection (2A) are satisfied."

(4) In subsection (2), for paragraph (b) substitute—

"(b) subsection (3A) or (3B) applies."

(5) After that subsection insert—

"(2A) The conditions referred to in subsection (1)(d) are that—

(a) at least one member is a dental practitioner, and

(b) subsection (3A) or (3B) applies."

(6) After subsection (3) insert—

"(3A) This subsection applies if a partner or member who is a dental practitioner, or who falls within subsection (3C), has the power to secure that the partnership's affairs are conducted in accordance with that partner's or member's wishes.

(3B) This subsection applies if, in any combination of partners or members who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership's affairs are conducted in accordance with their wishes, at least one of them is a dental practitioner or a person who falls within subsection (3C)."

(7) After subsection (3B) insert—

"(3C) A person falls within this subsection if the person is—

(a) an NHS employee,

(b) a section 92 employee, section 107 employee, section 50 employee, section 64 employee, section 17C employee or Article 15B employee,

(c) a health care professional who is engaged in the provision of services under this Act or the National Health Service (Wales) Act 2006, or

(d) an individual falling within section 108(1)(d)."

Commencement Information
I351 S. 203 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

204 Arrangements under section 107 of the National Health Service Act 2006

(1) Section 108 of the National Health Service Act 2006 (persons with whom section 107 arrangements may be made) is amended as follows.

(2) In subsection (1)—

(a) before "make an agreement" insert ", subject to such conditions as may be prescribed,",

(b) in each of paragraphs (b) and (c), omit "who meets the prescribed conditions",

(c) for paragraph (f) substitute—

"(f) a dental corporation,", and

(d) after paragraph (f) insert—

"(fa) a company limited by shares where the conditions in subsection (1A) are satisfied,

(fb) a limited liability partnership where subsection (1B) or (1C) applies,".

(3) After subsection (1) insert—

"(1A) The conditions referred to in subsection (1)(fa) are that—

(a) every person who owns a share in the company owns it both legally and beneficially, and

(b) it is not possible for two or more members of the company who are not persons who fall within subsection (1)(a) to (e) to hold the majority of the voting rights conferred by shares in the company on any matter on which members have such rights."

(4) After subsection (1A) insert—

"(1B) This subsection applies if a member of the partnership who falls within subsection (1)(a) to (e) has the power to secure that the partnership's affairs are conducted in accordance with that member's wishes.

(1C) This subsection applies if, in any combination of members of the partnership who, acting together, have the power (or who, if they were to act together, would have the power) to secure that the partnership's affairs are conducted in accordance with their wishes, at least one of them falls within subsection (1)(a) to (e)."

(5) Omit subsection (2).

(6) In subsection (3)—

(a) at the appropriate place insert—

""dental corporation"" means a body corporate which is carrying on the business of dentistry in accordance with the Dentists Act 1984,", and

(b) omit the definition of "qualifying body".

Commencement Information

I352 S. 204 partly in force; s. 204 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I353 S. 204 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

205 Payments in respect of costs of sight tests

(1) Section 180 of the National Health Service Act 2006 (payments in respect of costs of optical appliances) is amended as follows.

(2) In subsection (3), before paragraph (a) insert—

"(za) provide for payments to be made by the Board to meet, or to contribute towards, any cost accepted by the Board as having been incurred for the cost of a sight test of a person who—

(i) falls within section 115(2)(c), but

(ii) at the time of the test has not been issued with a notice by the Secretary of State of entitlement to receive assistance in respect of the cost of a sight test (or has been issued with such a notice but has yet to receive it),".

(3) After that subsection insert—

"(3A) The amount of a payment by virtue of subsection (3)(za) or (a) must not exceed the amount for the time being set in regulations under this section as the applicable fee in the case in question for the provision of the sight-testing service under section 115(1)(a)."

Commencement Information

I354 S. 205 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

206 Pharmaceutical needs assessments

(1) In section 128A of the National Health Service Act 2006 (pharmaceutical needs assessments), in subsections (1), (2)(c) and (d) and (3)(b) and (d), for "Primary Care Trust" substitute "Health and Wellbeing Board".

(2) In section 24 of that Act (plans for improving health etc.), at the end of subsection (8)(a) (but before the following ", and") insert "(other than pharmaceutical services or local pharmaceutical services)".

(3) In section 24A of that Act (report on consultation), in subsection (2), for "Parts 4 to 7" substitute "Parts 4 to 6".

(4) In section 242 of that Act (public involvement and consultation), in subsection (1F), after "(1E)," insert "—

(a) health services" does not include pharmaceutical services or local pharmaceutical services, and

(b)".

(5) In section 242A of that Act (Strategic Health Authorities: further duty to involve users), at the end of subsection (2) add "; and for that purpose "health services" does not include pharmaceutical services or local pharmaceutical services".

Commencement Information

I355 S. 206 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

207 Control of entry on pharmaceutical lists

(1) Section 129 of the National Health Service Act 2006 (regulations as to pharmaceutical lists) is amended as follows.

(2) In subsection (2), in paragraph (c)—

(a) for "must be granted if" substitute "may be granted only if", and

(b) omit the words from "and may otherwise" to the end.

(3) After that subsection insert—

"(2ZA) The Board may not include the Secretary of State, or such other persons as the regulations may prescribe, in a list prepared for the purposes of provision under subsection (2)(a)."

(4) In subsection (2A)—

(a) for "its needs statement" substitute "the needs statement for the relevant area", and

(b) for the words from "it is necessary" to the end substitute "to grant the application would—

(a)

meet a need in that area for the services or some of the services specified in the application, or

(b) secure improvements, or better access, to pharmaceutical services in that area."

(5) For subsection (2B) substitute—

"(2B) In subsection (2A), "relevant area", in relation to a needs statement, is the area of the Health and Wellbeing Board which includes the premises from which the application states that the applicant will undertake to provide services."

(6) In subsection (2C), for "(2B)" substitute "(2A)".

(7) In subsection (4)(c), omit "or (2B)".

(8) In subsection (6)(g)—

(a) after "grounds on which" insert "or circumstances in which",

(b) before "may, or must," insert "—

(i)",

and

(c) at the end insert ",

(ii) may, or must, remove a person or an entry in respect of premises from a pharmaceutical list".

(9) In subsection (10B), for "Primary Care Trust" substitute "Health and Wellbeing Board".

(10) In section 130(2) of that Act (regulations about appeals from decisions on applications for inclusion in pharmaceutical list)—

(a) after "an application" insert "on grounds corresponding to the conditions referred to in section 151(2), (3) or (4) as read with section 153", and

(b) omit "(by way of redetermination)".

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(11) In section 136 of that Act (designation of priority neighbourhoods or premises)—

(a) in subsections (1)(a) and (2)(a) and (b), for "neighbourhoods" substitute "relevant areas", and

(b) after subsection (3) insert—

"(4) Relevant area" has the same meaning as in section 129(2A)."

(12) In Schedule 12 to that Act (provision of local pharmaceutical services under LPS schemes), in paragraph 2—

(a) in sub-paragraphs (1)(a) and (2)(a) and (b), for "neighbourhoods" substitute "relevant areas", and

(b) after sub-paragraph (3) insert—

"(4) Relevant area" has the same meaning as in section 129(2A)."

Commencement Information

I356 S. 207 partly in force; s. 207 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I357 S. 207 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I358 S. 207(1)-(7)(9)(11)(12) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I359 S. 207(8)(10) in force at 1.7.2012 in so far as not already in force by S.I. 2012/1319, **art. 2(3)**

208 Lists of performers of pharmaceutical services and assistants etc.

(1) Omit the following provisions of the National Health Service Act 2006—

(a) section 146 (lists of persons performing local pharmaceutical services) and the preceding cross-heading,

(b) section 149 (supplementary lists), and

(c) section 150 (further provision about supplementary lists).

(2) After section 147 of that Act insert—

"**CHAPTER 4A**

LISTS OF PERFORMERS OF PHARMACEUTICAL SERVICES AND ASSISTANTS

147A Performers of pharmaceutical services and assistants

(1) Regulations may make provision for the preparation, maintenance and publication by the Board of one or more lists of—

(a) persons approved by the Board for the purpose of assisting in the provision of pharmaceutical services which the Board arranges;

(b) persons approved by the Board for the purpose of performing local pharmaceutical services.

(2) The regulations may, in particular, provide that—

(a) a person of a prescribed description may not assist in the provision of pharmaceutical services which the Board arranges unless the person is included in a list prepared by virtue of subsection (1)(a),

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(b) a person of a prescribed description may not perform local pharmaceutical services unless the person is included in a list prepared by virtue of subsection (1)(b).

(3) The regulations may, in particular, also include provision as to—

(a) the preparation, maintenance and publication of a list,

(b) eligibility for inclusion in a list,

(c) applications for inclusion (including provision for the procedure for applications and the documents to be supplied on application, whether by the applicant or by arrangement with the applicant),

(d) the grounds on which an application for inclusion may or must be granted or refused or on which a decision on such an application may be deferred,

(e) requirements with which a person included in a list must comply (including the declaration of financial interests and gifts and other benefits),

(f) the grounds on which the Board may or must suspend or remove a person from a list, the procedure for doing so, and the consequences of doing so,

(g) circumstances in which a person included in a list may not withdraw from it,

(h) payments to or in respect of a person suspended from a list (including provision for the amount of the payment, or the method of calculating it, to be determined by the Secretary of State or a person appointed by the Secretary of State),

(i) the supply to the Board by an applicant for inclusion in a list, or by a person included in a list, of a criminal conviction certificate under section 112 of the Police Act 1997, a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,

(j) the criteria to be applied in making decisions under the regulations,

(k) appeals against decisions made by the Board under the regulations, and

(l) disclosure of information about applicants for inclusion, grants or refusals of applications or suspensions or removals,

and may make any provision corresponding to anything in sections 151 to 159.

(4) Regulations under this section may, in particular, also provide that approval for the purposes of either paragraph (a) or paragraph (b) of subsection (1) is to be treated for the purposes of this section as approval for the purposes of the other paragraph (and for lists prepared by virtue of that subsection to be read accordingly).

(5) Regulations under this section may, in particular, also provide for—

(a) a person's inclusion in a list to be subject to conditions determined by the Board,

(b) the Board to vary the conditions or impose different ones,

(c) the consequences of failing to comply with a condition (including suspension or removal from a list),

(d) the review by the Board of decisions made by it by virtue of the regulations.

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) The imposition of such conditions must be with a view to—

(a) preventing any prejudice to the efficiency of the services to which a list relates, or

(b) preventing any acts or omissions of the type described in section 151(3)(a).

(7) If the regulations provide under subsection (3)(f) or (5) that the Board may suspend or remove a person (P) from a list, they must include provision—

(a) requiring P to be given notice of any allegation against P,

(b) giving P the opportunity of putting P's case at a hearing before the Board makes any decision as to P's suspension or removal, and

(c) requiring P to be given notice of the decision of the Board, the reasons for it and any right of appeal under subsection (8) or (9).

(8) If the regulations provide under subsection (3)(d) or (f) that the Board may refuse a person's application for inclusion in a list, or remove a person from one, the regulations must provide for an appeal to the First-tier Tribunal against the decision of the Board.

(9) If the regulations make provision under subsection (5), they must provide for an appeal by the person in question to the First-tier tribunal against the decision of the Board—

(a) to impose conditions, or any particular condition,

(b) to vary a condition,

(c) to remove the person from the list for breach of condition,

(d) on any review of an earlier such decision of the Board.

(10) Regulations making provision as to the matters referred to in subsection (3)(l) may, in particular, authorise the disclosure of information—

(a) by the Board to the Secretary of State, and

(b) by the Secretary of State to the Board.

147B Further provision about regulations under section 147A

(1) Regulations under section 147A may require a person (A) included in—

(a) a pharmaceutical list, or

(b) a list under section 132(3) (provision of drugs, medicines or listed appliances),

not to employ or engage a person (B) to assist A in the provision of the service to which the list relates unless B is included in a list mentioned in subsection (2).

(2) The lists are—

(a) a list referred to in subsection (1),

(b) a list under section 147A,

(c) a list under section 91, 106 or 123,

(d) a list corresponding to a list under section 91 prepared by the Board by virtue of regulations made under section 145,

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(e) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by a Local Health Board under or by virtue of the National Health Service (Wales) Act 2006,

or, in any of the cases in paragraphs (a) to (e), such a list of a prescribed description.

(3) If regulations do so require, they may, in particular, require that both A and B be included in lists prepared by the Board."

(3) For the heading of Chapter 5 of Part 7 of that Act substitute "Conditional inclusion in pharmaceutical lists".

(4) In section 159 of that Act (national disqualification), in subsection (1)—

(a) omit paragraph (b), and

(b) in paragraph (d), for "section 146" substitute "section 147A".

(5) In section 276 of that Act (index of defined expressions), omit the entry for "supplementary list".

(6) In Schedule 17 to that Act (exempt information relating to health services), in paragraph 13(1)(b), for "146" substitute "147A".

(7) Regulations under section 146 or 149 of that Act having effect immediately before the commencement of subsection (1) of this section are, despite the repeals made by that subsection, to continue to have effect as if they had been made under section 147A of that Act (as inserted by subsection (2) of this section).

Commencement Information

I360 S. 208 partly in force; s. 208 in force for specified purposes at Royal Assent, see s. 306(1)(d)

PART 7

REGULATION OF HEALTH AND SOCIAL CARE WORKERS

Orders under section 60 of the Health Act 1999

209 Power to regulate social workers etc. in England

(1) Section 60 of the Health Act 1999 (regulation of health care professions etc.) is amended as follows.

(2) In subsection (1), after paragraph (b) insert—

"(ba) regulating the social work profession in England,

(bb) modifying the regulation of the social work profession in England, so far as appears to Her to be necessary or expedient for the purpose of securing or improving the regulation of the profession or the services which it provides or to which it contributes,".

(3) In that subsection, after paragraph (bb) insert—

"(bc) regulating social care workers in England who appear to Her to require regulation in pursuance of this section,

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(bd) modifying the regulation of social care workers in England, so far as appears to Her to be necessary or expedient for the purpose of securing or improving their regulation or the services which they provide or to which they contribute,".

(4) In subsection (2), at the end of each of paragraphs (c) and (d), insert "(other than the social work profession in England)".

(5) After that subsection insert—

"(2ZA) In subsections (1) and (2), "the social work profession in England" means the profession engaged in social work in England; and for the purposes of this section, "social work in England" means social work which is required in connection with any health, education or social services provided in England."

(6) After subsection (2ZA) insert—

"(2ZB) In subsection (1)(bc) and (bd), "social care workers in England" means persons who are engaged in social care work in England.

(2ZC) For that purpose, "social care work in England" means work (other than social work in England) that is of any of the following descriptions—

(a) employment at a children's home, care home or residential family centre in England,

(b) management of a home or centre of a kind mentioned in paragraph (a),

(c) employment for the purposes of a domiciliary care agency, fostering agency, voluntary adoption agency or adoption support agency, in so far as the agency provides services to persons in England,

(d) management of an agency of a kind mentioned in paragraph (c),

(e) work for the purposes of the social services functions of a local authority whose area is in England,

(f) the provision in England of services similar to services which may or must be provided by a local authority in the exercise of its social services functions,

(g) the provision of personal care for persons in England,

(h) employment (in an undertaking other than an establishment or agency) which consists of or includes supplying, or providing services for the purpose of supplying, persons to provide personal care for persons in England,

(i) management of an undertaking of the kind mentioned in paragraph (h),

(j) employment in connection with the discharge of functions of the Secretary of State under section 80 of the Children Act 1989 (inspection of children's homes),

(k) employment as a member of staff of the Office for Standards in Education, Children's Services and Skills who inspects premises under—

(i) section 87 of the Children Act 1989 (welfare of children accommodated in independent schools and colleges),

(ii) section 31 of the Care Standards Act 2000 (inspections by persons authorised by registration authority), or

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(iii) section 139 of the Education and Inspections Act 2006 (inspection by Chief Inspector),

(l) employment as a member of staff of the Care Quality Commission who, under Part 1 of the Health and Social Care Act 2008, inspects premises used for or in connection with the provision of social care (within the meaning of that Part),

(m) management of staff mentioned in paragraph (k) or (l),

(n) employment at a day centre in England,

(o) participation in a course approved by the Health and Care Professions Council under article 15 of the Health and Social Work Professions Order 2001 for persons wishing to engage in the social work profession in England."

(7) After subsection (2ZC) insert—

"(2ZD) An expression used in subsection (2ZC) and in section 55 of the Care Standards Act 2000 has the same meaning in that subsection as it has in that section."

(8) After subsection (2ZD) insert—

"(2ZE) The exercise of functions of an approved mental health professional by a member of a profession to which subsection (2) applies is not to be regarded as social work of the kind engaged in by the social work profession in England."

(9) After subsection (2ZE) insert—

"(2ZF) In this section, "approved mental health professional" has the meaning given in section 114 of the Mental Health Act 1983."

(10) For the title to section 60 of the Health Act 1999 substitute "Regulation of health professions, social workers, other care workers etc.".

(11) In section 60A of that Act (standard of proof in fitness to practise proceedings), in subsection (2), for "a person's fitness to practise a profession to which section 60(2) applies" substitute "a matter specified in subsection (2A)".

(12) After that subsection insert—

"(2A) The matters are—

(a) a person's fitness to practise a profession to which section 60(2) applies;

(b) a person's fitness to practise the social work profession in England (within the meaning given by section 60);

(c) a person's suitability to remain registered as a social care worker in England (within the meaning given by that section)."

(13) In subsection (3) of that section, at the end insert "or the social work profession in England (within the meaning given in section 60(2ZA)".

Commencement Information

I361 S. 209 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

210 Training etc. of approved mental health professionals in England

In section 60 of the Health Act 1999 (regulation of health care professions etc.), in subsection (1), after paragraph (e) insert—

"(ea) modifying the functions, powers or duties of the Health and Care Professions Council that relate to the education and training of persons who are or wish to become approved mental health professionals,".

Commencement Information

I362 S. 210 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

211 Orders regulating social care workers in England: further provision

(1) Schedule 3 to the Health Act 1999 (further provision as to power to make Orders in Council under section 60 of that Act) is amended as follows.

(2) After paragraph 1 (matters generally within the scope of the Orders) insert—

"1A An Order may make provision, in relation to any social care workers in England, for any of the following matters (among others)—

(a) the establishment and continuance of a regulatory body,
(b) the functions of the Health and Care Professions Council or of another regulatory body,
(c) keeping registers of social care workers in England of any description,
(d) privileges of registered persons,
(e) education and training,
(f) standards of conduct and performance,
(g) discipline,
(h) removal or suspension from registration or the imposition of conditions on registration,
(i) investigation and enforcement by or on behalf of the Health and Care Professions Council or another regulatory body,
(j) appeals,
(k) default powers exercisable by a person other than the Health and Care Professions Council or another regulatory body."

(3) After paragraph 1A insert—

"1B The provision that may be made by virtue of paragraph 1(e) or 1A(f) includes provision for standards of conduct and performance of members of a profession, or social care workers in England, carrying out the functions of an approved mental health professional."

(4) In paragraph 7 (prohibition on Orders abolishing regulatory bodies), in sub-paragraph (1), for paragraph (c) substitute—

"(c) the Health and Care Professions Council,".

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) In paragraph 8 (matters outside the scope of the Orders), after sub-paragraph (2) insert—

"(2ZA) Where an enactment provides for any function mentioned in sub-paragraph (2ZB) to be exercised by the Health and Care Professions Council or another regulatory body, or any of its committees or officers, an Order may not provide for any person other than that body or any of its committees or officers to exercise that function.

(2ZB) The functions are—

(a) keeping the registers of social care workers in England of any description,

(b) determining standards of education and training required as a condition of registration,

(c) giving advice about standards of conduct and performance."

(6) In paragraph 9 (preliminary procedure for making Orders), in sub-paragraph (1)(b)—

(a) after "represent any profession" insert "or any social care workers in England", and

(b) after "by any profession" insert "or any social care workers in England".

(7) In paragraph 10 (interpretation)—

(a) at the appropriate place insert the following—

""social care work in England", "social care workers in England" and "the social work profession in England" have the meaning given by section 60,", and

(b) in the definition of "regulatory body"—

(i) after "any profession" insert "or any social care workers in England", and

(ii) after "the profession" insert "or the social care workers in England concerned".

(8) In paragraph 11 (application), after sub-paragraph (2) insert—

"(2A) References in section 60 and this Schedule to regulation, in relation to social care workers in England, include—

(a) the regulation of persons seeking to be registered or who were, but are no longer, allowed to be registered as social care workers in England,

(b) the regulation of activities carried on by persons who are not social care workers in England (or members of the social work profession in England) but which are carried on in connection with social care work in England."

Commencement Information

I363 S. 211 partly in force; s. 211 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I364 S. 211 in force at 1.8.2012 in so far as not already in force by S.I. 2012/1319, **art. 2(4)**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

The General Social Care Council

212 Abolition of the General Social Care Council

(1) The General Social Care Council is abolished.

(2) In section 54 of the Care Standards Act 2000 (the Care Councils)—

(a) in subsection (1), omit paragraph (a) and the "and" following it,
(b) in that subsection, for "conferred on them" substitute "conferred on it",
(c) omit subsection (2),
(d) in subsection (4), for "Each Council" substitute "The Welsh Council",
(e) in subsection (6), for "a Council" substitute "the Welsh Council", and
(f) omit subsection (7).

(3) For the title to that section substitute "The Care Council for Wales".

Commencement Information
I365 S. 212(1) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**
I366 S. 212(2)(3) in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

The Health and Care Professions Council

F64 213 Regulation of social workers in England

. . . . . .

Textual Amendments
F64 S. 213 omitted (2.12.2019) by virtue of Children and Social Work Act 2017 (c. 16), s. 70(2), **Sch. 5 para. 38**; S.I. 2019/1436, reg. 2(s)

214 The Health and Care Professions Council

(1) The body corporate known as the Health Professions Council—

(a) is to continue to exist, and
(b) is to change its name to the Health and Care Professions Council.

(2) In article 3 of the Health and Social Work Professions Order 2001 (S.I. 2002/254) (the Council and its Committees), for sub-paragraph (1) substitute—

"(1) The Health and Care Professions Council is referred to in this Order as "the Council"."

(3) For the title to that article substitute "The Health and Care Professions Council and its Committees".

(4) In Schedule 3 to that Order (interpretation), in the definition of "the Council" in paragraph 1, for "the Health Professions Council established under article 3" substitute "the Health and Care Professions Council (formerly known as the Health Professions

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Council and continued in existence by section 214 of the Health and Social Care Act 2012)".

Commencement Information

I367 S. 214 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

F65 215 Functions of the Council in relation to social work in England

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Textual Amendments

F65 S. 215 omitted (2.12.2019) by virtue of Children and Social Work Act 2017 (c. 16), s. 70(2), **Sch. 5 para. 38**; S.I. 2019/1436, reg. 2(s)

F66 216 Appeals in cases involving social workers in England

. . . . . .

Textual Amendments

F66 S. 216 omitted (2.12.2019) by virtue of Children and Social Work Act 2017 (c. 16), s. 70(2), **Sch. 5 para. 38**; S.I. 2019/1436, reg. 2(s)

217 Approval of courses for approved mental health professionals

(1) Part 8 of the Mental Health Act 1983 (miscellaneous local authority functions etc.) is amended as follows.

(2) Before section 114A insert—

"114ZA **Approval of courses: England**

(1) The Health and Care Professions Council may approve courses for persons who are, or wish to become, approved to act as approved mental health professionals by a local social services authority whose area is in England.

(2) The Council must publish a list of—

(a) the courses which are approved under this section, and

(b) the courses which have been, but are no longer, approved under this section and the periods for which they were so approved.

(3) The functions of an approved mental health professional are not to be considered to be relevant social work for the purposes of Part 4 of the Care Standards Act 2000.

(4) Where the function under subsection (1) is, in accordance with the Health and Social Work Professions Order 2001, exercisable by a committee of the Council, the committee may arrange for another person to exercise the function on the Council's behalf."

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(3) In section 114 (approval of mental health professionals by local social services authority), in subsection (6), after "section" insert "114ZA or".

(4) Section 114A (approval of courses) is amended as follows.

(5) For subsection (1) substitute—

"(1) The Care Council for Wales may, in accordance with rules made by it, approve courses for persons who are, or wish to become, approved to act as approved mental health professionals by a local social services authority whose area is in Wales."

(6) Omit subsection (3).

(7) In subsection (5), omit "General Social Care Council and the".

(8) For the title to that section substitute "Approval of courses: Wales".

Commencement Information
I368 S. 217 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

218 Exercise of function of approving courses, etc.

(1) The Health and Social Work Professions Order 2001 (S.I. 2002/254) is amended as follows.

(2) In article 3 (the Council and its Committees), in paragraph (3), at the end insert "(and see also section 114ZA of the Mental Health Act 1983 (approval of courses for approved mental health professionals))".

(3) After paragraph (5) of that article insert—

"(5ZA) In the application of paragraph (5) to the functions of the Council that relate to persons who are, or wish to become, approved mental health professionals in England, references to registrants are to be read as including a reference to such approved mental health professionals in England as are not registrants."

(4) In article 14 (the Council's education and training committee), after sub-paragraph (b) insert—

"(ba) the setting of criteria under article 15B;".

(5) After article 15 insert—

"15A **Exercise of function of approving courses for approved mental health professionals**

(1) The function under section 114ZA(1) of the Mental Health Act 1983 (approval of courses for approved mental health professionals in England) is exercisable by the Education and Training Committee.

(2) In relation to AMHP courses run outside the United Kingdom, section 114ZA(1) of that Act applies only in relation to courses run by institutions which are approved in accordance with article 15B(3).

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(3) In this article and articles 15B to 18, "AMHP course" means a course of the kind referred to in section 114ZA(1) of the Mental Health Act 1983.

15B **Criteria for approving courses for approved mental health professionals**

(1) The Council must set the criteria to be applied in exercising the function under section 114ZA(1) of the Mental Health Act 1983.

(2) The Education and Training Committee must—

(a) ensure that universities and other bodies in the United Kingdom concerned with the provision of AMHP courses are notified of the criteria set under paragraph (1); and

(b) take appropriate steps to satisfy itself that the AMHP courses provided by such bodies meet those criteria.

(3) In performing the function under paragraph (2)(b), the Committee may, in particular, approve or arrange with others to approve institutions which the Committee considers to be properly organised and equipped for conducting AMHP courses.

(4) The Council must from time to time publish a statement of the criteria set under paragraph (1).

(5) An AMHP course is to be treated for the purposes of articles 16 to 18 as a relevant course of education or training."

(6) In article 16 (visitors), in paragraph (6), at the end insert "; but that does not apply to AMHP courses."

(7) In article 17 (information), after paragraph (3) insert—

"(3A) The reference in paragraph (3) to the functions of the Committee under this Order includes a reference to the function under section 114ZA(1) of the Mental Health Act 1983 (approval of courses for approved mental health professionals) in so far as that function is exercisable by the Committee."

(8) In article 18 (refusal or withdrawal of approval), after paragraph (1) insert—

"(1A) Where as a result of any visitor's report or other information acquired by the Committee or the Council, and taking account of the observations received from the institution under article 16(9), the Committee is of the opinion that an AMHP course does not meet the criteria set under article 15B(1), it may refuse to approve, or withdraw approval from, the course."

(9) In that article—

(a) in paragraph (3), after "paragraph (1)" insert "or (1A)", and

(b) in paragraph (6), after "paragraph (1)" in each place it appears insert "or, as the case may be, (1A)".

(10) In article 21(1)(a) (Council's duty to establish standards of conduct etc. and give guidance), after "prospective registrants" insert "(including registrants or prospective registrants carrying out the functions of an approved mental health professional)".

(11) In article 45 (finances of the Council), after paragraph (3) insert—

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"(3A) The Secretary of State may make grants or loans to the Council towards expenses incurred, or to be incurred by it, in connection with the exercise of its functions in relation to persons who are, or wish to become, approved mental health professionals in England."

Commencement Information

I369 S. 218 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

219 Arrangements with other health or social care regulators

(1) After article 44 of the Health and Social Work Professions Order 2001 (S.I. 2002/254) insert—

"44A **Arrangements with other persons who maintain registers of health or social care workers**

(1) The Council may make arrangements with any relevant person for the Council to provide administrative, technical or advisory services to that person.

(2) A relevant person is a person or group of persons (whether inside or outside the United Kingdom) who maintain—

(a) a register of members of a profession engaged in the provision of health care,

(b) a register of persons engaged in, but who are not members of a profession engaged in, the provision of health care,

(c) a register of members of the social work profession, or

(d) a register of persons engaged in social care work."

(2) In Schedule 3 to that Order (interpretation), at the appropriate place, insert—

""health care" includes—

(a) all forms of health care for individuals, whether relating to physical or mental health, and

(b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition;".

220 References in enactments to registered health professionals, etc.

(1) In section 58 of the Medicines Act 1968 (medicinal products on prescription only), after subsection (1A) insert—

"(1ZA) Paragraphs (a) and (g) of subsection (1A) do not apply to persons in so far as they are registered as members of the social work profession in England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999)."

(2) In section 27 of the National Health Service (Scotland) Act 1978 (arrangements for provision of pharmaceutical services), after subsection (1B) insert—

"(1C) Paragraphs (a) and (h) of subsection (1A) do not apply to persons in so far as they are registered as members of the social work profession in England

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or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999)."

(3) In section 3 of the Video Recordings Act 1984 (exempted supplies), after subsection (11) insert—

"(11A) But subsection (11) does not apply to a person in so far as the person is required to register under the Health and Social Work Professions Order 2001 as a member of the social work profession in England (within the meaning of section 60 of the Health Act 1999)."

(4) In Group 7 in Part 2 of Schedule 9 to the Value Added Tax Act 1994 (exemption for medical care services), in the Notes, after Note (2) insert—

"2ZA Paragraph (c) of item 1 does not include supplies of services made by a person in the capacity of a registered member of the social work profession in England (within the meaning of section 60 of the Health Act 1999)."

(5) In section 69 of the Data Protection Act 1998 (meaning of "health professional"), at the end of paragraph (h) of subsection (1), insert ", except in so far as the person is registered as a social worker in England (within the meaning of that Order)".

(6) In section 25 of the National Health Service Reform and Health Care Professions Act 2002 (the Council for Healthcare Regulatory Excellence), after subsection (3) insert—

"(3A) A reference in an enactment to a body mentioned in subsection (3) is not (unless there is express provision to the contrary) to be read as including a reference to the Health and Care Professions Council, or a regulatory body within subsection (3)(j), so far as it has functions relating to—

(a) the social work profession in England, or

(b) social care workers in England.

(3B) For the purposes of subsection (3A)—

"enactment" means an enactment contained in—

(a) an Act, an Act of the Scottish Parliament or an Act or Measure of the National Assembly for Wales (whether passed before or after the commencement of this subsection), or

(b) subordinate legislation (within the meaning of the Interpretation Act 1978), an instrument made under an Act of the Scottish Parliament, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation (whether made before or after that commencement), and

"the social work profession in England" and "social care workers in England" have the meaning given in section 60 of the 1999 Act."

(7) In section 126 of the National Health Service Act 2006 (arrangements for provision of pharmaceutical services), after subsection (4) insert—

"(4A) Paragraphs (a) and (h) of subsection (4) do not apply to persons in so far as they are registered as members of the social work profession in England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999)."

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(8) In section 80 of the National Health Service (Wales) Act 2006 (arrangements for provision of pharmaceutical services), after subsection (4) insert—

"(4A) Paragraphs (a) and (h) of subsection (4) do not apply to persons in so far as they are registered as members of the social work profession in England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999)."

Commencement Information
I370 S. 220 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

Role of the Secretary of State

221 Functions of the Secretary of State in relation to social care workers

(1) In section 67 of the Care Standards Act 2000 (functions of the appropriate Minister), after subsection (1) insert—

"(1A) But the Secretary of State may not exercise the function under subsection (1)(a) or (d) in relation to a social worker who is registered as such in a register maintained under article 5 of the Health and Social Work Professions Order 2001."

(2) In subsection (2) of that section, after "take part in" insert "courses approved by the Health and Care Professions Council under article 15 or by virtue of article 19(4) of the Health and Social Work Professions Order 2001 for persons who are or wish to become social workers,".

(3) The Secretary of State may make arrangements with the Health and Care Professions Council for the discharge, during the relevant period, of the functions of the General Social Care Council; and for that purpose "the relevant period" is the period—

(a) beginning with the day on which this Act is passed, and

(b) ending with the commencement of section 212(1).

Commencement Information
I371 S. 221 partly in force; s. 221(3) in force at Royal Assent, see s. 306(1)(b)
I372 S. 221 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

The Professional Standards Authority for Health and Social Care

222 The Professional Standards Authority for Health and Social Care

(1) The body corporate known as the Council for Healthcare Regulatory Excellence—

(a) is to continue to exist, and

(b) is to change its name to the Professional Standards Authority for Health and Social Care.

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(2) In consequence of that, in section 25 of the National Health Service Reform and Health Care Professions Act 2002 (which establishes the Council for Healthcare Regulatory Excellence), in subsection (1)—

(a) for "the Council for Healthcare Regulatory Excellence" substitute "the Professional Standards Authority for Health and Social Care", and

(b) for " "the Council"" substitute " "the Authority"".

(3) For the title of section 25 of that Act substitute "The Professional Standards Authority for Health and Social Care".

(4) For the cross-heading preceding that section substitute "The Professional Standards Authority for Health and Social Care".

(5) For the title of Part 2 of that Act substitute "Health and Social Care Professions etc.".

Commencement Information

I373 S. 222 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

223 Functions of the Authority

(1) In section 25 of the National Health Service Reform and Health Care Professions Act 2002 (the Professional Standards Authority), in subsection (2)(a), for "patients" substitute "users of health care, users of social care in England, users of social work services in England".

(2) In subsection (2A) of that section, for "patients" substitute "users of health care, users of social care in England, users of social work services in England".

(3) In section 26A of that Act (powers of Secretary of State etc. to request the Authority for advice), after subsection (1) insert—

"(1A) The Secretary of State may request the Authority for advice on any matter connected with the social work profession, or social care workers, in England; and the Authority must comply with such a request."

(4) After subsection (2) of that section insert—

"(2A) A person to whom the Authority gives advice, or for whom it investigates and reports on a matter, under this section must pay such fee as the Authority determines; and the fee may be charged by reference to the advice or the investigation and report concerned or on a periodic basis."

(5) In subsection (3) of that section, after "this section" insert "—

health care profession" means a profession (whether or not regulated by or by virtue of any enactment) which is concerned (wholly or partly) with the physical or mental health of individuals; and".

(6) In section 26B of that Act (duty to inform and consult the public), in subsection (4)(b), for "patients" substitute "users of health care, users of social care in England or users of social work services in England".

(7) In section 27 of that Act (the Authority and regulatory bodies), in subsections (5) and (13), for "Secretary of State" substitute "Privy Council".

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(8) In subsection (7) of that section—

(a) for "Secretary of State" substitute "Privy Council", and

(b) in paragraph (a), omit "he or".

(9) In section 29 of that Act (reference of disciplinary cases to court by the Authority), in subsection (5), after "subsection (4)" insert "(subject to subsection (5A))".

(10) After subsection (5) of that section insert—

"(5A) In the case of a social worker in England, the "relevant court" means the High Court of Justice in England and Wales."

(11) In section 38 of that Act (regulations and orders), in subsection (2), omit "27".

(12) In subsection (3) of that section, for "the Secretary of State" substitute "the Privy Council".

(13) After subsection (3D) of that section (inserted by section 224(3)) insert—

"(3E) A statutory instrument containing regulations made by the Privy Council under section 27 is subject to annulment in pursuance of a resolution of either House of Parliament."

(14) In paragraph 16 of Schedule 7 to that Act (reports and other information), in sub-paragraph (1A)(a) for "patients" substitute "users of health care, users of social care in England, users of social work services in England".

Commencement Information

I374 S. 223(1)(2)(5)(9)(10)(14) in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

I375 S. 223(3)(6) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)** (with art. 8)

I376 S. 223(4) in force at 1.2.2016 by S.I. 2016/81, **art. 2**

I377 S. 223(7)(8)(11)-(13) in force at 4.6.2018 by S.I. 2018/617, **art. 2(a)**

224 Funding of the Authority

(1) After section 25 of the National Health Service Reform and Health Care Professions Act 2002 insert—

"**25A Funding of the Authority**

(1) The Privy Council must by regulations require each regulatory body to pay the Authority periodic fees of such amount as the Privy Council determines in respect of such of the Authority's functions in relation to that body as are specified in the regulations.

(2) A reference in this section to the Authority's functions does not include a reference to its functions under sections 25G to 25I and 26A.

(3) The regulations must, in particular, provide for the method of determining the amount of a fee under the regulations.

(4) Before determining the amount of a fee under the regulations, the Privy Council must request the Authority to make a proposal as to the amount of

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funding that it considers it requires in order to perform for the period to which the fee would apply such of its functions in relation to the regulatory bodies as are specified in the regulations.

(5) The Authority must—

(a) comply with a request under subsection (4), but

(b) before doing so, consult the regulatory bodies.

(6) Having received a proposal under subsection (5), the Privy Council may consult the regulatory bodies.

(7) Having taken into account such representations as it receives from consultees, the Privy Council must—

(a) make a proposal as to the amount of funding that it considers the Authority requires in order to perform for the period to which the fee would apply such of its functions in relation to the regulatory bodies as are specified in the regulations, and

(b) determine in accordance with the method provided for under subsection (3) the amount of the fee that each regulatory body would be required to pay.

(8) The Privy Council must—

(a) consult the Authority about the proposal under subsection (7)(a) and the determinations under subsection (7)(b), and

(b) consult each regulatory body about the determination under subsection (7)(b) of the amount it would be required to pay.

(9) Having taken into account such representations as it receives from consultees, the Privy Council must—

(a) determine the amount of funding that the Authority requires in order to perform for the period to which the fee would apply such of its functions in relation to the regulatory bodies as are specified in the regulations, and

(b) determine in accordance with the method provided for under subsection (3) the amount of the fee that each regulatory body is to be required to pay.

(10) Regulations under this section requiring payment of a fee may make provision—

(a) requiring the fee to be paid within such period as is specified;

(b) requiring interest at such rate as is specified to be paid if the fee is not paid within the period specified under paragraph (a);

(c) for the recovery of unpaid fees or interest.

(11) The regulations may enable the Privy Council to redetermine the amount of a fee provided for under the regulations, on a request by the Authority or a regulatory body or on its own initiative.

(12) Before making regulations under this section, the Privy Council must consult—

(a) the Authority,

(b) the regulatory bodies, and

(c) such other persons as it considers appropriate."

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(2) In section 25(5) of that Act (meaning of "this group of sections") for "26" substitute "25A".

(3) In section 38 of that Act (regulations and orders) after subsection (3) insert—

"(3A) A statutory instrument containing regulations made by the Privy Council under section 25A shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3B) Regulations made by the Privy Council under section 25A that include provision which would, if included in an Act of the Scottish Parliament, fall within the legislative competence of that Parliament shall be subject to the negative procedure in that Parliament (in addition to the statutory instrument containing the regulations being subject to annulment under subsection (3A)).

(3C) Sections 28 and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (negative procedure etc.) shall apply in relation to regulations of the description given in subsection (3B) as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) that is subject to the negative procedure, but as if references to a Scottish statutory instrument were references to a statutory instrument.

(3D) Section 32 of that Act (laying) shall apply in relation to the laying of a statutory instrument containing regulations of the description given in subsection (3B) before the Scottish Parliament as it applies in relation to the laying of a Scottish statutory instrument (within the meaning of Part 2 of that Act) before that Parliament."

(4) In paragraph 14 of Schedule 7 to that Act (payments and loans to Authority), after sub-paragraph (2) insert—

"(2A) The Authority may borrow money for the purposes of or in connection with its functions; and sub-paragraphs (3) and (4) are without prejudice to the generality of this sub-paragraph."

(5) In that paragraph, omit sub-paragraphs (5) and (6).

Commencement Information

I378 S. 224 partly in force; s. 224 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I379 S. 224 in force at 16.3.2015 in so far as not already in force by S.I. 2015/409, **art. 2**

225 Power to advise regulatory bodies, investigate complaints, etc.

(1) After section 25A of the National Health Service Reform and Health Care Professions Act 2002 insert—

"**25B Power of the Authority to advise regulatory bodies etc.**

(1) The Authority may, for the purpose of assisting the Authority in its performance of its functions under this group of sections, provide advice or provide auditing services to—

(a) a regulatory body;

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(b) a body which has functions (whether or not relating to health or social care) corresponding to those of a regulatory body.

(2) A body to which the Authority provides advice or auditing services under this section must pay such fee as the Authority may determine.

(3) In this section, "this group of sections" has the meaning given by section 25(5) but does not include section 26A."

(2) In section 28(1) of that Act (power to make regulations about investigation by the Authority of complaints about regulatory bodies), for "The Secretary of State" substitute "The Privy Council".

(3) In section 38(2) of that Act (regulations and orders), omit "regulations under section 28 or".

Commencement Information
I380 S. 225 in force at 16.3.2015 by S.I. 2015/409, **art. 2**

226 Accountability and governance

(1) Schedule 7 to the National Health Service Reform and Health Care Professions Act 2002 (constitution etc. of the Authority) is amended as follows.

(2) In paragraph 4 (membership and chair)—
(a) in paragraph (e), for "the Secretary of State" substitute "the Privy Council", and
(b) in paragraph (f), for "two executive members" substitute "one executive member".

(3) In paragraph 6 (appointments), for "The Secretary of State" substitute "The Privy Council".

(4) In paragraph 10 (remuneration and allowances)—
(a) in each of sub-paragraphs (1) and (2), for "the Secretary of State" substitute "the Authority", and
(b) for sub-paragraphs (3) and (4) substitute—

"(3) The Authority may provide for the payment of such pension, allowance or gratuities as it may determine to or in respect of a person who is or has been the chair or any other member of the Authority.

(4) The Authority may, where it considers there are special circumstances that make it right for a person ceasing to hold office as chair of the Authority to receive compensation, pay the person such compensation as it may determine."

(5) In paragraph 11 (employees)—
(a) in sub-paragraph (1), for "members" substitute "member", and
(b) in sub-paragraph (2), for "members must be employees" substitute "member must be an employee".

(6) In paragraph 15 (accounts)—

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(a) in each of sub-paragraphs (1) and (2), for "the Secretary of State" substitute "the Privy Council", and

(b) in sub-paragraph (3)—

(i) omit "the Secretary of State and", and

(ii) for "the Secretary of State" substitute "the Privy Council".

(7) In paragraph 16 (reports and other information), after sub-paragraph (1A) insert—

"(1B) The Authority must, by such date in each year as the Privy Council determines, publish—

(a) a strategic plan for the Authority for the coming financial year, and

(b) a strategic plan for the Authority for such of the subsequent financial years as the Authority may determine."

(8) In sub-paragraph (2) of that paragraph, after "its report for that year" insert ", and a copy of each of its strategic plans published in that year,".

(9) In section 38 of that Act (regulations and orders), after subsection (3E) (inserted by section 223(13)) insert—

"(3F) A statutory instrument containing regulations made by the Privy Council under paragraph 6 of Schedule 7 is subject to annulment in pursuance of a resolution of either House of Parliament."

Commencement Information

I381 S. 226(1) in force at 1.12.2012 for specified purposes by S.I. 2012/2657, **art. 2(3)**

I382 S. 226(1) in force at 4.6.2018 in so far as not already in force by S.I. 2018/617, **art. 2(b)** (with art. 3)

I383 S. 226(2)(a) in force at 9.6.2014 by S.I. 2014/1454, **art. 2**

I384 S. 226(2)(b)(5) in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

I385 S. 226(3)(4)(6)-(9) in force at 4.6.2018 by S.I. 2018/617, **art. 2(b)** (with art. 3)

227 Appointments to regulatory bodies

After section 25B of the National Health Service Reform and Health Care Professions Act 2002 insert—

"**25C Appointments to regulatory bodies**

(1) The Privy Council and a regulatory body may make arrangements for the regulatory body or other persons to assist the Privy Council in connection with its exercise of any of its appointment functions in relation to the regulatory body.

(2) The Privy Council and the Authority may make arrangements for the Authority to assist the Privy Council in connection with—

(a) its exercise of any of its appointment functions in relation to a regulatory body;

(b) its exercise of its function under paragraph 4 of Schedule 7.

(3) The Privy Council may make arrangements with any other person to assist it in connection with—

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(a) its exercise of any of its appointment functions in relation to a regulatory body;

(b) its exercise of its function under paragraph 4 of Schedule 7.

(4) The Scottish Ministers and the Authority may make arrangements for the Authority to assist them in connection with their exercise of their function under that paragraph.

(5) The Welsh Ministers and the Authority may make arrangements for the Authority to assist them in connection with their exercise of their function under that paragraph.

(6) The Department of Health, Social Services and Public Safety in Northern Ireland may make arrangements for the Authority to assist the Department in connection with its exercise of its function under that paragraph.

(7) In this section, "regulatory body" does not include the Pharmaceutical Society of Northern Ireland.

(8) In this section, "appointment functions" means—

(a) in relation to the General Medical Council, the function under paragraph 1A(2) of Schedule 1 to the Medical Act 1983 and such functions as the Privy Council from time to time has by virtue of paragraph 1B(1)(b) or (d) of that Schedule (appointment of members and chair and determination of terms of office),

(b) in relation to the General Dental Council, the function under paragraph 1A(2) of Schedule 1 to the Dentists Act 1984 and such functions as the Privy Council from time to time has by virtue of paragraph 1B(1)(b) or (d) of that Schedule (corresponding functions in relation to that Council),

(c) in relation to the General Optical Council, the function under paragraph 1A(2) of Schedule 1 to the Opticians Act 1989 and such functions as the Privy Council from time to time has by virtue of paragraph 1B(1)(b) or (d) of that Schedule (corresponding functions in relation to that Council),

(d) in relation to the General Osteopathic Council, the function under paragraph 1A(2) of the Schedule to the Osteopaths Act 1993 and such functions as the Privy Council from time to time has by virtue of paragraph 1B(1)(b) or (d) of that Schedule (corresponding functions in relation to that Council),

(e) in relation to the General Chiropractic Council, the function under paragraph 1A(2) of Schedule 1 to the Chiropractors Act 1994 and such functions as the Privy Council has by virtue of paragraph 1B(1)(b) or (d) of that Schedule (corresponding functions in relation to that Council),

(f) in relation to the General Pharmaceutical Council, the function under paragraph 1(2) of Schedule 1 to the Pharmacy Order 2010 (S.I. 2010/231) and such functions as the Privy Council from time to time has by virtue of paragraph 2(1)(b) or (d) of that Schedule (corresponding functions in relation to that Council),

(g) in relation to the Nursing and Midwifery Council, the function under paragraph 1A(2) of Schedule 1 to the Nursing and Midwifery Order 2001 (S.I. 2002/253) and such functions as the Privy Council from time

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to time has by virtue of paragraph 1B(1)(b) or (d) of that Schedule (corresponding functions in relation to that Council), and

(h) in relation to the Health and Care Professions Council, the function under paragraph 1(2) of Schedule 1 to the Health and Social Work Professions Order 2001 (S.I. 2002/254) and such functions as the Privy Council from time to time has by virtue of paragraph 1B(1)(b) or (d) of that Schedule (corresponding functions in relation to that Council).

(9) A reference to assisting in connection with the exercise of a function does not include a reference to exercising the function."

Commencement Information

I386 S. 227 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)** (with art. 3)

228 Establishment of voluntary registers

After section 25C of the National Health Service Reform and Health Care Professions Act 2002 insert—

"**25D Power of regulatory bodies to establish voluntary registers**

(1) A regulatory body may establish and maintain a voluntary register of persons who are (and, where the body thinks appropriate, persons who have been)—

(a) unregulated health professionals;

(b) unregulated health care workers;

(c) unregulated social care workers in England;

(d) participating in studies that come within subsection (2) or (3).

(2) Studies come within this subsection if they are studies for the purpose of becoming a member of—

(a) a profession to which section 60(2) of the Health Act 1999 applies, or

(b) the social work profession in England.

(3) Studies come within this subsection if they are studies for the purpose of becoming—

(a) an unregulated health professional,

(b) an unregulated health care worker, or

(c) an unregulated social care worker in England.

(4) A regulatory body may establish and maintain a register under subsection (1)(a), (b) or (c) of only such persons as are (or have been) engaged in work that supports, or otherwise relates to, work engaged in by members of a profession which the body regulates; but this subsection does not apply to the Health and Care Professions Council.

(5) A regulatory body may establish and maintain a register under subsection (1)(d) of only such persons as are (or have been) participating in studies for the purpose of—

(a) in the case of studies coming within subsection (2), becoming a member of a profession which the body regulates,

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(b) in the case of studies coming within subsection (3)(a), becoming a member of a profession for which the body maintains a voluntary register, or

(c) in the case of studies coming within subsection (3)(b) or (c), engaging in work in respect of which the body maintains a voluntary register.

(6) The General Pharmaceutical Council may establish and maintain a register under subsection (1) of only such persons as are (or have been) engaged in work or participating in studies in England, Wales or Scotland.

(7) The Pharmaceutical Society of Northern Ireland may establish and maintain a register under subsection (1) of only such persons as are (or have been) engaged in work, or are participating in studies, in Northern Ireland.

(8) A regulatory body may establish and maintain a register under subsection (1) jointly with one or more other regulatory bodies.

(9) Where regulatory bodies establish and maintain a register in reliance on subsection (8)—

(a) subsections (4) and (5) apply to each body (but subsection (4) does not apply to the Health and Care Professions Council),

(b) subsection (6) applies to the General Pharmaceutical Council if it is one of the bodies, and

(c) subsection (7) applies to the Pharmaceutical Society of Northern Ireland if it is one of the bodies.

(10) But subsections (6) and (7) do not apply where the bodies concerned are or include the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland.

(11) Accordingly, in those circumstances, the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland may jointly establish and maintain a register of persons who are (and, where they consider appropriate, have been) engaged in work or participating in studies anywhere in the United Kingdom.

(12) A request to be registered, or to continue to be registered, in a register established under subsection (1) must be accompanied by a fee of such amount as the regulatory body (or bodies) concerned may determine.

25E Section 25D: interpretation

(1) This section applies for the purposes of section 25D.

(2) "Voluntary register" means a register of persons in which a person is not required by an enactment to be registered in order to be entitled to—

(a) use a title,

(b) practise as a member of a profession,

(c) engage in work that involves the provision of health care,

(d) engage in work of a description given in section 60(2ZC) of the Health Act 1999 (social care work in England), or

(e) participate in studies that come within section 25D(2) or (3).

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(3) Where an enactment imposes a requirement of that kind which applies to part only of the United Kingdom, a register is to be regarded as a voluntary register in so far as it applies to any part of the United Kingdom to which the requirement does not apply.

(4) The reference in subsection (2) to an enactment does not include a reference to an enactment in so far as it imposes a requirement of that kind which applies—

(a) only to work or practice of a particular kind, and

(b) only when work or practice of that kind is engaged in for particular purposes.

(5) In subsections (2) to (4), "enactment" means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) an Act or Measure of the National Assembly for Wales, or

(d) Northern Ireland legislation.

(6) "Unregulated health professional" means a member of a profession—

(a) which is concerned with the physical or mental health of individuals, but

(b) to which section 60(2) of the Health Act 1999 does not apply.

(7) "Unregulated health care worker" means a person engaged in work which—

(a) involves the provision of health care, but

(b) is not work which may be engaged in only by members of a profession.

(8) In subsections (2) and (7), "health care" includes—

(a) all forms of health care for individuals, whether relating to physical or mental health, and

(b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

(9) "Unregulated social care worker in England" means a person engaged in social care work in England within the meaning of section 60 of the Health Act 1999.

(10) But a person is not to be regarded as being (or having been) engaged in work as an unregulated social care worker merely because the person is (or has been) participating in a course of the description given in subsection (2ZC)(o) of that section (social work courses).

(11) "The social work profession in England" has the meaning given in that section.

25F Establishment of voluntary register: impact assessment

(1) Before establishing a register under section 25D, a regulatory body—

(a) must make an assessment of the likely impact of doing so, and

(b) must consult such persons as it considers appropriate.

(2) In performing the duty under subsection (1)(a), the body must have regard to such guidance relating to the preparation of impact assessments as it considers appropriate.

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(3) An assessment under this section must, in particular, include an assessment of the likely impact of establishing the register on—

(a) persons who would be eligible for inclusion in the register;

(b) persons who employ persons who would be eligible for inclusion in the register;

(c) users of health care, users of social care in England and users of social work services in England.

(4) A regulatory body must publish any assessment it makes under this section.

(5) In deciding whether to establish a register under section 25D, a regulatory body must have regard to the assessment it made under this section in relation to the register."

Commencement Information

I387 S. 228 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

229 Accreditation of voluntary registers

(1) After section 25F of the National Health Service Reform and Health Care Professions Act 2002 insert—

"**25G Power of the Authority to accredit voluntary registers**

(1) Where a regulatory body or other person maintains a voluntary register, the Authority may, on an application by the body or other person, take such steps as it considers appropriate for the purpose of establishing whether the register meets such criteria as the Authority may from time to time set ("accreditation criteria").

(2) Accreditation criteria may, in particular, relate to—

(a) the provision to the Authority of information in connection with the establishment, operation or maintenance of register;

(b) publication of the names of persons included in the register or who have been removed from the register (whether voluntarily or otherwise);

(c) the establishment or operation of a procedure for appeals from decisions relating to inclusion in or removal from the register.

(3) If the Authority is satisfied that a voluntary register meets the accreditation criteria, it may accredit the register.

(4) The Authority may carry out periodic reviews of the operation of registers accredited under this section for the purpose of establishing whether they continue to meet the accreditation criteria.

(5) If, on a review under subsection (4), the Authority is satisfied that a voluntary register no longer meets the accreditation criteria, the Authority may remove or suspend, or impose conditions on, the accreditation of the register.

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(6) The Authority may refuse to accredit a register, or to continue to accredit a register, unless the person who maintains the register pays a fee of such amount as the Authority may determine.

(7) The Authority must publish such accreditation criteria as it sets.

(8) The Authority may publish a list of registers accredited under this section.

(9) "Voluntary register" has the meaning given in section 25E.

25H Accreditation of voluntary register: impact assessment

(1) Before accrediting a register under section 25G, the Authority—

(a) must make an assessment of the likely impact of doing so, and

(b) must consult such persons as it considers appropriate.

(2) For that purpose, the Authority must have regard to such guidance relating to the preparation of impact assessments as it considers appropriate.

(3) An assessment under this section must, in particular, include an assessment of the likely impact of accrediting the register on—

(a) persons who are, or are eligible to be, included in the register;

(b) persons who employ persons who are, or are eligible to be, included in the register;

(c) users of health care, users of social care in England and users of social work services in England.

(4) For the purposes of subsection (3), the Authority may request the person who maintains the register to provide it with such information as it specifies; and if the person refuses to comply with the request, the Authority may refuse to accredit the register.

(5) The Authority may publish any assessment it makes under this section.

(6) In deciding whether to accredit a register under section 25G, the Authority must have regard to its assessment under this section in relation to the register.

25I Functions of the Authority in relation to accredited voluntary registers

(1) The Authority has the following functions—

(a) to promote the interests of users of health care, users of social care in England, users of social work services in England and other members of the public in relation to the performance of voluntary registration functions,

(b) to promote best practice in the performance of voluntary registration functions, and

(c) to formulate principles of good governance in the performance of voluntary registration functions and to encourage persons who maintain or operate accredited voluntary registers to conform to those principles.

(2) In this section—

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(a) a reference to the performance of voluntary registration functions is a reference to the maintenance or operation of an accredited voluntary register, and

(b) "accredited voluntary register" means a register accredited under section 25G"."

(2) In section 26 of that Act (general powers and duties of the Authority), after subsection (2) insert—

"(2A) A reference in subsection (2) to a regulatory body includes a reference to a person other than a regulatory body who has voluntary registration functions; and for that purpose, the only functions that person has are the person's voluntary registration functions."

(3) After subsection (3) of that section insert—

"(3A) A reference in subsection (3) to a regulatory body includes a reference to a person other than a regulatory body in so far as that person has voluntary registration functions."

(4) After subsection (4) of that section insert—

"(4A) For the purposes of paragraph (c) of subsection (4), the reference in that subsection to subsection (3) includes a reference to subsection (3) as construed in accordance with subsection (3A)."

(5) After subsection (12) of that section insert—

"(13) In this section, "voluntary registration functions" is to be construed in accordance with section 25I."

(6) In section 26A of that Act (powers of Secretary of State and devolved authorities to request advice etc.), after subsection (1A) (inserted by section 223(3)), insert—

"(1B) The Secretary of State may request the Authority for advice on any matter connected with accreditation of registers under section 25G; and the Authority must comply with such a request.

(1C) The Welsh Ministers, the Scottish Ministers or the relevant Northern Ireland department may request the Authority for advice on any matter connected with accreditation of registers under section 25G other than accreditation of registers referred to in subsection (1D); and the Authority must comply with such a request.

(1D) The registers are registers of persons who are or have been—

(a) unregulated social care workers in England,

(b) participating in studies for the purpose of becoming a member of the social work profession in England;

(c) participating in studies for the purpose of becoming an unregulated social care worker in England.

(1E) In subsection (1D), "the social work profession in England" and "unregulated social care worker in England" each have the meaning given in section 25E."

(7) In section 26B of that Act (duty of the Authority to inform and consult the public), after subsection (1) insert—

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"(1A) The references in subsection (1) to the Authority's functions do not include a reference to its accreditation functions.

(1B) For the purpose of ensuring that members of the public are informed about the exercise by the Authority of its accreditation functions, the Authority may publish or provide in such manner as it thinks fit information about the exercise of those functions.

(1C) For the purposes of this section, the Authority's accreditation functions are—

(a) its functions under sections 25G to 25I,

(b) its functions under section 26 that relate to the performance of voluntary registration functions (within the meaning given by section 25I), and

(c) its function under section 26A(1B)."

(8) In subsection (2) of that section, after "subsection (1)" insert "or (1B)".

(9) At the end of subsection (4) of that section insert "(other than its accreditation functions)".

Commencement Information

I388 S. 229 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

Consequential provision etc.

230 Consequential provisions and savings, etc.

(1) Parts 1 to 3 of Schedule 15 (which contain minor and consequential amendments and savings relating to the preceding provisions of this Part) have effect.

(2) The Privy Council may by order make transitional, transitory or saving provision in connection with the commencement of the preceding provisions of this Part.

(3) The quorum for the exercise of the power under subsection (2) is two.

(4) Anything done by the Privy Council under subsection (2) is sufficiently signified by an instrument signed by the Clerk of the Council.

(5) In section 38 of the National Health Service Reform and Health Care Professions Act 2002 (regulations and orders), after subsection (4) insert—

"(4A) The quorum for the exercise by the Privy Council of the power under section 25A, 27 or 28 or paragraph 6 of Schedule 7 is two; and anything done by the Privy Council under either of those sections or that paragraph is sufficiently signified by an instrument signed by the Clerk of the Council."

(6) The amendments made by this Part to an Order in Council under section 60 of the Health Act 1999 do not affect the power to make a further Order in Council under that section amending or revoking provision made by those amendments.

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Commencement Information

I389 S. 230 partly in force; s. 230 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I390 S. 230(1) in force at 1.8.2012 for specified purposes by S.I. 2012/1319, **art. 2(4)**

I391 S. 230(1)-(4)(6) in force at 1.12.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(3)**

I392 S. 230(2)-(6) in force at 1.8.2012 in so far as not already in force by S.I. 2012/1319, **art. 2(4)**

The Office of the Health Professions Adjudicator

231 Abolition of the Office of the Health Professions Adjudicator

(1) The Office of the Health Professions Adjudicator ("the OHPA") is abolished.

(2) In Part 2 of the Health and Social Care Act 2008 (regulation of health professions etc.), omit sections 98 to 110 and Schedules 6 and 7 (establishment etc. of the OHPA).

(3) All property, rights and liabilities to which the OHPA is entitled or subject immediately before the commencement of subsection (1) (including rights and liabilities relating to staff) are transferred to the Secretary of State.

(4) Part 4 of Schedule 15 (which contains consequential amendments and savings in relation to the OHPA) has effect.

Commencement Information

I393 S. 231 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

PART 8

THE NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELLENCE

Establishment and general duties

232 The National Institute for Health and Care Excellence

(1) There is to be a body corporate known as the National Institute for Health and Care Excellence (referred to in this Part as "NICE").

(2) Schedule 16 (which makes further provision about NICE) has effect.

Commencement Information

I394 S. 232 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

233 General duties

(1) In exercising its functions NICE must have regard to—

(a) the broad balance between the benefits and costs of the provision of health services or of social care in England,

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(b) the degree of need of persons for health services or social care in England, and

(c) the desirability of promoting innovation in the provision of health services or of social care in England.

(2) NICE must exercise its functions effectively, efficiently and economically.

(3) In this Part—

"health services" means services which must or may be provided as part of the health service in England;

"social care" includes all forms of personal care and other practical assistance provided for individuals who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.

Commencement Information

I395 S. 233 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Functions: quality standards

234 Quality standards

(1) The relevant commissioner may direct NICE to prepare statements of standards in relation to the provision of—

(a) NHS services,

(b) public health services, or

(c) social care in England.

(2) In this Part such a statement is referred to as a "quality standard".

(3) In preparing a quality standard NICE must consult the public and, for that purpose, may publish drafts of the standard.

(4) NICE must keep a quality standard under review and may revise it as it considers appropriate.

(5) A quality standard (and any revised standard)—

(a) has no effect unless it is endorsed by the relevant commissioner, and

(b) must not be published by NICE unless the relevant commissioner so requires.

(6) The relevant commissioner may require NICE—

(a) to publish the standard (or revised standard) or to disseminate it to persons specified by the relevant commissioner, and

(b) to do so in the manner specified by the relevant commissioner.

(7) NICE must—

(a) establish a procedure for the preparation of quality standards, and

(b) consult such persons as it considers appropriate in establishing that procedure.

(8) Subsection (9) applies in a case where the Secretary of State and the Board each has power under this section to give NICE a direction to prepare a quality standard in relation to the same matter or connected matters.

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(9) In such a case—

(a) the Secretary of State and the Board may issue a joint direction under subsection (1), and

(b) if they do so, NICE must prepare a joint quality standard in respect of the matter or matters concerned.

(10) In this section "the relevant commissioner"—

(a) in relation to a quality standard in relation to the provision of NHS services, means the Board, and

(b) in relation to a quality standard in relation to the provision of public health services or of social care in England, means the Secretary of State,

and a reference to the relevant commissioner in relation to a joint quality standard is a reference to both the Secretary of State and the Board.

(11) In this Part—

"NHS services" means services the provision of which is arranged by the Board or a clinical commissioning group under the National Health Service Act 2006 (including pursuant to arrangements made under section 7A of the National Health Service Act 2006) or section 117 of the Mental Health Act 1983 (after-care);

"public health services" means services provided pursuant to the functions of—

(a) the Secretary of State under section 2A or 2B of, or paragraph 7C, 8 or 12 of Schedule 1 to, that Act, or

(b) a local authority under section 2B or 111 of, or paragraphs 1 to 7B or 13 of Schedule 1 to, that Act.

Commencement Information

I396 S. 234 partly in force; s. 234 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I397 S. 234 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

235 Supply of quality standards to other persons

(1) Regulations may confer powers on NICE in relation to the supply by NICE of quality standards to—

(a) devolved authorities;

(b) other persons (whether or not in the United Kingdom).

(2) The regulations may in particular—

(a) confer power on NICE to make such adjustments as NICE considers appropriate to a quality standard for the purposes of supplying it as mentioned in subsection (1), and

(b) provide for the imposition by NICE of charges for or in connection with the supply of a quality standard as so mentioned.

(3) Provision made under subsection (2)(b) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.

(4) In this section "devolved authority" means—

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(a) the Scottish Ministers,
(b) the Welsh Ministers, and
(c) the Department of Health, Social Services and Public Safety in Northern Ireland.

Commencement Information
I398 S. 235 partly in force; s. 235 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I399 S. 235 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

236 Advice or guidance to the Secretary of State or the Board

(1) NICE must give advice or guidance to the Secretary of State or the Board on any quality matter referred to it by the Secretary of State or (as the case may be) the Board.

(2) "Quality matter"—
(a) in relation to the Secretary of State, means any matter in relation to which the Secretary of State has the power to direct NICE to prepare a quality standard, and
(b) in relation to the Board, means any matter in relation to which the Board has the power to direct NICE to prepare a quality standard.

Commencement Information
I400 S. 236 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Functions: advice, guidance etc.

237 Advice, guidance, information and recommendations

(1) Regulations may confer functions on NICE in relation to the giving of advice or guidance, provision of information or making of recommendations about any matter concerning or connected with the provision of—
(a) NHS services,
(b) public health services, or
(c) social care in England.

(2) The regulations may provide that a function conferred under subsection (1)(a)—
(a) is only exercisable on the direction of the Secretary of State or the Board;
(b) is subject to directions given by the Secretary of State or (as the case may be) the Board about NICE's exercise of the function.

(3) The regulations may provide that a function conferred under subsection (1)(b) or (c)—
(a) is only exercisable on the direction of the Secretary of State;
(b) is subject to directions given by the Secretary of State about NICE's exercise of the function.

(4) Provision made under subsection (2)(b) or (3)(b) must not permit a direction to be given about the substance of advice, guidance or recommendations of NICE.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) The regulations may make provision about—

(a) the persons who may request or require that advice, guidance, information or recommendations be given, provided or (as the case may be) made by NICE,

(b) the publication or other dissemination of the advice, guidance, information or recommendations (whether by NICE, the Secretary of State or the Board), and

(c) the imposition by NICE of charges for or in connection with the giving of advice or guidance, provision of information or making of recommendations.

(6) Provision made under subsection (5)(c) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.

(7) The regulations must make provision about—

(a) the establishment by NICE of procedures for the giving of advice or guidance, provision of information or making of recommendations under the regulations, and

(b) consultation by NICE in establishing the procedures.

(8) The regulations may make provision requiring specified health or social care bodies, or health or social care bodies of a specified description, to—

(a) have regard to specified advice or guidance, or advice or guidance of a specified description, given by NICE pursuant to the regulations;

(b) comply with specified recommendations, or recommendations of a specified description, made by NICE pursuant to the regulations.

(9) Provision made under subsection (8) may require a specified body, or bodies of a specified description, to have regard to advice or guidance or to comply with recommendations—

(a) generally in the exercise of functions, or

(b) in the exercise of specified functions or functions of a specified description.

(10) But provision made under subsection (8) may impose a requirement on a local authority, or a description of local authorities, only if the requirement relates to—

(a) the exercise by an authority of any of its functions under section 2B or 111 of, or paragraphs 1 to 7B or 13 of Schedule 1 to, the National Health Service Act 2006;

(b) the exercise by an authority of any of its functions by virtue of section 6C(1) or (3) of that Act;

(c) anything done by an authority in pursuance of arrangements under section 7A of that Act.

(11) In this section—

"health or social care body" means any public body exercising functions in connection with the provision of health services or of social care in England;

"local authority" means—

(a) a county council in England;

(b) a district council in England, other than a council for a district in a county for which there is a county council;

(c) a London borough council;

(d) the Council of the Isles of Scilly;

(e) the Common Council of the City of London;

' "public body" means a body or other person whose functions—

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(a) are of a public nature, or
(b) include functions of that nature,

but, in the latter case, the body or person is a public body to the extent only of those functions;

"specified" means specified in the regulations.

Commencement Information
I401 S. 237 partly in force; s. 237 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I402 S. 237 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

238 NICE recommendations: appeals

(1) Regulations under section 237 may make provision about appeals against recommendations made by NICE pursuant to the regulations.

(2) The regulations may, in particular, include provision about—
(a) the types of recommendations in relation to which an appeal may be brought,
(b) the persons who may bring an appeal,
(c) the grounds on which an appeal may be brought, and
(d) the persons by whom an appeal is to be heard.

Commencement Information
I403 S. 238 partly in force; s. 238 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I404 S. 238 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

239 Training

(1) Regulations may confer functions on NICE in relation to providing, or facilitating the provision of, training in connection with any matter concerning or connected with the provision of—
(a) NHS services,
(b) public health services, or
(c) social care in England.

(2) The regulations may provide that a function conferred under subsection (1)(a)—
(a) is only exercisable on the direction of the Board;
(b) is subject to directions given by the Board about NICE's exercise of the function.

(3) The regulations may provide that a function conferred under subsection (1)(b) or (c)—
(a) is only exercisable on the direction of the Secretary of State;
(b) is subject to directions given by the Secretary of State about NICE's exercise of the function.

(4) The regulations may provide for the imposition by NICE of charges for or in connection with the provision, or the facilitation of the provision, of training.

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(5) Provision made under subsection (4) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.

Commencement Information

I405 S. 239 partly in force; s. 239 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I406 S. 239 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

240 Advisory services

(1) Regulations may confer functions on NICE in relation to the giving of advice to persons (whether or not in the United Kingdom) in relation to any matter concerning or connected with—

(a) the provision of health care,

(b) the protection or improvement of public health, or

(c) the provision of social care.

(2) The regulations may make provision about the imposition of charges by NICE for or in connection with the giving of such advice.

(3) Provision made under subsection (2) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.

(4) In this Part "health care" includes all forms of health care provided for individuals whether relating to physical or mental health and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

Commencement Information

I407 S. 240 partly in force; s. 240 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I408 S. 240 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

241 Commissioning guidance

(1) The Board may direct NICE to exercise any of the Board's functions in relation to the preparation of the guidance required to be published by the Board under section 14Z8 of the National Health Service Act 2006 (the "commissioning guidance").

(2) A direction under subsection (1) may direct NICE to exercise the functions in such manner and within such period as may be specified in the direction.

(3) If requested to do so, NICE must—

(a) provide the Board with information or advice on such matters connected to the Board's functions in respect of the commissioning guidance as may be specified in the request, and

(b) disseminate the commissioning guidance to such persons and in such manner as may be specified in the request.

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Commencement Information

I409 S. 241 partly in force; s. 241 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I410 S. 241 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Functions: other

242 NICE's charter

(1) Regulations may make provision requiring NICE to publish a document explaining the functions of NICE and how NICE intends to exercise them (referred to in this section as "the charter").

(2) The regulations may, in particular, make provision about—

(a) the information to be provided in the charter,

(b) the timing of preparation of the charter,

(c) review and revision by NICE of the charter, and

(d) the manner in which the charter must or may be published.

Commencement Information

I411 S. 242 partly in force; s. 242 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I412 S. 242 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

243 Additional functions

(1) NICE may do any of the following—

(a) acquire, produce, manufacture and supply goods,

(b) acquire land by agreement and manage and deal with land,

(c) supply accommodation to any person,

(d) supply services to any person and provide new services,

(e) provide instruction for any person, and

(f) develop and exploit ideas and exploit intellectual property.

(2) But NICE may exercise a power under subsection (1) only—

(a) if doing so is connected with the provision of health care or social care, and

(b) to the extent that its exercise does not to any significant extent interfere with the performance by NICE of any function it has under or by virtue of any other provision of this Part.

(3) NICE may—

(a) charge for anything it does in the exercise of a power under subsection (1), and

(b) calculate any such charge on the basis that it considers to be the appropriate commercial basis.

Commencement Information

I413 S. 243 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
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244 Arrangements with other bodies

(1) NICE may arrange with any person or body to provide, or assist in providing, any service which NICE is required or authorised to provide by virtue of this Part.

(2) The power under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to NICE.

Commencement Information

I414 S. 244 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

245 Failure by NICE to discharge any of its functions

(1) The Secretary of State may give a direction to NICE if the Secretary of State considers that—

(a) NICE—

(i) is failing or has failed to discharge any of its functions, or

(ii) is failing or has failed properly to discharge any of its functions, and

(b) the failure is significant.

(2) A direction under subsection (1) may direct NICE to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.

(3) If NICE fails to comply with a direction under subsection (1), the Secretary of State may—

(a) discharge the functions to which it relates, or

(b) make arrangements for any other person to discharge them on the Secretary of State's behalf.

(4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish reasons for doing so.

(5) For the purposes of this section, a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service in England or (as the case may be) with what otherwise appears to the Secretary of State to be the purpose for which it is conferred.

Commencement Information

I415 S. 245 partly in force; s. 245 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I416 S. 245 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

246 Protection from personal liability

(1) Section 265 of the Public Health Act 1875 (which relates to the protection of members and officers of certain authorities from personal liability) has effect as if there were included in the authorities referred to in that section a reference to NICE.

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(2) In its application to NICE as provided for by subsection (1), section 265 of that Act has effect as if any reference in that section to the Public Health Act 1875 were a reference to this Act.

Commencement Information
I417 S. 246 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Supplementary

247 Interpretation of this Part

In this Part—

"the Board" means the National Health Service Commissioning Board;

"health care" has the meaning given by section 240(4);

"the health service" has the same meaning as in the National Health Service Act 2006 (see section 275(1) of that Act);

"health services" has the meaning given by section 233(3);

"NHS services" has the meaning given by section 234(11);

"public health services" has the meaning given by section 234(11);

"quality standard" has the meaning given by section 234(2);

"social care" has the meaning given by section 233(3).

Commencement Information
I418 S. 247 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

248 Dissolution of predecessor body

The Special Health Authority known as the National Institute for Health and Clinical Excellence is abolished.

Commencement Information
I419 S. 248 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

249 Consequential and transitional provision

(1) Schedule 17 (which contains consequential provision) has effect.

(2) A statement of standards prepared and published by the Institute before commencement is to be treated on and after commencement as if it were a quality standard—

(a) prepared and published by NICE in accordance with section 234,

(b) endorsed under subsection (5) of that section, and

(c) in respect of which the transitional commissioner is the relevant commissioner for the purposes of that section.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) Subsections (4) to (6) apply to a case where before commencement—

(a) the Secretary of State has referred a matter to the Institute for the purpose of preparing and publishing a statement of standards, but

(b) the Institute has not published the statement.

(4) The referral by the Secretary of State to the Institute of the matter is to be treated on and after commencement as if it were a direction given to NICE by the transitional commissioner for the preparation of a quality standard in relation to that matter under section 234(1); and the transitional commissioner is to be treated as the relevant commissioner for the purposes of that section.

(5) Anything done by the Institute before commencement in relation to the matter is to be treated on and after commencement as having been done by NICE in pursuance of the direction.

(6) Consultation with any person undertaken by the Institute before commencement in relation to the matter is to be treated on and after commencement as if it were consultation by NICE under section 234(3) in relation to the preparation of the quality standard.

(7) A procedure established by the Institute before commencement for the preparation of statements of standards is to be treated on and after commencement as if it were a procedure established by NICE in accordance with section 234(7) for the preparation of quality standards.

(8) For the purposes of this section "the transitional commissioner" is the Secretary of State; but the Secretary of State, after consulting the Board, may direct that in relation to a particular statement of standards or matter the transitional commissioner is—

(a) the Board, or

(b) both the Secretary of State and the Board.

(9) In this section—

"commencement" means the commencement of section 234;

"the Institute" means the Special Health Authority known as the National Institute for Health and Clinical Excellence;

"statement of standards" means a document containing advice to the Secretary of State in relation to the quality of the provision of health care prepared and published by the Institute pursuant to the directions given to the Institute by the Secretary of State on 27 July 2009.

Commencement Information

I420 S. 249 partly in force; s. 249 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I421 S. 249 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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PART 9

HEALTH AND ADULT SOCIAL CARE SERVICES: INFORMATION

CHAPTER 1

INFORMATION STANDARDS

250 Powers to publish information standards

(1) The Secretary of State or the National Health Service Commissioning Board (referred to in this Chapter as "the Board") may prepare and publish an information standard.

(2) For the purposes of this Part "an information standard" is a document containing standards in relation to the processing of information.

(3) The Secretary of State may exercise the power under subsection (1) only in relation to information concerning, or connected with, the provision of health services or of adult social care in England.

(4) The Board may exercise the power under subsection (1) only in relation to information concerning, or connected with, the provision of NHS services.

(5) An information standard must include guidance about the implementation of the standard.

(6) The following must have regard to an information standard published under this section—

(a) the Secretary of State;

(b) the Board;

(c) any public body which exercises functions in connection with the provision of health services or of adult social care in England;

(d) any person (other than a public body) who provides health services, or adult social care in England, pursuant to arrangements made with a public body exercising functions in connection with the provision of such services or care.

(7) In this section—

"adult social care"—

(a) includes all forms of personal care and other practical assistance provided for individuals who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance, but

(b) does not include anything provided by an establishment or agency for which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of the Care Standards Act 2000;

"health services" means services which must or may be provided as part of the health service in England; and for that purpose "the health service" has the same meaning as in the National Health Service Act 2006 (see section 275(1) of that Act);

"NHS services" means services the provision of which is arranged by the Board or a clinical commissioning group under the National Health Service Act 2006

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(including pursuant to arrangements made under section 7A of that Act) or section 117 of the Mental Health Act 1983 (after-care);

[[F67]"processing" has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(4) and (14) of that Act);**]**

"public body" means a body or other person whose functions—

(a) are of a public nature, or

(b) include functions of that nature,

but in the latter case, the body or person is a public body to the extent only of those functions.

Textual Amendments

F67 Words in s. 250(7) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 172** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

Commencement Information

I422 S. 250 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

251 Information standards: supplementary

(1) Before publishing an information standard, the Secretary of State or the Board must consult such persons as the Secretary of State or (as the case may be) the Board considers appropriate.

(2) For the purposes of section 250 the Secretary of State or the Board may adopt an information standard prepared or published by another person.

Commencement Information

I423 S. 251 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

[[F68]CHAPTER 1A

CONTINUITY OF INFORMATION

Textual Amendments

F68 Pt. 9 Ch. 1A inserted (25.6.2015) by Health and Social Care (Safety and Quality) Act 2015 (c. 28), **ss. 2**, 6(4); S.I. 2015/1438, reg. 2(a)

251A Consistent identifiers

(1) The Secretary of State must by regulations specify a description of consistent identifier for the purposes of this section.

(2) "Consistent identifier" means any identifier (such as, for example, a number or code used for identification purposes) that—

(a) relates to an individual, and

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(b) forms part of a set of similar identifiers that is of general application.

(3) Subsection (4) applies if—

(a) a relevant health or adult social care commissioner or provider ("the relevant person") processes information about an individual, and

(b) the individual is one to whom a consistent identifier of the description specified under subsection (1) relates.

(4) If this subsection applies the relevant person must include the consistent identifier in the information processed (but this is subject to subsections (5) to (8)).

(5) Subsection (4) applies only so far as the relevant person considers that the inclusion is—

(a) likely to facilitate the provision to the individual of health services or adult social care in England, and

(b) in the individual's best interests.

(6) The relevant person need not comply with subsection (4) if the relevant person reasonably considers that one or more of the following criteria apply—

(a) the relevant person does not know the consistent identifier and is not reasonably able to learn it;

(b) the individual objects, or would be likely to object, to the inclusion of the consistent identifier in the information;

(c) the information concerns, or is connected with, the provision of health services or adult social care by an anonymous access provider;

(d) for any other reason the relevant person is not reasonably able, or should not be required, to comply with subsection (4).

(7) This section does not permit the relevant person to do anything which, but for this section, would be inconsistent with—

(a) any provision **[**F69of the data protection legislation**]**, or

(b) a common law duty of care or confidence.

(8) This section does not require the relevant person to do anything which the relevant person is required to do by or under provision included in a contract by virtue of any provision of the National Health Service Act 2006 (and, accordingly, any such requirement is to be treated as arising under the contract, and not under this section).

[F70(9) In this section, "the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).**]**

Textual Amendments

F69 Words in s. 251A(7)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 173(2)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F70 S. 251A(9) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 173(3)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

[F71**251B Duty to share information**

(1) This section applies in relation to information about an individual that is held by a relevant health or adult social care commissioner or provider ("the relevant person").

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(2) The relevant person must ensure that the information is disclosed to—

(a) persons working for the relevant person, and

(b) any other relevant health or adult social care commissioner or provider with whom the relevant person communicates about the individual,

but this is subject to subsections (3) to (6).

(3) Subsection (2) applies only so far as the relevant person considers that the disclosure is—

(a) likely to facilitate the provision to the individual of health services or adult social care in England, and

(b) in the individual's best interests.

(4) The relevant person need not comply with subsection (2) if the relevant person reasonably considers that one or more of the following apply—

(a) the individual objects, or would be likely to object, to the disclosure of the information;

(b) the information concerns, or is connected with, the provision of health services or adult social care by an anonymous access provider;

(c) for any other reason the relevant person is not reasonably able, or should not be required, to comply with subsection (2).

(5) This section does not permit the relevant person to do anything which, but for this section, would be inconsistent with—

(a) any provision **[**F72of the data protection legislation**]**, or

(b) a common law duty of care or confidence.

(6) This section does not require the relevant person to do anything which the relevant person is required to do under a common law duty of care (and, accordingly, any such requirement is to be treated as arising under that common law duty and not under this section).

F73(7) **[** In this section, "the data protection legislation" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).**]]**

Textual Amendments

F71 S. 251B inserted (1.10.2015) by Health and Social Care (Safety and Quality) Act 2015 (c. 28), **ss. 3**, 6(4); S.I. 2015/1438, reg. 3(b)

F72 Words in s. 251B(5)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 174(2)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F73 S. 251B(7) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 174(3)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

[F74**251C** Continuity of information: interpretation

(1) This section applies for the purposes of sections 251A and 251B and this section.

(2) "Relevant health or adult social care commissioner or provider" means—

(a) any public body so far as it exercises functions in connection with the provision of health services, or of adult social care in England, and

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(b) any person (other than a public body) so far as the person provides such services or care—

(i) pursuant to arrangements made with a public body exercising functions in connection with the provision of the services or care, and

(ii) otherwise than as a member or officer of a body or an employee of a person,

but this is subject to subsection (3).

(3) The Secretary of State may by regulations provide for a person to be excluded from the definition of "relevant health or adult social care commissioner or provider", whether generally or in particular cases.

(4) Regulations under subsection (3) may, in particular, provide for a person to be excluded in relation to the exercise of particular functions or the exercise of functions in relation to particular descriptions of person, premises or institution.

(5) A reference to an inclusion or a disclosure being likely to facilitate the provision to an individual of health services or adult social care in England is to its being likely to facilitate that provision directly (rather than by means of a clinical trial, a study, an audit, or any other indirect means).

(6) "Anonymous access provider" means a relevant health or adult social care commissioner or provider (whether "the relevant person" under section 251A(3)(a) or 251B(1) or another person) whose services or care are, or may be, received by individuals anonymously due to the nature of the services or care.

(7) Other terms have the same meaning as in section 250 (and "processes" and "processed" are to be read in accordance with the meaning of "processing" in that section).**]]**

Textual Amendments

F74 S. 251C inserted (25.6.2015) by Health and Social Care (Safety and Quality) Act 2015 (c. 28), **ss. 4**, 6(4); S.I. 2015/1438, reg. 2(b) (with reg. 4)

Modifications etc. (not altering text)

C6 S. 251C modified (temp.) (25.6.2015) by The Health and Social Care (Safety and Quality) Act 2015 (Commencement No. 1 and Transitory Provision) Regulations 2015 (S.I. 2015/1438), **reg. 4**

CHAPTER 2

THE HEALTH AND SOCIAL CARE INFORMATION CENTRE

Establishment and general duties

252 The Health and Social Care Information Centre

(1) There is to be a body corporate known as the Health and Social Care Information Centre (referred to in this Chapter as "the Information Centre").

(2) Schedule 18 (which makes further provision about the Information Centre) has effect.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information

I424 S. 252 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

253 General duties

(1) In exercising its functions the Information Centre must have regard to—

(a) the information standards published by the Secretary of State or the Board under section 250,

(b) such guidance issued by the Secretary of State as the Secretary of State may require,

(c) such guidance issued by the Board as the Board may require,

⌊[F75](ca) the need to respect and promote the privacy of recipients of health services and of adult social care in England,⌋ and

(d) the need to promote the effective, efficient and economic use of resources in the provision of health services and of adult social care in England.

(2) The Information Centre must—

(a) seek to minimise the burdens it imposes on others, and

(b) exercise its functions effectively, efficiently and economically.

(3) In this Chapter—

"adult social care"—

(a) includes all forms of personal care and other practical assistance provided for individuals who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance, but

(b) does not include anything provided by an establishment or agency for which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of the Care Standards Act 2000;

"health services" means services which must or may be provided as part of the health service in England.

Textual Amendments

F75 S. 253(1)(ca) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 122(2)**, 127(1); S.I. 2014/1714, art. 3(2)(d)

Commencement Information

I425 S. 253 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Functions: information systems

254 Powers to direct Information Centre to establish information systems

(1) The Secretary of State or the Board may direct the Information Centre to establish and operate a system for the collection or analysis of information of a description specified in the direction.

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(2) A direction may be given under subsection (1) by the Secretary of State only if—

(a) the Secretary of State considers that the information which could be obtained by complying with the direction is information which it is necessary or expedient for the Secretary of State to have in relation to the exercise by the Secretary of State of the Secretary of State's functions in connection with the provision of health services or of adult social care in England, or

(b) the Secretary of State otherwise considers it to be in the interests of the health service in England or of the recipients or providers of adult social care in England for the direction to be given.

(3) A direction may be given under subsection (1) by the Board only if the Board considers that the information which could be obtained by complying with the direction is information which it is necessary or expedient for the Board to have in relation to its exercise of functions in connection with the provision of NHS services.

(4) In this Chapter "NHS services" means services the provision of which is arranged by the Board or a clinical commissioning group under the National Health Service Act 2006 (including pursuant to arrangements made under section 7A of that Act) or section 117 of the Mental Health Act 1983 (after-care).

(5) Before giving a direction under subsection (1) the Secretary of State or (as the case may be) the Board must consult the Information Centre.

(6) A function conferred by a direction given by the Secretary of State or the Board under subsection (1) is subject to directions given by the Secretary of State or (as the case may be) the Board about the Information Centre's exercise of the function.

(7) The Information Centre may charge the Board a reasonable fee in respect of the cost of complying with a direction given by the Board under subsection (1).

Commencement Information

I426 S. 254 partly in force; s. 254 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I427 S. 254 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

255 Powers to request Information Centre to establish information systems

(1) Any person (including a devolved authority) may request the Information Centre to establish and operate a system for the collection or analysis of information of a description specified in the request.

(2) A request may be made under subsection (1) by a person only if the person considers that the information which could be obtained by complying with the request is information which it is necessary or expedient for the person to have in relation to the person's exercise of functions, or carrying out of activities, in connection with the provision of health care or adult social care.

(3) The Information Centre must comply with a mandatory request unless the Centre considers that the request relates to information of a description prescribed in regulations.

(4) For the purposes of this Chapter a request under subsection (1) is a mandatory request if—

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(a) it is made by a principal body, and

(b) the body considers that the information which could be obtained by complying with the request is information which it is necessary or expedient for the body to have in relation to its discharge of a duty in connection with the provision of health services or of adult social care in England.

(5) The Secretary of State or the Board may direct the Information Centre not to comply with a request specified in the direction which is not a mandatory request.

(6) The Secretary of State or the Board may direct the Information Centre to comply with a request specified in the direction which was made by a person outside England.

(7) Subsection (8) applies where the Information Centre has discretion under this section as to whether to comply with—

(a) a mandatory request, or

(b) other request under subsection (1).

(8) In deciding whether to comply with the request, the Information Centre—

(a) must, in particular, consider whether doing so would interfere to an unreasonable extent with the exercise by the Centre of any of its functions, and

(b) may take into account the extent to which the principal body or other person making the request has had regard to—

(i) the code of practice prepared and published by the Centre under section 263, and

(ii) advice or guidance given by the Centre under section 265.

(9) In this section "principal body" means—

(a) Monitor,

(b) the Care Quality Commission,

(c) the National Institute for Health and Care Excellence, and

(d) such other persons as may be prescribed in regulations.

(10) In this Chapter "health care" includes all forms of health care whether relating to physical or mental health and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

Commencement Information

I428 S. 255 partly in force; s. 255 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I429 S. 255 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

256 Requests for collection under section 255: confidential information

(1) A request under section 255 is a confidential collection request if it is a request for the Information Centre to establish and operate a system for the collection of information which is in a form which—

(a) identifies any individual to whom the information relates who is not an individual who provides health care or adult social care, or

(b) enables the identity of such an individual to be ascertained.

(2) A person may make a confidential collection request under section 255 only if the request—

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(a) is a mandatory request,
(b) relates to information which the person making the request ("R") may require to be disclosed to R or to the Information Centre by the person holding it, or
(c) relates to information which may otherwise be lawfully disclosed to the Information Centre or to R by the person holding it.

Commencement Information
I430 S. 256 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

257 Requests under section 255: supplementary

(1) The Information Centre must publish procedures for—
(a) the making and consideration of requests under section 255, and
(b) the reconsideration by the Centre of a decision not to comply with such a request.

(2) The procedure mentioned in subsection (1)(b) must provide for the person who made the request to have an opportunity to make representations to the Information Centre within a reasonable period for the purposes of the reconsideration.

(3) The Information Centre may charge a person a reasonable fee in respect of the cost of complying with a request made by that person under section 255.

(4) Before making a request under section 255 a person must consult the Information Centre.

(5) The Information Centre must publish details of—
(a) any mandatory request, and
(b) any other request under section 255 with which the Centre is obliged, or decides, to comply.

Commencement Information
I431 S. 257 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

258 Information systems: supplementary

(1) Before establishing an information system pursuant to a direction under section 254 or a request under section 255 the Information Centre must consult—
(a) the person who gave the direction or made the request,
(b) representatives of other persons who the Centre considers are likely to use the information to which the direction or request relates,
(c) representatives of persons from whom any information will be collected, and
(d) such other persons as the Centre considers appropriate.

(2) If the Information Centre reasonably believes that there is no longer a need to retain information which it has obtained by complying with a direction under section 254 or a request under section 255, the Centre may destroy the information.

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Commencement Information

I432 S. 258 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

259 Powers to require and request provision of information

(1) The Information Centre may—

(a) require any person mentioned in subsection (2) to provide it with any information which the Centre considers it necessary or expedient for the Centre to have for the purposes of any function it exercises by virtue of this Chapter, and

(b) request any other person to provide it with such information.

(2) Those persons are—

(a) a health or social care body;

(b) any person (other than a public body) who provides health services, or adult social care in England, pursuant to arrangements made with a public body exercising functions in connection with the provision of such services or care.

(3) But the Information Centre may not impose a requirement under subsection (1)(a) for the purpose of complying with a confidential collection request falling within section 256(2)(c).

(4) In such a case, the Information Centre may, however, request any person mentioned in subsection (2) to provide it with any information which the Centre considers it necessary or expedient for the Centre to have for the purpose of complying with the request.

(5) A requirement under subsection (1)(a) must be complied with by providing the information to the Information Centre in such form and manner, and within such period, as the Centre may specify.

(6) If the Information Centre considers it appropriate to do so, the Centre may make a payment to any person who has provided information to the Centre pursuant to a request made under subsection (1)(b) in respect of the costs to that person of doing so.

(7) If the Information Centre considers it appropriate to do so, the Centre may make a payment to any person mentioned in subsection (2)(b) who has provided information to the Centre pursuant to a request made under subsection (4) in respect of the costs to that person of doing so.

(8) The Information Centre must publish a procedure for notifying persons of requirements imposed, and requests made, under this section.

(9) In imposing requirements under this section the Information Centre must co-operate with any other person who is authorised to require the provision of information by a person mentioned in subsection (2).

(10) The provision of information under this section—

(a) does not breach any obligation of confidence owed by the person providing it, but

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(b) is subject to any express restriction on disclosure imposed by or under another Act (other than any restriction which allows disclosure if authorised by or under an Act).

(11) In this Chapter "health or social care body" means a public body which exercises functions in connection with the provision of health services or of adult social care in England.

Commencement Information
I433 S. 259 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

260 Publication of information

(1) The Information Centre must publish all information which it obtains by complying with a direction under section 254 or a request under section 255 unless the information falls within subsection (2); and, subject to subsection (3), if the information falls within that subsection, the Centre must not publish it.

(2) Information falls within this subsection if—

(a) the information is in a form which identifies any relevant person to whom the information relates or enables the identity of such a relevant person to be ascertained and the Centre, after taking into account the public interest as well as the interests of the relevant person, considers that it is not appropriate for the information to be published,

(b) the information is in a form which identifies any individual to whom the information relates who is not a relevant person or enables the identity of such an individual to be ascertained,

(c) the Centre considers that—

(i) the information fails to meet the information standards published under section 250 (so far as they are applicable), and

(ii) it would not be in the public interest to publish the information, or

(d) the information is of a description specified in a direction given to the Centre by the Secretary of State or the Board.

(3) A direction under section 254 may provide that the obligation to publish imposed by subsection (1) applies to information falling within subsection (2)(a) which is obtained by complying with the direction.

(4) Where the Information Centre publishes information which it obtains by complying with a direction under section 254 or a mandatory request under section 255, the Centre—

(a) must comply with the requirements (if any) specified in the direction or mandatory request as to the form, manner and timing of publication of the information, and

(b) may publish the information in such other form and such other manner, and at such other times, as it considers appropriate.

(5) Where the Information Centre publishes information which it obtains by complying with a request under section 255 other than a mandatory request, the Centre—

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(a) may act in accordance with such provision (if any) as may be included in the request as to the form, manner and timing of publication of the information, and

(b) may publish the information in such other form and such other manner, and at such other times, as it considers appropriate.

(6) In considering the appropriate form, manner and timing of publication of information under this section, the Information Centre must have regard to—

(a) the need for the information to be easily accessible,

(b) the persons who the Centre considers likely to use the information, and

(c) the uses to which the Centre considers the information is likely to be put.

(7) In this Chapter "relevant person" means—

(a) any person who provides health care or adult social care, or

(b) any body corporate not falling within paragraph (a).

Commencement Information

I434 S. 260 partly in force; s. 260 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I435 S. 260 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

261 Other dissemination of information

(1) The Information Centre may disseminate (other than by way of publication), to any such persons and in such form and manner and at such times, as it considers appropriate, any information—

(a) which it obtains by complying with a direction under section 254 or a request under section 255, and

(b) which falls within subsection (2).

[F76(1A) But the Information Centre may do so only if it considers that disseminating the information would be for the purposes of—

(a) the provision of health care or adult social care, or

(b) the promotion of health.**]**

(2) Information falls within this subsection if—

(a) the information is required to be published under section 260;

(b) the information is in a form which identifies any relevant person to whom the information relates or enables the identity of such a relevant person to be ascertained and—

(i) the relevant person has consented to the dissemination, or

(ii) the Centre, after taking into account the public interest as well as the interests of the relevant person, considers that it is appropriate for the information to be disseminated;

(c) the information is in a form which identifies any individual to whom the information relates who is not a relevant person or enables the identity of such an individual to be ascertained and the individual has consented to the dissemination;

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(d) the Centre is prohibited from publishing the information only by virtue of it falling within section 260(2)(c) and the Centre considers it would be in the public interest for the information to be disseminated;

(e) the Centre is prohibited from publishing the information only by virtue of a direction given under section 260(2)(d) and that direction provides that the power in subsection (1) applies to the information.

(3) A direction under section 260(2)(d) may require the Information Centre to disseminate information which the Centre is prohibited from publishing only by virtue of the direction.

(4) The Information Centre may also disseminate, in such form and manner and at such times as it considers appropriate, any information which it collects pursuant to a direction under section 254 or a request under section 255 (whether or not it falls within subsection (2)) to any person to whom the information could have been lawfully disclosed by the person from whom the Centre collected the information.

(5) The Information Centre may also disclose information which it obtains by complying with a direction under section 254 or a request under section 255 (whether or not it falls within subsection (2)) if—

(a) the information has previously been lawfully disclosed to the public,

(b) the disclosure is made in accordance with any court order,

(c) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,

(d) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person conferred under or by virtue of any provision of this or any other Act,

(e) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or

(f) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).

(6) Paragraphs (a), (b) and (f) of subsection (5) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

(7) Nothing in this section or section 262 prevents the Information Centre from disseminating information (otherwise than by publishing it) under or by virtue of any other provision of this or any other Act.

(8) For the purposes of this section and section 262 the provision by the Information Centre of information which it has obtained by complying with a direction under section 254 or a request under section 255 to the person who gave the direction or made the request is to be treated as dissemination by the Centre of that information to that person.

Textual Amendments

F76 S. 261(1A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 122(3)**, 127(1); S.I. 2014/1714, art. 3(2)(d)

Commencement Information

I436 S. 261 partly in force; s. 261 in force for specified purposes at Royal Assent, see s. 306(1)(d)

Status: *This version of this Act contains provisions that are prospective.*
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I437 S. 261 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

262 Other dissemination: directions and requests under sections 254 and 255

(1) A direction under section 254 may require the Information Centre to disseminate information which it obtains by complying with the direction if the information falls within subsection (2).

(2) Information falls within this subsection if—

(a) the information is required to be published under section 260;

(b) the information is in a form which identifies any relevant person to whom the information relates or enables the identity of such a relevant person to be ascertained and—

(i) the relevant person has consented to the dissemination, or

(ii) the person giving the direction, after taking into account the public interest as well as the interests of the relevant person, considers that it is appropriate for the information to be disseminated;

(c) the information is in a form which identifies any individual to whom the information relates who is not a relevant person or enables the identity of such an individual to be ascertained and the individual has consented to the dissemination;

(d) the Centre is prohibited from publishing the information only by virtue of it falling within section 260(2)(c) and the person giving the direction considers it would be in the public interest for the information to be disseminated.

(3) A direction under section 254 may require the Information Centre to exercise—

(a) the power conferred by section 261(4) in relation to information which it collects pursuant to the direction, or

(b) any other power it has under or by virtue of any other provision of this Act (other than section 261(1) or (5)) or any other Act to disseminate information which it obtains by complying with the direction.

(4) A request under section 255 may request the Information Centre to exercise—

(a) the power conferred by section 261(1) or (4) in relation to information which it obtains by complying with the request, or

(b) any other power it has to disseminate such information under or by virtue of any other provision of this or any other Act.

(5) A direction under section 254 may require, and a request under section 255 may request, the Information Centre not to exercise the power conferred by section 261(1) or (4) in relation to information which it obtains by complying with the direction or request.

(6) Section 255(3) does not apply in relation to anything included in a mandatory request by virtue of subsection (4) or (5).

(7) A requirement imposed on, or a request made to, the Information Centre in accordance with this section to disseminate information may include a requirement or request about the persons to whom the information is to be disseminated and the form, manner and timing of dissemination.

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Commencement Information

I438 S. 262 partly in force; s. 262 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I439 S. 262 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

[F77 262A Publication and other dissemination: supplementary

In exercising any function under this Act of publishing or otherwise disseminating information, the Information Centre must have regard to any advice given to it by the committee appointed by the Health Research Authority under paragraph 8(1) of Schedule 7 to the Care Act 2014 (committee to advise in connection with information dissemination etc).**]**

Textual Amendments

F77 S. 262A inserted (1.1.2015) by Care Act 2014 (c. 23), **ss. 122(4)**, 127(1); S.I. 2014/2473, art. 5(l)

263 Code of practice on confidential information

(1) The Information Centre must prepare and publish a code in respect of the practice to be followed in relation to the collection, analysis, publication and other dissemination of confidential information concerning, or connected with, the provision of health services or of adult social care in England.

(2) For the purposes of this section "confidential information" is—

(a) information which is in a form which identifies any individual to whom the information relates or enables the identity of such an individual to be ascertained, or

(b) any other information in respect of which the person who holds it owes an obligation of confidence.

(3) Before publishing the code, the Information Centre must consult—

(a) the Secretary of State,

(b) the Board, and

(c) such other persons as the Centre considers appropriate.

(4) The Information Centre must not publish the code without the approval of—

(a) the Secretary of State, and

(b) the Board, so far as the code relates to information concerning, or connected with, the provision of NHS services.

(5) The Information Centre must keep the code under review and may revise it as it considers appropriate (and a reference in this section to the code includes a reference to any revised code).

(6) A health or social care body must have regard to the code in exercising functions in connection with the provision of health services or of adult social care in England.

(7) A person, other than a public body, who provides health services, or adult social care in England, pursuant to arrangements made with a public body exercising functions

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in connection with the provision of such services or care must, in providing those services or that care, have regard to the code.

Commencement Information

I440 S. 263 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

264 Information Register

The Information Centre must maintain and publish a register containing descriptions of the information which has been obtained by virtue of this Chapter.

Commencement Information

I441 S. 264 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

265 Advice or guidance

(1) The Information Centre—

(a) may give advice or guidance to any person mentioned in subsection (2) on any matter relating to the collection, analysis, publication or other dissemination of information, and

(b) must, if requested to do so by the Secretary of State or the Board, give advice or guidance on any such matter as may be specified in the request to—

(i) the Secretary of State or (as the case may be) the Board;

(ii) such other persons as may be specified in the request.

(2) Those persons are—

(a) the Secretary of State,

(b) the Board,

(c) any person who makes, or is proposing to make, a request under section 255,

(d) any health or social care body, and

(e) any person (including a devolved authority) who collects, or is proposing to collect, information which relates to the provision of health care or adult social care.

(3) The Secretary of State must, at least once in any review period, exercise the power under subsection (1)(b) by requesting the Information Centre to give the Secretary of State advice about ways in which the burdens relating to the collection of information imposed on health or social care bodies and other persons may be minimised.

(4) For the purposes of subsection (3) a review period is—

(a) the period of 3 years beginning with the day on which this section comes into force, and

(b) each subsequent period of 3 years.

(5) A health or social care body to whom advice or guidance is given under this section must have regard to the advice or guidance in exercising functions in connection with the provision of health services or of adult social care in England.

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(6) A person, other than a public body, who provides health services, or adult social care in England, pursuant to arrangements made with a public body exercising functions in connection with the provision of such services or care must, in providing those services or that care, have regard to any advice or guidance given to the person under this section.

Commencement Information
I442 S. 265 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Functions: quality of health and social care information

266 Assessment of quality of information

The Information Centre must from time to time—

(a) assess the extent to which information it collects pursuant to a direction under section 254 or a request under 255 meets the information standards published under section 250 (so far as they are applicable), and

(b) publish a record of the results of the assessment.

Commencement Information
I443 S. 266 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

267 Power to establish accreditation scheme

(1) Regulations may make provision for the establishment and operation of a scheme for the accreditation of information service providers ("the accreditation scheme").

(2) The regulations may provide that the accreditation scheme is to be established and operated by the Information Centre or such other person as the Secretary of State may specify in the regulations (the "operator").

(3) The regulations may, in particular, confer power on the operator—

(a) to establish the procedure for accrediting information service providers under the scheme,

(b) to set the criteria to be met by a provider in order to be accredited ("the accreditation criteria"),

(c) to keep an accreditation under the scheme under review, and

(d) to charge a reasonable fee in respect of an application for accreditation.

(4) The regulations may make provision requiring the operator—

(a) to publish details of the scheme, including, in particular, the accreditation criteria,

(b) to provide for the review of a decision to refuse an application for accreditation, and

(c) to provide advice to applicants for accreditation with a view to ensuring that they meet the accreditation criteria.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) In this section "information service provider" means any person other than a public body who provides services involving the collection, analysis, publication or other dissemination of information in connection with the provision of health services or of adult social care in England.

Commencement Information

I444 S. 267 partly in force; s. 267 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I445 S. 267 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Functions: other

268 Database of quality indicators

(1) Regulations may make provision conferring functions on the Information Centre in connection with the establishment, maintenance and publication of a database of quality indicators in relation to the provision of health services and of adult social care in England.

(2) The regulations may, in particular, make provision about—

(a) the persons who may propose a quality indicator for inclusion in the database,

(b) the giving of advice and guidance by the Information Centre to such persons in relation to such a proposal,

(c) the assessment and approval of quality indicators proposed for inclusion in the database by such person as the Secretary of State or the Board may direct, and

(d) the inclusion in the database of guidance about how providers may demonstrate performance measured against the quality indicators.

(3) In this section a "quality indicator" means a factor by reference to which performance in the provision of services or care can be measured.

Commencement Information

I446 S. 268 partly in force; s. 268 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I447 S. 268 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

269 Power to confer functions in relation to identification of GPs

(1) Regulations may make provision conferring functions on the Information Centre in connection with the verification of the identity of general medical practitioners for purposes connected with the health service in England.

(2) In subsection (1) "general medical practitioners" means persons registered in the General Practitioner Register kept by the General Medical Council.

Commencement Information

I448 S. 269 partly in force; s. 269 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I449 S. 269 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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270 Additional functions

(1) The Information Centre may do any of the following—

(a) acquire, produce, manufacture and supply goods,

(b) acquire land by agreement and manage and deal with land,

(c) supply accommodation to any person,

(d) supply services to any person and provide new services,

(e) provide instruction for any person, and

(f) develop and exploit ideas and exploit intellectual property.

(2) But the Information Centre may exercise a power under subsection (1) only—

(a) if doing so involves, or is connected with, the collection, analysis, publication or other dissemination of information, and

(b) to the extent that its exercise does not to any significant extent interfere with the performance by the Centre of any function under or by virtue of any other provision of this or any other Act.

(3) The Information Centre may—

(a) charge for anything it does in the exercise of a power under subsection (1), and

(b) calculate any such charge on the basis that it considers to be the appropriate commercial basis.

Commencement Information

I450 S. 270 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

271 Arrangements with other bodies

(1) The Information Centre may arrange with any person or body to provide, or assist in providing, any service which the Centre is required or authorised to provide by virtue of this Chapter.

(2) The power under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to the Information Centre.

Commencement Information

I451 S. 271 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

272 Failure by Information Centre to discharge any of its functions

(1) The Secretary of State may give a direction to the Information Centre if the Secretary of State considers that—

(a) the Centre—

(i) is failing or has failed to discharge any of its functions, or

(ii) is failing or has failed properly to discharge any of its functions, and

(b) the failure is significant.

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(2) A direction under subsection (1) may direct the Information Centre to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.

(3) If the Information Centre fails to comply with a direction under subsection (1), the Secretary of State may—

(a) discharge the functions to which it relates, or

(b) make arrangements for any other person to discharge them on the Secretary of State's behalf.

(4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish reasons for doing so.

(5) For the purposes of this section, a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service in England or (as the case may be) with what otherwise appears to the Secretary of State to be the purpose for which it is conferred.

Commencement Information

I452 S. 272 partly in force; s. 272 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I453 S. 272 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

273 Protection from personal liability

(1) Section 265 of the Public Health Act 1875 (which relates to the protection of members and officers of certain authorities from personal liability) has effect as if there were included in the authorities referred to in that section a reference to the Information Centre.

(2) In its application to the Information Centre as provided for by subsection (1), section 265 of that Act has effect as if any reference in that section to the Public Health Act 1875 were a reference to this Act.

Commencement Information

I454 S. 273 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

General and supplementary

274 Powers of Secretary of State or Board to give directions

(1) Regulations may make provision conferring powers on the Secretary of State or the Board to give directions—

(a) requiring a health or social care body to exercise such of the Information Centre's functions as may be specified;

(b) requiring the Centre or another health or social care body to exercise such information functions of the Secretary of State or (as the case may be) the Board as may be specified;

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(c) requiring the Centre to exercise such of the information functions of any health or social care body as may be specified;

(d) requiring the Centre to exercise such systems delivery functions of the Secretary of State or (as the case may be) the Board as may be specified.

(2) A function required to be exercised by a direction given by the Secretary of State or the Board by virtue of subsection (1) is subject to directions given by the Secretary of State or (as the case may be) the Board about the exercise of the function.

(3) A power conferred on the Secretary of State under subsection (1)(a) must provide that a direction may be given in respect of a function of the Information Centre only if the function relates to information which is of a description prescribed in the regulations and—

(a) in respect of which the Secretary of State may give a direction under section 254, or

(b) which the Secretary of State considers is information in respect of which a mandatory request may be made under section 255.

(4) A power conferred on the Board under subsection (1)(a) must provide that a direction may be given in respect of a function of the Information Centre only if the function relates to information which is of a description prescribed in the regulations and in respect of which the Board may give a direction under section 254.

(5) A power conferred under subsection (1)(a) must provide that a direction must include provision requiring the body in question to provide the Information Centre with the information it needs to comply with the duty under section 264 (duty to publish information register).

(6) A power conferred on the Secretary of State under subsection (1)(d) must provide that a direction may include provision about payments by the Secretary of State to the Information Centre for things done in the exercise of the function in respect of which the direction is given.

(7) A power conferred on the Board under subsection (1)(d) must provide that a direction must permit the Information Centre to charge the Board a reasonable fee in respect of the cost of complying with the direction.

(8) A power conferred under subsection (1)(d) must provide that the giving of a direction does not prevent the Secretary of State or (as the case may be) the Board from exercising the function in respect of which the direction is given.

(9) In this section—

"information function" means a function in relation to the collection, analysis, publication or other dissemination of information;

"specified" means specified in a direction given under regulations made under subsection (1);

"systems delivery function"—

(a) in relation to the Secretary of State, means a function of the Secretary of State which is exercisable in relation to the development or operation of information or communications systems in connection with the provision of health services or of adult social care in England;

(b) in relation to the Board, means a function of the Board which is exercisable in relation to the development or operation of information

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or communications systems in connection with the provision of NHS services.

Commencement Information

I455 S. 274 partly in force; s. 274 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I456 S. 274 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

275 Interpretation of this Chapter

In this Chapter—

"adult social care" has the meaning given by section 253(3);

"the Board" means the National Health Service Commissioning Board;

"devolved authority" means—

(a) the Scottish Ministers;

(b) the Welsh Ministers; and

(c) a Northern Ireland Minister;

"health care" has the meaning given by section 255(10);

"health or social care body" has the meaning given by section 259(11);

"the health service" has the same meaning as in the National Health Service Act 2006 (see section 275(1) of that Act);

"health services" has the meaning given by section 253(3);

"mandatory request" has the meaning given by section 255(4);

"Northern Ireland Minister" includes the First Minister, the deputy First Minister and a Northern Ireland Department;

"public body" means a body or other person whose functions—

(a) are of a public nature, or

(b) include functions of that nature,

but in the latter case, the body or person is a public body to the extent only of those functions;

"relevant person" has the meaning given by section 260(7).

Commencement Information

I457 S. 275 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

276 Dissolution of predecessor body

The Special Health Authority known as the Health and Social Care Information Centre is abolished.

Commencement Information

I458 S. 276 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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277 Consequential provision

Schedule 19 (which contains consequential provision) has effect.

Commencement Information
I459 S. 277 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 10

ABOLITION OF CERTAIN PUBLIC BODIES ETC

278 The Alcohol Education and Research Council

(1) The Alcohol Education and Research Council is abolished.

(2) The Licensing (Alcohol Education and Research) Act 1981 is repealed.

(3) Part 1 of Schedule 20 (which contains consequential amendments and savings) has effect.

Commencement Information
I460 S. 278 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

279 The Appointments Commission

(1) The Appointments Commission is abolished.

(2) Part 5 of the Health Act 2006 (which established the Commission) is repealed.

(3) Part 2 of Schedule 20 (which contains consequential amendments and savings) has effect.

Commencement Information
I461 S. 279 in force at 31.10.2012 by S.I. 2012/1831, **art. 2(3)**

280 The National Information Governance Board for Health and Social Care

(1) The National Information Governance Board for Health and Social Care is abolished.

(2) Omit sections 250A to 250D of the National Health Service Act 2006 (which established the Board).

(3) After section 20 of the Health and Social Care Act 2008 insert—

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"**20A Functions relating to processing of information by registered persons**

(1) The Commission has the following functions in relation to the processing of relevant information—

(a) to monitor the practice followed by registered persons in relation to such processing, and

(b) to keep the National Health Service Commissioning Board and Monitor informed about the practice being followed by registered persons in relation to such processing.

(2) The Commission must, in exercising those functions, seek to improve the practice followed by registered persons in relation to the processing of relevant information.

(3) In this section "relevant information" means—

(a) patient information,

(b) any other information obtained or generated in the course of the provision of the health service continued under section 1 of the National Health Service Act 2006,

(c) any other information obtained or generated in the course of the exercise by an English local authority of its adult social services functions, and

(d) any other information obtained or generated in the course of the carrying on by an English local authority of adult placement schemes in connection with which arrangements are made for the provision of personal care.

(4) In subsection (3) "patient information" means—

(a) information (however recorded) which relates to the physical or mental health or condition of an individual ("P"), to the diagnosis of P's condition or to P's care or treatment, and

(b) information (however recorded) which is to any extent derived, directly or indirectly, from that information,

whether or not the identity of the individual in question is ascertainable from the information.

(5) In this section—

"adult placement scheme" and "personal care" each have such meaning as they have from time to time in regulations under section 20;

"processing", in relation to information, has the same meaning as in the Data Protection Act 1998;

"registered person" means a person registered under this Chapter as a manager or service provider in respect of a regulated activity."

(4) In section 80(3) of that Act (persons Commission must consult before publishing code of practice on confidential personal information), for paragraph (a) substitute—

"(a) the National Health Service Commissioning Board,".

(5) In section 252 of the National Health Service Act 2006 (consultation before making regulations on control of patient information), in subsection (1), for "the National

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Information Governance Board for Health and Social Care" substitute "the Care Quality Commission"; and in consequence of that—

(a) for the title to that section substitute "Consultation with the Care Quality Commission", and

(b) in section 271(3)(g) of that Act—

(i) for "sections" substitute "section", and

(ii) omit "and 252 (consultation with National Information Governance Board)".

(6) The Care Quality Commission must exercise its power under paragraph 6(3) of Schedule 1 to the Health and Social Care Act 2008 so as to appoint a committee, to be known as "the National Information Governance Committee", until 31 March 2015.

(7) The purpose of the committee is to provide the Care Quality Commission with advice on and assistance with the exercise of its functions relating to the processing of relevant information within the meaning of section 20A of the Health and Social Care Act 2008.

(8) Part 3 of Schedule 20 (which contains consequential amendments and savings) has effect.

Commencement Information

I462 S. 280 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

281 The National Patient Safety Agency

(1) The National Patient Safety Agency is abolished.

(2) The National Patient Safety Agency (Establishment and Constitution) Order 2001 (S.I. 2001/1743) is revoked.

(3) In section 13 of the NHS Redress Act 2006 (scheme authority's duties of co-operation), omit subsection (2).

Commencement Information

I463 S. 281 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

282 The NHS Institute for Innovation and Improvement

(1) The NHS Institute for Innovation and Improvement is abolished.

(2) The NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005 (S.I. 2005/1446) is revoked.

Commencement Information

I464 S. 282 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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283 Standing advisory committees

(1) Omit section 250 of, and Schedule 19 to, the National Health Service Act 2006 (Secretary of State's standing advisory committees).

(2) In consequence of the repeal of Schedule 19 to that Act, in Schedule 3 to the Health Act 2009, omit paragraph 13.

(3) The repeal of section 250 of the National Health Service Act 2006 does not affect the continuing effect of the National Health Service (Standing Advisory Committees) Order 1981 (S.I. 1981/597) (establishment of the Joint Committee on Vaccination and Immunisation) made under that section.

Commencement Information
I465 S. 283 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

PART 11

MISCELLANEOUS

Information relating to births and deaths etc.

284 Special notices of births and deaths

(1) Section 269 of the National Health Service Act 2006 (special notices of births and deaths) is amended as follows.

(2) For subsection (2) substitute—

"(2) Each registrar of births and deaths must furnish to such relevant body or bodies as may be determined in accordance with regulations the particulars of such births or deaths entered in a register of births or deaths kept for the registrar's sub-district as may be prescribed."

(3) In subsection (4) for "the Primary Care Trust for the area in which the birth takes place" substitute "such relevant body or bodies as may be determined in accordance with regulations".

(4) In subsection (6)—
(a) after "under subsection (4)" insert "to a relevant body", and
(b) for "the Primary Care Trust" (in each place where it occurs) substitute "the body".

(5) In subsection (7)—
(a) for "A Primary Care Trust" substitute "A relevant body to whom notice is required to be given under subsection (4)", and
(b) for "any medical practitioner or midwife residing or practising within its area" substitute "such descriptions of medical practitioners or midwives as may be prescribed".

(6) In subsection (9) for "the Primary Care Trust concerned" substitute "the relevant body or bodies to whom the failure relates".

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(7) In subsection (10), in paragraph (a) for "a Primary Care Trust" substitute "a relevant body".

(8) After subsection (10) insert—

"(11) For the purposes of this section, the following are relevant bodies—

(a) the National Health Service Commissioning Board,

(b) clinical commissioning groups,

(c) local authorities.

(12) Information received by a local authority by virtue of this section may be used by it only for the purposes of functions exercisable by it in relation to the health service.

(13) In this section, "local authority" has the same meaning as in section 2B."

(9) Until the commencement of section 34, section 269(11) of the National Health Service Act 2006 has effect as if Primary Care Trusts were included in the list of bodies that are relevant bodies for the purposes of that section.

Commencement Information

I466 S. 284 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

285 Provision of information by Registrar General

(1) Section 270 of the National Health Service Act 2006 (provision of information by Registrar General) is amended as follows.

(2) In subsection (1) —

(a) for "the Secretary of State" substitute "any of the following persons", and

(b) at the end insert "—

(a) the Secretary of State,

(b) the Board,

(c) a clinical commissioning group,

(d) a local authority,

(e) the National Institute for Health and Care Excellence,

(f) the Health and Social Care Information Centre,

(g) a Special Health Authority which has functions that are exercisable in relation to England,

(h) the Care Quality Commission, and

(i) such other persons as the Secretary of State may specify in a direction."

(3) In subsection (2) —

(a) for "the Secretary of State" substitute "the person to whom the information is provided", and

(b) for "his functions" substitute "functions exercisable by the person".

(4) After subsection (4) insert—

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"(5) In this section, "local authority" has the same meaning as in section 2B."

Commencement Information

I467 S. 285 partly in force; s. 285 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I468 S. 285 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

286 Provision of information by Registrar General: Wales

(1) Section 201 of the National Health Service (Wales) Act 2006 (provision of information by Registrar General) is amended as follows.

(2) In subsection (1) —

(a) for "the Welsh Ministers" substitute "any of the following persons", and

(b) at the end insert "—

(a) the Welsh Ministers,

(b) a Special Health Authority which has functions that are exercisable in relation to Wales,

(c) a Local Health Board,

(d) an NHS trust established under section 18, and

(e) such other persons as the Welsh Ministers may specify in a direction."

(3) In subsection (2) —

(a) for "the Welsh Ministers" substitute "the person to whom the information is provided", and

(b) for "their functions" substitute "functions exercisable by the person".

Commencement Information

I469 S. 286 partly in force; s. 286 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I470 S. 286 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

287 Provision of statistical information by Statistics Board

(1) Section 42 of the Statistics and Registration Service Act 2007 (information relating to births and deaths etc) is amended as follows.

(2) For subsection (4) substitute—

"(4) The Board may disclose to a person mentioned in subsection (4A) any information referred to in subsection (2)(a) to (c) which is received by the Board under this section, or any information which is produced by the Board by analysing any such information, if—

(a) the information consists of statistics and is disclosed for the purpose of assisting the person in the performance of functions exercisable by it in relation to the health service, or

(b) the information is disclosed for the purpose of assisting the person to produce or to analyse statistics for the purpose of assisting the person,

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or any other person mentioned in subsection (4A), in the performance of functions exercisable by it in relation to the health service.

(4A) Those persons are—

(a) the Secretary of State,
(b) the Welsh Ministers,
(c) the National Health Service Commissioning Board,
(d) a clinical commissioning group,
(e) a local authority,
(f) a Local Health Board,
(g) an NHS trust established under section 18 of the National Health Service (Wales) Act 2006,
(h) the National Institute for Health and Care Excellence,
(i) the Health and Social Care Information Centre,
(j) a Special Health Authority,
(k) the Care Quality Commission, and
(l) such other persons as the appropriate authority may specify in a direction given for the purposes of this section.

(4B) For the purposes of subsection (4A)(l), the appropriate authority is—

(a) in relation to a direction to be given for purposes relating only to Wales, the Welsh Ministers, and
(b) in any other case, the Secretary of State."

(3) After subsection (5) insert—

"(5A) A direction under subsection (4A)(l) must be given by an instrument in writing.

(5B) Sections 272(7) and 273(1) of the National Health Service Act 2006 apply in relation to the power of the Secretary of State to give a direction under subsection (4A)(l) as they apply in relation to powers to give a direction under that Act.

(5C) Sections 203(9) and 204(1) of the National Health Service (Wales) Act 2006 apply in relation to the power of the Welsh Ministers to give a direction under subsection (4A)(l) as they apply in relation to powers to give a direction under that Act."

(4) After subsection (6) insert—

"(7) In subsection (4A)—

"clinical commissioning group" and "Special Health Authority" have the same meaning as in the National Health Service Act 2006;

"local authority" has the same meaning as in section 2B of that Act of 2006."

Commencement Information

I471 S. 287 partly in force; s. 287 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I472 S. 287 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Duties to co-operate

288 Monitor: duty to co-operate with Care Quality Commission

(1) Monitor must co-operate with the Care Quality Commission in the exercise of their respective functions.

(2) In particular Monitor must—

(a) give the Commission any information Monitor has about the provision of health care services which Monitor or the Commission considers would assist the Commission in the exercise of its functions,

(b) make arrangements with the Commission to ensure that—

(i) a person applying both for a licence under Chapter 3 of Part 3 and to be registered under the Health and Social Care Act 2008 may do so by way of a single application form,

(ii) such a person is granted a licence under that Chapter and registration under that Act by way of a single document, and

(c) seek to secure that the conditions included in a licence under that Chapter in a case within paragraph (b) are consistent with any conditions on the person's registration under that Act.

(3) Without prejudice to subsection (2)(a) Monitor must, on request, provide the Commission with any material relevant to the exercise of Monitor's functions pursuant to section 73(2), so far as the material relates to the provision of health care services.

(4) In subsection (2), references to registration under the Health and Social Care Act 2008 are references to registration under Chapter 2 of Part 1 of that Act.

Commencement Information

I473 S. 288(1)(2)(a) in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

I474 S. 288(2)(b)(3)(4) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I475 S. 288(2)(c) in force at 1.4.2014 by S.I. 2014/39, **art. 2(3)**

289 Care Quality Commission: duty to co-operate with Monitor

(1) Section 70 of the Health and Social Care Act 2008 (co-operation between the Commission and the Independent Regulator of NHS foundation trusts) is amended as follows.

(2) For subsection (1) substitute—

"(1) The Commission must co-operate with Monitor in the exercise of their respective functions."

(3) For subsection (2) substitute—

"(2) In particular the Commission must—

(a) give Monitor any information the Commission has about the provision of health care which the Commission or Monitor considers would assist Monitor in the exercise of its functions,

(b) make arrangements with Monitor to ensure that—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(i) a person applying to be both registered under Chapter 2 and for a licence under the Health and Social Care Act 2012 may do so by way of a single application form, and

(ii) such a person is granted a registration under Chapter 2 and a licence under that Act by way of a single document, and

(c) seek to secure that the conditions on a registration under Chapter 2 in a case within paragraph (b) are consistent with the conditions included in the person's licence under that Act."

(4) In subsection (3)—

(a) for "Independent Regulator" substitute "Monitor", and

(b) for "an NHS foundation trust" substitute "a person who holds a licence under the Health and Social Care Act 2012".

(5) After that subsection insert—

"(4) In this section, a reference to a licence under the Health and Social Care Act 2012 is a reference to a licence under Chapter 3 of Part 3 of that Act."

(6) In the heading of that section, for "Independent Regulator of NHS Foundation Trusts" substitute "Monitor".

Commencement Information

I476 S. 289(1) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**
I477 S. 289(1) in force at 1.4.2013 for specified purposes by S.I. 2013/671, **art. 2(3)**
I478 S. 289 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**
I479 S. 289(2) in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**
I480 S. 289(3) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**
I481 S. 289(4)(a)(6) in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**
I482 S. 289(4)(b)(5) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

290 Other duties to co-operate

(1) Monitor and each relevant body must co-operate with each other in the exercise of their respective functions.

(2) The Care Quality Commission and each relevant body must co-operate with each other in the exercise of their respective functions.

(3) The relevant bodies are—

(a) the National Health Service Commissioning Board,

(b) the National Institute for Health and Care Excellence,

(c) the Health and Social Care Information Centre,

[[F78](ca) Health Education England,**]** and

(d) Special Health Authorities which have functions that are exercisable in relation to England.

(4) The Secretary of State may by order amend subsection (3) so as to add to the list of relevant bodies a body that has functions relating to health.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) Where Monitor or the Care Quality Commission regulates an activity of a relevant body, the duty imposed by subsection (1) or (as the case may be) subsection (2) does not apply to—

(a) the exercise by Monitor or by the Commission of its function of regulating that activity;

(b) the exercise by the relevant body of any function in so far as it involves carrying on that activity.

(6) A reference in this section to regulating an activity includes a reference to—

(a) authorising the carrying on of the activity, imposing restrictions on the carrying on of the activity, and exercising functions in relation to such authorisations or restrictions;

(b) enforcing the performance of an obligation imposed (whether or not by provision made by or under an enactment) with respect to the carrying on of the activity;

(c) issuing guidance on the carrying on of the activity, the authorisation of the activity, restrictions on the activity, or the performance of obligation imposed with respect to the carrying on of the activity.

(7) For the purposes of this section and section 291, the functions of a Special Health Authority include such functions as it is directed to exercise under section 7 of the National Health Service Act 2006 (directions by Secretary of State).

(8) References in this section and section 291 to functions are references to functions so far as exercisable in relation to England.

Textual Amendments

F78 S. 290(3)(ca) inserted (1.4.2015) by Care Act 2014 (c. 23), s. 127(1), **Sch. 5 para. 15(3)**; S.I. 2014/3186, art. 2(f)

Modifications etc. (not altering text)

C7 S. 290 excluded (1.1.2015) by Care Act 2014 (c. 23), **ss. 111(9)**, 127(1); S.I. 2014/2473, art. 5(c)

C8 S. 290(1)(2) modified by 2006 c. 41, s. 13Z4(3) (as inserted (27.3.2012 for specified purposes) by Health and Social Care Act 2012 (c. 7), **ss. 23(1)**, 306(1)(d)(4))

Commencement Information

I483 S. 290 partly in force; s. 290 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I484 S. 290(1)(2)(3)(a)(d)(4)-(8) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I485 S. 290(3)(b)(c) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

291 Breaches of duties to co-operate

(1) If the Secretary of State is of the opinion that bodies subject to a relevant co-operation duty have breached or are breaching the duty, or are at significant risk of breaching the duty, the Secretary of State may give a written notice of the Secretary of State's opinion to each body.

(2) The relevant co-operation duties are—

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(a) the duty under section 288 (co-operation by Monitor with the Care Quality Commission),

(b) the duties under section 290(1) and (2),

(c) the duty under section 70 of the Health and Social Care Act 2008 (co-operation by the Care Quality Commission with Monitor),

(d) any duties imposed by an enactment on relevant bodies to co-operate with each other in the exercise of their respective functions.

(3) The Secretary of State must publish each notice given under subsection (1) in such form as the Secretary of State considers appropriate.

(4) Subsection (5) applies if, having given a notice under subsection (1), the Secretary of State is satisfied that—

(a) the bodies concerned have breached or are continuing to breach the duty or, the risk of a breach having materialised, are breaching the duty, and

(b) the breach is having a detrimental effect on the performance of the health service (or, where the effect of the breach on the performance of the health service is both beneficial and detrimental, its overall effect is detrimental).

(5) The Secretary of State may by order prohibit each body from exercising specified functions, or from exercising specified functions in a specified manner, unless the other body concerned agrees in writing that the body may do so.

(6) The power to make an order under subsection (5)—

(a) may be exercised so as to specify different functions in relation to each body, but

(b) may not be exercised so as to prevent a body from complying with a requirement imposed by or under an enactment or by a court or tribunal.

(7) In default of agreement as to the exercise of a function specified in an order under subsection (5), a body may exercise the function in accordance with provision determined by arbitration.

(8) An order under subsection (5) must specify the period for which a prohibition imposed by it has effect; and the period specified for that purpose may not exceed one year beginning with the day on which the order comes into force.

(9) But if the Secretary of State is satisfied that the breach is continuing to have a detrimental effect (or an effect that overall is detrimental) on the performance of the health service, the Secretary of State may by order extend by one year the period for which the prohibition for the time being has effect.

(10) In this section, "the health service" means the comprehensive health service continued under section 1(1) of the National Health Service Act 2006.

Modifications etc. (not altering text)

C9 S. 291(2)(d) modified by 2006 c. 41, s. 14Z24(3) (as inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 26**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

C10 S. 291(2)(d) modified by 2006 c. 41, s. 13Z4(3) (as inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 23(1)**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

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Commencement Information

I486 S. 291 partly in force; s. 291 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I487 S. 291 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)**

The Care Quality Commission

292 Requirement for Secretary of State to approve remuneration policy etc.

In paragraph 5 of Schedule 1 to the Health and Social Care Act 2008 (employees of the Care Quality Commission), at the end insert—

"(5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (3) or (4), the Commission must obtain the approval of the Secretary of State to its policy on that matter."

Commencement Information

I488 S. 292 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

293 Conduct of reviews etc.

F79(1) . . . . . .

F80(2) . . . . . .

F81(3) . . . . . .

F82(4) . . . . . .

Textual Amendments

F79 S. 293(1) omitted (1.10.2014) by virtue of Care Act 2014 (c. 23), **ss. 91(9)(e)**, 127(1); S.I. 2014/1714, art. 4

F80 S. 293(2) omitted (1.10.2014) by virtue of Care Act 2014 (c. 23), **ss. 91(9)(e)**, 127(1); S.I. 2014/1714, art. 4

F81 S. 293(3) omitted (1.10.2014) by virtue of Care Act 2014 (c. 23), **ss. 90(10)**, 127(1); S.I. 2014/2473, art. 3(e)

F82 S. 293(4) omitted (1.10.2014) by virtue of Care Act 2014 (c. 23), **ss. 90(10)**, 127(1); S.I. 2014/2473, art. 3(e)

Commencement Information

I489 S. 293 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

294 Failure to discharge functions

(1) In section 82 of the Health and Social Care Act 2008 (failure by Commission to discharge functions), in subsection (1), at the end insert ",

and that the failure is significant."

(2) After subsection (2) of that section insert—

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"(2A) But the Secretary of State may not give a direction under subsection (1) in relation to the performance of functions in a particular case."

(3) After subsection (3) of that section insert—

"(4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.

(5) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service in England or (as the case may be) with what otherwise appears to the Secretary of State to be the purpose for which it is conferred; and "the health service" has the same meaning as in the National Health Service Act 2006."

(4) In section 161 of that Act (orders, regulations and directions: general provisions), in subsection (3), before "any power of the Secretary of State to give directions" insert "(subject to section 82(2A))".

(5) In section 165 of that Act (directions), at the beginning of subsection (2) insert "Subject to subsection (3),".

(6) After that subsection insert—

"(3) A direction under section 82 must be given by regulations or by an instrument in writing."

Commencement Information

I490 S. 294 partly in force; s. 294 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I491 S. 294 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)**

Arrangements with devolved authorities etc.

295 Arrangements between the Board and Northern Ireland Ministers

(1) The National Health Service Commissioning Board may make arrangements with a Northern Ireland Minister for the Board to commission services for the purposes of the Northern Ireland health service.

(2) Arrangements under this section may be on such terms and conditions as may be agreed between the parties to the arrangements.

(3) Those terms and conditions may include provision with respect to the making of payments to the National Health Service Commissioning Board in respect of the cost to it of giving effect to the arrangements.

(4) In this section—

"commission" means arrange for the provision of,

"Northern Ireland health service" means any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the National Health Service Act 2006 (and, for that purpose, "enactment" includes subordinate legislation within the meaning of the Interpretation Act 1978 and Northern Ireland legislation), and

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"Northern Ireland Minister" includes the First Minister, the deputy First Minister and a Northern Ireland department.

Commencement Information

I492 S. 295 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I493 S. 295 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

296 Arrangements between the Board and Scottish Ministers etc.

(1) The National Health Service Commissioning Board may make arrangements with the Scottish Ministers or a Scottish health body for the Board to commission services for the purposes of the Scottish health service.

(2) Arrangements under this section may be on such terms and conditions as may be agreed between the parties to the arrangements.

(3) Those terms and conditions may include provision with respect to the making of payments to the National Health Service Commissioning Board in respect of the cost to it of giving effect to the arrangements.

(4) In this section—

"commission" means arrange for the provision of, and

"Scottish health body" means—

(a) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978, and

(b) the Common Services Agency for the Scottish Health Service constituted by section 10 of that Act.

Commencement Information

I494 S. 296 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I495 S. 296 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

297 Relationships between the health services

Schedule 21 (which amends enactments relating to the relationships between the health services in the United Kingdom) has effect.

Commencement Information

I496 S. 297 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I497 S. 297 in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

298 Advice or assistance to public authorities in the Isle of Man or Channel Islands

(1) The National Health Service Commissioning Board or a clinical commissioning group may provide advice or assistance to any public authority in the Isle of Man or Channel Islands.

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(2) Advice or assistance under subsection (1) may be provided on such terms, including terms as to payment, as the Board or (as the case may be) the clinical commissioning group considers appropriate.

Commencement Information
I498 S. 298 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

Supervised community treatment under the Mental Health Act 1983

299 Certificate of consent of community patients to treatment

(1) Part 4A of the Mental Health Act 1983 (treatment of community patients not recalled to hospital) is amended as follows.

(2) In section 64C (treatment of adult community patients), after subsection (4) insert—

"(4A) Where there is authority to give treatment by virtue of subsection (2)(a), the certificate requirement is also met in respect of the treatment if the approved clinician in charge of the treatment has certified in writing that the patient has capacity to consent to the treatment and has consented to it.

(4B) But, if the patient has not attained the age of 18, subsection (4A) does not apply to section 58A type treatment."

(3) In section 64E (treatment of child community patients), in subsection (7)—

(a) for "(3) to (9)" substitute "(3) to (4A) and (5) to (9)", and

(b) at the end insert "; and for the purpose of this subsection, subsection (4A) of section 64C above has effect as if—

(a) the references to treatment were references only to section 58 type treatment,

(b) the reference to subsection (2)(a) of section 64C were a reference to subsection (6)(a) of this section, and

(c) the reference to capacity to consent were a reference to competence to consent."

(4) After section 64F insert—

"**64FA Withdrawal of consent**

(1) Where the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above, the patient may at any time before the completion of the treatment withdraw his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.

(2) Subsection (3) below applies where—

(a) the consent of a patient to any treatment has been given as mentioned in section 64C(2)(a) above for the purposes of section 64B or 64E above; but

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(b) before the completion of the treatment, the patient loses capacity or (as the case may be) competence to consent to the treatment.

(3) The patient shall be treated as having withdrawn his consent and section 64B or (as the case may be) section 64E above shall then apply as if the remainder of the treatment were a separate form of treatment.

(4) Without prejudice to the application of subsections (1) to (3) above to any treatment given under the plan of treatment to which a patient has consented, a patient who has consented to such a plan may at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

(5) This section shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58, 58A, 64B or 64E above if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient."

(5) In section 64H (certificates: supplementary provision)—

(a) in subsection (2), at the end insert "; and the regulations may make different provision for the different descriptions of Part 4A certificate", and

(b) in subsections (3), (4) and (5), after "Part 4A certificate" insert "that falls within section 64C(4) above".

(6) In section 17B of the Mental Health Act 1983 (conditions of community treatment order), in subsection (3)(b), after "Part 4A of this Act" insert "that falls within section 64C(4) below".

(7) In section 61 of that Act (review of treatment), in subsection (1), after "that section)" insert "that falls within section 64C(4) below".

(8) In section 62A of that Act (treatment on recall of community patient or revocation of order), in subsection (5), after "applies" insert "and the Part 4A certificate falls within section 64C(4) below".

(9) In subsection (6) of that section, after "58 or 58A above" insert "or 64B or 64E below".

(10) After that subsection insert—

"(6A) In a case where this section applies and the certificate requirement is no longer met for the purposes of section 64C(4A) below, the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above or 64B or 64E below shall not be precluded if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of treatment under the plan, would cause serious suffering to the patient."

Commencement Information

I499 S. 299 in force at 1.6.2012 by S.I. 2012/1319, **art. 2(2)**

Status: *This version of this Act contains provisions that are prospective.*
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Transfer schemes

300 Transfer schemes

(1) The Secretary of State may make a property transfer scheme or a staff transfer scheme in connection with—

(a) the establishment or abolition of a body by this Act, or

(b) the modification of the functions of a body or other person by or under this Act.

(2) A property transfer scheme is a scheme for the transfer from a body or other person mentioned in the first column of the Table in Schedule 22 of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to a body or other person mentioned in the corresponding entry in the second column.

(3) A staff transfer scheme is a scheme for the transfer from a body or other person mentioned in the first column of the Table in Schedule 23 of any rights or liabilities under or in connection with a contract of employment to a body or other person mentioned in the corresponding entry in the second column.

(4) The Secretary of State may direct the Board or a qualifying company to exercise the functions of the Secretary of State in relation to the making of a property transfer scheme or a staff transfer scheme in connection with the abolition of—

(a) one or more Primary Care Trusts specified in the direction, or

(b) one or more Strategic Health Authorities so specified.

(5) Where the Secretary of State gives a direction under subsection (4), the Secretary of State may give directions to the Board or (as the case may be) the company about its exercise of the functions.

(6) For the purposes of this section and section 301—

(a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and

(b) the terms of the individual's employment in the civil service are to be regarded as constituting the terms of the contract of employment.

(7) In this section and sections 301 and 302 references to the transfer of property include references to the grant of a lease.

(8) In this section and Schedules 22 and 23, "qualifying company" means—

(a) a company which is formed under section 223 of the National Health Service Act 2006 and wholly or partly owned by the Secretary of State or the Board, or

(b) a subsidiary of a company which is formed under that section and wholly owned by the Secretary of State.

(9) In section 301 and Schedules 22 and 23—

"local authority" means—

(a) a county council in England;

(b) a district council in England, other than a council for a district in a county for which there is a county council;

(c) a London borough council;

(d) the Council of the Isles of Scilly;

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(e) the Common Council of the City of London;

"public authority" means any body or other person which has functions conferred by or under an Act or by royal charter.

Commencement Information

I500 S. 300 partly in force; s. 300 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I501 S. 300 in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**

I502 S. 300 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I503 S. 300 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

301 Transfer schemes: supplemental

(1) The things that may be transferred under a property transfer scheme or a staff transfer scheme include—

(a) property, rights and liabilities that could not otherwise be transferred;

(b) property acquired, and rights and liabilities arising, after the making of the scheme;

(c) criminal liabilities but only where the transfer is to a person mentioned in subsection (2).

(2) Those persons are—

(a) the National Health Service Commissioning Board;

(b) a clinical commissioning group;

(c) a local authority;

(d) the Care Quality Commission;

(e) Monitor;

(f) the National Institute for Health and Care Excellence;

(g) the Health and Social Care Information Centre;

(h) the Health and Care Professions Council;

(i) a public authority other than a Minister of the Crown.

(3) A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular—

(a) create rights, or impose liabilities, in relation to property or rights transferred;

(b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;

(c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;

(d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee.

(4) A property transfer scheme may make provision for the shared ownership or use of property.

(5) A staff transfer scheme may make provision which is the same or similar to the TUPE regulations.

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(6) A property transfer scheme or a staff transfer scheme may provide—

(a) for the scheme to be modified by agreement after it comes into effect, and

(b) for any such modifications to have effect from the date when the original scheme comes into effect.

(7) Where a Primary Care Trust, a Strategic Health Authority or a Special Health Authority is abolished by this Act, the Secretary of State must exercise the powers conferred by section 300 and this section so as to secure that all the body's liabilities (other than criminal liabilities) are dealt with.

(8) In this section, "TUPE regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

Commencement Information

I504 S. 301 in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**

I505 S. 301 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I506 S. 301 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

302 Subsequent property transfer schemes

(1) This section applies in relation to any property, rights or liabilities which are transferred under a property transfer scheme under section 300(1) from a Primary Care Trust, a Strategic Health Authority or the Secretary of State to a Special Health Authority or a qualifying company.

(2) The Secretary of State may make a scheme for the transfer of any such property, rights or liabilities from the Special Health Authority or the qualifying company to any body or other person mentioned in the second column of Schedule 22.

(3) Subsections (1) to (4) and (6) of section 301 apply in relation to a scheme under subsection (2) as they apply in relation to a property transfer scheme under section 300(1).

Commencement Information

I507 S. 302 in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**

I508 S. 302 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I509 S. 302 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 12

FINAL PROVISIONS

303 Power to make consequential provision

(1) The Secretary of State may by order make provision in consequence of this Act.

(2) An order under this section may, in particular—

(a) amend, repeal, revoke or otherwise modify any enactment;

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(b) include transitional, transitory or saving provision in connection with the commencement of provision made by the order.

(3) Transitory provision by virtue of subsection (2)(b) may, in particular, modify the application of provision made by the order pending the commencement of—

(a) another provision of the order,

(b) a provision of this Act,

(c) any other enactment.

(4) Before making an order under this section that contains provision which would, if included in an Act of the Scottish Parliament, fall within the legislative competence of that Parliament, the Secretary of State must consult the Scottish Ministers.

(5) The power conferred by this section is not restricted by any other provision of this Act.

(6) In this section, "enactment" includes—

(a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation,

and references to an enactment include a reference to an enactment passed or made after the passing of this Act.

304 Regulations, orders and directions

(1) A power to make regulations under this Act is exercisable by the Secretary of State.

(2) Regulations under this Act, and orders by the Secretary of State, the Welsh Ministers or the Privy Council under this Act, must be made by statutory instrument.

(3) Subject to subsections (4) to (6), a statutory instrument containing regulations under this Act, or an order by the Secretary of State or the Privy Council under this Act, is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subsection (3) does not apply to an order under section 306 (commencement).

(5) A statutory instrument which contains (whether alone or with other provision) any of the following may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—

(a) regulations under section 65 (extension of Monitor's functions to adult social care services);

(b) the first regulations under section 83 (licensing requirement: exemption regulations);

(c) the first order under section 86 (approval by Secretary of State of licensing criteria);

(d) regulations under section 100(7)(b) or (c) (percentage to be prescribed in cases of objections to proposals to modify standard licence conditions);

(e) regulations under section 105(4) (manner in which turnover to be calculated for purposes of penalty for breach of licence conditions etc.);

(f) regulations under section 106(3)(d) (descriptions of action for specifying in enforcement undertaking for breach of licence conditions etc.);

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(g) regulations under section 120(2)(a), (b) or (c) (percentage to be prescribed in cases of objections to proposals for national tariff);

(h) regulations under section 130 (health special administration regulations);

(i) an order under section 140 (maximum amount that may be raised from levy to raise funds for special administration cases);

(j) regulations under section 142(2)(b) (percentage to be prescribed in cases of objections to proposals to impose levy);

(k) an order under section 290(4) (addition to list of bodies subject to duty co-operate);

(l) an order under section 291(5) (order prohibiting bodies subject to duty to co-operate from exercising specified functions etc.);

(m) an order under section 303 (consequential provision) which includes provision that amends or repeals a provision of an Act of Parliament;

(n) regulations which, by virtue of subsection (10)(a), include provision that amends or repeals a provision of an Act of Parliament.

(6) An order by the Privy Council under this Act that includes provision which would, if included in an Act of the Scottish Parliament, fall within the legislative competence of that Parliament is subject to the negative procedure in that Parliament (in addition to the statutory instrument containing the order being subject to annulment under subsection (3)).

(7) Sections 28 and 31 of the Interpretation and Legislative Reform (Scotland) Act 2010 (negative procedure etc.) apply in relation to an order of the description given in subsection (6) as they apply in relation to devolved subordinate legislation (within the meaning of Part 2 of that Act) that is subject to the negative procedure, but as if references to a Scottish statutory instrument were references to a statutory instrument.

(8) Section 32 of that Act (laying) shall apply in relation to the laying of a statutory instrument containing an order of the description given in subsection (6) before the Scottish Parliament as it applies in relation to the laying of a Scottish statutory instrument (within the meaning of Part 2 of that Act) before that Parliament.

(9) A power to make regulations under this Act, a power of the Secretary of State, the Welsh Ministers or the Privy Council to make an order under this Act, and (subject to section 71(3)) a power to give directions under or by virtue of this Act—

(a) may be exercised either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or descriptions of case,

(b) may be exercised so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different descriptions of case, or different provision as respects the same case or description of case for different purposes of this Act,

(iii) any such provision either unconditionally or subject to any specified condition, and

(c) may, in particular, make different provision for different areas.

(10) Any such power includes—

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(a) power to make incidental, supplementary, consequential, saving, transitional or transitory provision (including, in the case of a power to make regulations, provision amending, repealing or revoking enactments), and

(b) power to provide for a person to exercise a discretion in dealing with any matter.

(11) A power to give directions under or by virtue of this Act includes power to vary or revoke the directions by subsequent directions.

(12) A direction under this Act by a Minister of the Crown (acting alone)—

(a) must, in the case of a direction under any of the following provisions, be given by regulations or an instrument in writing—

(i) section 71(2) (direction to Monitor to perform functions);

(ii) section 234(1) (direction to NICE to prepare quality standards);

(iii) section 245(1) (direction to NICE to perform functions);

(iv) section 249(8) (direction to Board to be transitional commissioner in relation to pre-commencement statements of quality standards);

(v) section 254(1) (direction to Information Centre to establish information systems);

(vi) section 255(5) or (6) (direction to Information Centre to comply, or not to comply, with request to establish information systems);

(vii) section 260(2)(d) (direction to Information Centre that information of specified description is not subject to duty to publish);

(viii) section 272(1) (direction to Information Centre to perform functions);

(ix) paragraph 7 of Schedule 6 (direction to Board to exercise functions of Secretary of State relating to Primary Care Trusts), and

(b) must, in the case of any other direction, be given by an instrument in writing.

(13) A direction under or by virtue of this Act by any other person (or persons) must be given by an instrument in writing.

305 Financial provision

There is to be paid out of money provided by Parliament—

(a) any expenditure incurred by virtue of this Act by the Secretary of State, and

(b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

306 Commencement

(1) The following provisions come into force on the day on which this Act is passed—

(a) section 219 (Health and Care Professions Council: power to make arrangements with other health or social care regulators);

(b) section 221(3) (power of Secretary of State to make arrangements with Health and Care Professions Council to discharge General Social Care Council's functions during period preceding abolition);

(c) the provisions of this Part;

(d) any other provision of this Act so far as is necessary for enabling the exercise on or after the day on which this Act is passed of any power to make an order

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or regulations or to give directions that is conferred by the provision or an amendment made by it.

(2) Sections 35 to 37 come into force on such day as the appropriate authority may by order appoint.

(3) In subsection (2) "the appropriate authority" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers.

(4) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.

(5) Different days may be appointed under subsection (2) or (4) for different purposes (including different areas).

(6) Transitory provision in an order under subsection (2) or (4) may, in particular, modify the application of a provision of this Act pending the commencement of—

(a) another provision of this Act, or

(b) any other enactment (within the meaning of section 303).

(7) An order under subsection (4) which brings paragraph 17 of Schedule 1A to the National Health Service Act 2006 (inserted by Schedule 2) into force may make provision—

(a) for the duty of a clinical commissioning group under sub-paragraph (1) or (2) of that paragraph not to apply in relation to the whole or any part of the initial period (within the meaning of Schedule 6), and

(b) for the duty of the Board under paragraph 16 of Schedule A1 to that Act (inserted by Schedule 1) to have effect subject to such modifications specified in the order as the Secretary of State considers appropriate in consequence of the provision made under paragraph (a).

(8) Where a provision of this Act (or an amendment made by it) requires consultation to take place, consultation undertaken before the commencement of the provision is as effective for the purposes of that provision as consultation undertaken after that commencement.

307 Commencement: consultation with Scottish Ministers

(1) The Secretary of State must consult the Scottish Ministers before making an order under section 306(4) relating to—

(a) section 58 (radiation protection functions), so far as relating to the Scottish Ministers,

(b) section 60 (co-operation in relation to public health functions), so far as relating to the exercise of functions in relation to Scotland by a person to which the provision inserted by subsection (1) of that section applies,

(c) section 223(4) (requirement for persons advised etc. by the Professional Standards Authority for Health and Social Care to pay fee), so far as relating to the Scottish Ministers,

(d) section 224(1) (funding of the Professional Standards Authority for Health and Social Care), so far as relating to a body that regulates a profession in Scotland which does not fall within Section G2 of Part 2 of Schedule 5 to the Scotland Act 1998 (health professions),

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(e) section 224(4) and (5) (power of the Professional Standards Authority for Health and Social Care to borrow), so far as relating to functions of the Professional Standards Authority for Health and Social Care which are exercisable in relation to—

(i) unregulated health professionals in Scotland, unregulated health care workers in Scotland or relevant students in Scotland,

(ii) a body that maintains a register of persons within sub-paragraph (i),

(iii) a profession in Scotland which does not fall within Section G2 of Part 2 of Schedule 5 to the Scotland Act 1998, or

(iv) a body that regulates a profession within sub-paragraph (iii),

(f) section 225(1) (power of the Professional Standards Authority for Health and Social Care to advise regulatory bodies etc.), so far as relating to a body that regulates a profession in Scotland which does not fall within Section G of Part 2 of Schedule 5 to the Scotland Act 1998 (architects, health professions and auditors),

(g) section 226(8) (requirement for the Professional Standards Authority for Health and Social Care to lay copy strategic reports before Parliament etc.), so far as relating to the Scottish Parliament,

(h) section 227 (appointments to regulatory bodies), so far as relating to—

(i) the exercise of the appointment functions under subsection (8)(f) of the provision inserted by that section, or

(ii) subsection (4) of that provision,

(i) section 228 (establishment of voluntary registers), so far as relating to the establishment and maintenance of relevant registers,

(j) section 229 (accreditation of voluntary registers), so far as relating to the functions of the Professional Standards Authority for Health and Social Care in relation to relevant registers,

(k) Part 2 or 3 of Schedule 15 (amendments relating to the Health and Care Professions Council or the Professional Standards Authority for Health and Social Care) and section 230(1) so far as relating to the Part in question, and

(l) paragraphs 1 to 4 of Schedule 21 (amendments of the National Health Service (Scotland) Act 1978 relating to the relationships between the health services) and section 297 so far as relating to those paragraphs.

(2) In this section—

"relevant registers" means—

(a) registers of unregulated health professionals in Scotland,

(b) registers of unregulated health care workers in Scotland, or

(c) registers of relevant students in Scotland,

"relevant students in Scotland" means persons participating in studies in Scotland for the purpose of becoming—

(a) an unregulated health professional,

(b) an unregulated health care worker, or

(c) a member of a profession which does not fall within Section G2 of Part 2 of Schedule 5 to the Scotland Act 1998,

"unregulated health professional" means a person who is or has been practising as an unregulated health professional (within the meaning of the provisions inserted by section 228) and "unregulated health professional in

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Scotland" means a person who is or has been practising as such in Scotland, and

"unregulated health care worker" means a person who is or has been engaged in work as an unregulated health care worker (within the meaning of those provisions) and "unregulated health care worker in Scotland" means a person who is or has been engaged in such work in Scotland.

308 Extent

(1) Subject to subsections (2) to (5), this Act extends to England and Wales only.

(2) Any amendment, repeal or revocation made by this Act has the same extent as the enactment amended, repealed or revoked.

(3) The following provisions extend to England and Wales, Scotland and Northern Ireland—

(a) section 46 insofar as it inserts section 252A(8) of the National Health Service Act 2006;

(b) sections 56(1) and (3), 57, 58 and 60 (public health functions);

(c) section 150(2) and paragraph 1 of Schedule 13 (references to Monitor in instruments etc.);

(d) section 214(1) (the Health and Care Professions Council);

(e) section 222(1) (the Professional Standards Authority for Health and Social Care);

(f) section 230(1) to (4) and (6) and paragraphs 53 and 59 of Schedule 15 (Part 7: consequential provision etc.);

(g) section 231(1), (3) and (4) and Part 4 of Schedule 15 (abolition of the Office of the Health Professions Adjudicator);

(h) section 279(1) and (3) and Part 2 of Schedule 20 (abolition of the Appointments Commission);

(i) sections 300 and 301 (transfer schemes) insofar as they confer powers in connection with the abolition of the Health Protection Agency;

(j) this Part.

(4) Sections 128 to 133 (health special administration) extend to England and Wales and Scotland.

(5) The Secretary of State may by order provide that specified provisions of this Act, in their application to the Isles of Scilly, have effect with such modifications as may be specified.

309 Short title

This Act may be cited as the Health and Social Care Act 2012.

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SCHEDULES

SCHEDULE 1

Section 9(2)

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Commencement Information

I510 Sch. 1 partly in force; Sch. 1 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I511 Sch. 1 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 3(2)(3))

I512 Sch. 1 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

"SCHEDULE A1

Section 1H(4)

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Status

1 (1) The Board is not to be regarded as a servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown.

(2) The Board's property is not to be regarded as property of, or property held on behalf of, the Crown.

Membership

2 (1) The Board is to consist of—

(a) a chair appointed by the Secretary of State,

(b) at least five other members so appointed, and

(c) the chief executive and other members appointed in accordance with paragraph 3.

(2) In this Schedule—

(a) references to non-executive members of the Board are references to the members appointed in accordance with sub-paragraph (1)(a) and (b), and

(b) references to executive members of the Board are references to the other members.

(3) The number of executive members must be less than the number of non-executive members.

The chief executive and other executive members: appointment and status

3 (1) The chief executive and the other executive members of the Board are to be appointed by the non-executive members.

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(2) A person may not be appointed as chief executive without the consent of the Secretary of State.

(3) The chief executive and the other executive members are to be employees of the Board.

(4) The first chief executive of the Board is to be appointed by the Secretary of State.

Non-executive members: tenure

4 (1) A person holds and vacates office as a non-executive member of the Board in accordance with that person's terms of appointment.

(2) A person may at any time resign from office as a non-executive member by giving notice to the Secretary of State.

(3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds—

(a) incapacity,

(b) misbehaviour, or

(c) failure to carry out his or her duties as a non-executive member.

(4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove that person from office under sub-paragraph (3).

(5) A person may not be appointed as a non-executive member for a period of more than four years.

(6) A person who ceases to be a non-executive member is eligible for re-appointment.

Suspension of non-executive members

5 (1) This paragraph applies where a person is suspended under paragraph 4(4).

(2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice.

(3) The notice may be—

(a) delivered in person (in which case the person is taken to receive it when it is delivered), or

(b) sent by first class post to the person's last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).

(4) The initial period of suspension must not exceed six months.

(5) The Secretary of State may at any time review the suspension.

(6) The Secretary of State—

(a) must review the suspension if requested in writing by the person to do so, but

(b) need not review the suspension less than three months after the beginning of the initial period of suspension.

(7) Following a review during a period of suspension, the Secretary of State may—

(a) revoke the suspension, or

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(b) suspend the person for another period of not more than six months from the expiry of the current period.

(8) The Secretary of State must revoke the suspension if the Secretary of State —

(a) decides that there are no grounds to remove the person from office under paragraph 4(3), or

(b) decides that there are grounds to do so but does not remove the person from office under that provision.

6 (1) Where a person is suspended from office as the chair under paragraph 4(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair's functions.

(2) Appointment as interim chair is for a term not exceeding the shorter of—

(a) the period ending with either—

(i) the appointment of a new chair, or

(ii) the revocation or expiry of the existing chair's suspension, and

(b) the remainder of the interim chair's term as a non-executive member.

(3) A person who ceases to be the interim chair is eligible for re-appointment.

Payment of non-executive members

7 (1) The Board must pay to its non-executive members such remuneration as the Secretary of State may determine.

(2) The Board must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member of the Board.

(3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, the Board must pay compensation to the person of such amount as the Secretary of State may, with the approval of the Treasury, determine.

Staff

8 The Board may appoint such persons to be employees of the Board as it considers appropriate.

9 (1) Employees of the Board are to be paid such remuneration and allowances as the Board may determine.

(2) Employees of the Board are to be appointed on such other terms and conditions as the Board may determine.

(3) The Board may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of the Board.

(4) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of this paragraph, the Board must obtain the approval of the Secretary of State to its policy on the matter.

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Committees

10 (1) The Board may appoint such committees and sub-committees as it considers appropriate.

(2) A committee or sub-committee may consist of or include persons who are not members or employees of the Board.

(3) The Board may pay such remuneration and allowances as it determines to any person who—

(a) is a member of a committee or a sub-committee, but

(b) is not an employee of the Board,

whether or not that person is a non-executive member of the Board.

Trust funds and trustees

11 (1) The Secretary of State may by order provide for the appointment of trustees for the Board to hold property on trust—

(a) for the general or any specific purposes of the Board, or

(b) for any purposes relating to the health service in England.

(2) An order under sub-paragraph (1) may—

(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as the Secretary of State considers appropriate, and

(d) make provision with respect to the term of office of any trustee and his or her removal from office.

(3) Where trustees have been appointed by virtue of sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the Board to the trustees.

Procedure

12 (1) The Board may regulate its own procedure.

(2) The validity of any act of the Board is not affected by any vacancy among the members or by any defect in the appointment of any member.

Exercise of functions

13 The Board may arrange for the exercise of any of its functions on its behalf by—

(a) any non-executive member,

(b) any employee (including any executive member), or

(c) a committee or sub-committee.

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Provision of information to Secretary of State

14 (1) The Secretary of State may require the Board to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.

(2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.

Accounts

15 (1) The Board must keep proper accounts and proper records in relation to the accounts.

(2) The Secretary of State may, with the approval of the Treasury, give directions to the Board as to—

(a) the content and form of its accounts, and

(b) the methods and principles to be applied in the preparation of its accounts.

(3) In sub-paragraph (2) the reference to accounts includes a reference to the Board's consolidated annual accounts prepared under paragraph 16 and any interim accounts prepared by virtue of paragraph 17.

(4) The chief executive of the Board is to be its accounting officer.

Annual accounts

16 (1) The Board must prepare consolidated annual accounts in respect of each financial year.

(2) The consolidated annual accounts must contain—

(a) the Board's annual accounts, and

(b) a consolidation of the Board's annual accounts and the annual accounts of each clinical commissioning group.

(3) The Board must send copies of the consolidated annual accounts to—

(a) the Secretary of State, and

(b) the Comptroller and Auditor General,

within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.

(4) The Comptroller and Auditor General must—

(a) examine, certify and report on the consolidated annual accounts, and

(b) lay copies of the accounts and the report on them before Parliament.

(5) In this paragraph, "financial year" includes the period which begins with the day on which the Board is established and ends on the following 31 March.

Interim Accounts

17 (1) The Secretary of State may, with the approval of the Treasury, direct the Board to prepare accounts in respect of such period or periods as may be specified in the direction ("interim accounts").

(2) The interim accounts in respect of any period must contain—

(a) the Board's accounts in respect of that period, and

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(b) a consolidation of the Board's accounts in respect of that period and any accounts of clinical commissioning groups in respect of that period which are prepared by virtue of paragraph 17(3) of Schedule 1A.

(3) The Board must send copies of any interim accounts to—

(a) the Secretary of State, and

(b) if the Secretary of State so directs, the Comptroller and Auditor General,

within such period as the Secretary of State may direct.

(4) The Comptroller and Auditor General must—

(a) examine, certify and report on any interim accounts sent by virtue of sub-paragraph (3)(b),

(b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and

(c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.

Seal and evidence

18 (1) The application of the Board's seal must be authenticated by the signature of any member of the Board or any other person who has been authorised (generally or specially) for that purpose.

(2) A document purporting to be duly executed under the Board's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed."

SCHEDULE 2

Section 25(2)

CLINICAL COMMISSIONING GROUPS

Commencement Information

I513 Sch. 2 partly in force; Sch. 2 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I514 Sch. 2 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 9)

I515 Sch. 2 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

"SCHEDULE 1A

Sections 14B(6), 14D(2) and 14I(4)

CLINICAL COMMISSIONING GROUPS

PART 1

CONSTITUTION OF CLINICAL COMMISSIONING GROUPS

General

1 A clinical commissioning group must have a constitution.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

2 (1) The constitution must specify—
(a) the name of the clinical commissioning group,
(b) the members of the group, and
(c) the area of the group.

(2) The name of the group must comply with such requirements as may be prescribed.

3 (1) The constitution must specify the arrangements made by the clinical commissioning group for the discharge of its functions (including its functions in determining the terms and conditions of its employees).

(2) The arrangements may include provision—
(a) for the appointment of committees or sub-committees of the clinical commissioning group, and
(b) for any such committees to consist of or include persons other than members or employees of the clinical commissioning group.

(3) The arrangements may include provision for any functions of the clinical commissioning group to be exercised on its behalf by—
(a) any of its members or employees,
(b) its governing body, or
(c) a committee or sub-committee of the group.

4 (1) The constitution must specify the procedure to be followed by the clinical commissioning group in making decisions.

(2) The constitution must also specify the arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the group and the manner in which they are made.

5 The constitution must specify the arrangements made by the clinical commissioning group for discharging its duties under section 14O(1) to (4).

6 The provision made by virtue of paragraphs 3 and 4 must secure that there is effective participation by each member of the clinical commissioning group in the exercise of the group's functions.

Governing bodies of clinical commissioning groups

7 (1) The constitution must specify the arrangements made by the clinical commissioning group for the discharge of the functions of its governing body.

(2) The arrangements—
(a) must include provision for the appointment of the audit committee and remuneration committee of the governing body, and
(b) may include provision for the appointment of other committees or sub-committees of the governing body.

(3) Arrangements under sub-paragraph (2)(a) may include provision for the audit committee to include individuals who are not members of the governing body.

(4) Arrangements under sub-paragraph (2)(b) may include provision for a committee or sub-committee to include individuals who are not members of the governing body but are—
(a) members of the clinical commissioning group, or

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(b) individuals of a description specified in the constitution.

(5) The arrangements may include provision for any functions of the governing body to be exercised on its behalf by—

(a) any committee or sub-committee of the governing body,

(b) a member of the governing body,

(c) a member of the clinical commissioning group who is an individual (but is not a member of the governing body), or

(d) an individual of a description specified in the constitution.

(6) In this paragraph, references to the functions of the governing body of a clinical commissioning group include references to the functions of the clinical commissioning group which are exercisable by the governing body under arrangements specified in the constitution by virtue of paragraph 3(3).

8 (1) The constitution must specify the procedure to be followed by the governing body in making decisions.

(2) The constitution must also specify the arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the governing body and the manner in which they are made.

(3) The provision made under sub-paragraph (2) must include provision for meetings of governing bodies to be open to the public, except where the clinical commissioning group considers that it would not be in the public interest to permit members of the public to attend a meeting or part of a meeting.

Supplemental

9 In addition to the provision authorised or required to be included under this Part of this Schedule, the constitution may make further provision.

PART 2

FURTHER PROVISION ABOUT CLINICAL COMMISSIONING GROUPS

Status

10 (1) A clinical commissioning group is a body corporate.

(2) A clinical commissioning group is not to be regarded as a servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.

(3) The property of a clinical commissioning group is not to be regarded as property of, or property held on behalf of, the Crown.

Staff

11 (1) A clinical commissioning group may appoint such persons to be employees of the group as it considers appropriate.

(2) A clinical commissioning group must—

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(a) pay its employees remuneration and travelling or other allowances in accordance with determinations made by its governing body under section 14L(3)(a), and

(b) employ them on such other terms and conditions as it may determine.

(3) A clinical commissioning group may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.

(4) Such arrangements may include the establishment and administration, by the clinical commissioning group or otherwise, of one or more pension schemes.

(5) The arrangements that may be made under sub-paragraph (3) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of any of the clinical commissioning group's employees who suffer loss of office or employment or loss or diminution of emoluments.

Accountable officer

12 (1) A clinical commissioning group must have an accountable officer.

(2) The accountable officer is to be appointed by the Board.

(3) The Board may appoint a person to be the accountable officer for more than one clinical commissioning group (and in the following provisions of this paragraph such an appointment is referred to as a "joint appointment").

(4) The accountable officer may be—

(a) an individual who is a member of the clinical commissioning group or of any body that is a member of the group or, in the case of a joint appointment, an individual who is a member of any of the groups in question or of any body that is a member of any of those groups, or

(b) an employee of the group or of any member of the group or, in the case of a joint appointment, an employee of any of the groups in question or of any member of those groups.

(5) If the accountable officer is not an employee of the clinical commissioning group or, in the case of a joint appointment, of any of the groups in question, the group or any of the groups may pay remuneration and travelling or other allowances to the accountable officer in accordance with determinations made by its governing body under section 14L(3)(a).

(6) A clinical commissioning group may, for or in respect of its accountable officer, make arrangements for providing pensions, allowances or gratuities.

(7) The arrangements that may be made under sub-paragraph (6) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of the accountable officer where the officer suffers loss of office or loss or diminution of emoluments.

(8) Where a clinical commissioning group has, by virtue of paragraph 11(4), established a pension scheme, the arrangements that may be made under sub-paragraph (6) include arrangements for the accountable officer to be a member of the scheme.

(9) The accountable officer is responsible for ensuring that the clinical commissioning group or, in the case of a joint appointment, each of the groups in question—

(a) complies with its obligations under—

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(i) sections 14Q and 14R,
(ii) sections 223H to 223J,
(iii) paragraphs 17 to 19 of this Schedule, and
(iv) any other provision of this Act specified in a document published by the Board for the purposes of this sub-paragraph, and

(b) exercises its functions in a way which provides good value for money.

Remuneration etc for members of governing bodies

13 (1) A clinical commissioning group may pay members of its governing body such remuneration and travelling or other allowances as it considers appropriate.

(2) A clinical commissioning group may, for or in respect of such members of its governing body as it may determine, make arrangements for providing pensions, allowances or gratuities.

(3) Such arrangements may include the establishment and administration, by the clinical commissioning group or otherwise, of one or more pension schemes.

(4) The arrangements that may be made under sub-paragraph (2) include arrangements for the provision of pensions, allowances or gratuities by way of compensation to or in respect of any members of the governing body who suffer loss or diminution of emoluments.

(5) Where a clinical commissioning group has, by virtue of paragraph 11(4), established a pension scheme, the arrangements that may be made under sub-paragraph (2) include arrangements for members of the governing body to be members of the scheme.

(6) Sub-paragraph (2) does not apply to members of the governing body who are—
(a) members or employees of the clinical commissioning group, or
(b) members or employees of a body that is a member of the clinical commissioning group.

Additional powers in respect of payment of allowances

14 A clinical commissioning group may pay such travelling or other allowances as it considers appropriate to any of the following—
(a) members of the clinical commissioning group who are individuals;
(b) individuals authorised to act on behalf of a member of the clinical commissioning group in dealings between the member and the group;
(c) members of any committee or sub-committee of the clinical commissioning group or its governing body.

Trust funds and trustees

15 (1) The Secretary of State may by order provide for the appointment of trustees for a clinical commissioning group to hold property on trust—
(a) for the general or any specific purposes of the group, or
(b) for any purposes relating to the health service in England.

(2) An order under sub-paragraph (1) may—
(a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,

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(b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),

(c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as the Secretary of State considers appropriate, and

(d) make provision with respect to the term of office of any trustee and his or her removal from office.

(3) Where trustees have been appointed by virtue of sub-paragraph (1), the Secretary of State may by order provide for the transfer of any trust property from the clinical commissioning group to the trustees.

Externally financed development agreements

16 (1) The powers of a clinical commissioning group include power to enter into externally financed development agreements.

(2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Secretary of State.

(3) The Secretary of State may give a certificate under this paragraph if—

(a) in the Secretary of State's opinion the purpose or main purpose of the agreement is the provision of services or facilities in connection with the discharge by a clinical commissioning group of any of its functions, and

(b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.

(4) If a clinical commissioning group enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.

(5) In sub-paragraph (3)(b) "another party" means any party to the agreement other than the clinical commissioning group.

(6) The fact that an agreement made by a clinical commissioning group has not been certified under this paragraph does not affect its validity.

Accounts and audits

17 (1) A clinical commissioning group must keep proper accounts and proper records in relation to the accounts.

(2) A clinical commissioning group must prepare annual accounts in respect of each financial year.

(3) The Board may, with the approval of the Secretary of State, direct a clinical commissioning group to prepare accounts in respect of such period or periods as may be specified in the direction.

(4) The Board may, with the approval of the Secretary of State, give directions to a clinical commissioning group as to—

(a) the methods and principles according to which its annual or other accounts must be prepared, and

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(b) the form and content of such accounts.

(5) The annual accounts and, if the Board so directs, accounts prepared by virtue of sub-paragraph (3) must be audited in accordance with the Audit Commission Act 1998 by an auditor or auditors appointed in accordance with arrangements made by the Board for the purposes of this paragraph.

(6) The Comptroller and Auditor General may examine—
(a) the annual accounts and any records relating to them, and
(b) any report on them by the auditor or auditors.

(7) A clinical commissioning group must send its audited annual accounts, and any audited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board.

(8) The Board may direct a clinical commissioning group to send its unaudited annual accounts, and any unaudited accounts prepared by it by virtue of sub-paragraph (3), to the Board by no later than the date specified in a direction by the Board.

(9) For the purposes of this paragraph "financial year" includes the period which begins on the day the clinical commissioning group is established and ends on the following 31 March.

Provision of financial information to Board

18 (1) The Board may direct a clinical commissioning group to supply it with such information relating to its accounts or to its income or expenditure, or its use of resources, as may be specified in the direction.

(2) The power conferred by sub-paragraph (1) includes power to direct a clinical commissioning group to supply the Board with—
(a) estimates of its future income or expenditure or its future use of resources;
(b) any information which the Board considers is necessary to enable it to verify any other information supplied to it under sub-paragraph (1).

(3) A clinical commissioning group must supply the Board with any information specified in a direction under sub-paragraph (1) within such period as may be specified in the direction.

(4) In this paragraph, a reference to the use of resources is a reference to their expenditure, consumption or reduction in value.

Provision of information required by the Secretary of State

19 (1) The Secretary of State may require each clinical commissioning group to provide the Board with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.

(2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.

(3) The powers conferred by this paragraph must be exercised in the same way in relation to each clinical commissioning group.

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(4) The Board must give any information obtained by it under sub-paragraph (1) to the Secretary of State, in such form, and at such time or within such period, as the Secretary of State may require.

Incidental powers

20 The power conferred on a clinical commissioning group by section 2 includes, in particular, power to—

(a) enter into agreements,

(b) acquire and dispose of property, and

(c) accept gifts (including property to be held on trust for the purposes of the clinical commissioning group).

Seal and evidence

21 (1) The application of a clinical commissioning group's seal must be authenticated by the signature of any person who has been authorised (generally or specially) for that purpose.

(2) Any instrument which, if executed by an individual, would not need to be under seal may be executed on behalf of a clinical commissioning group by any person who has been authorised (generally or specially) for that purpose.

(3) A document purporting to be duly executed under a clinical commissioning group's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proven, taken to be so executed or signed.

PART 3

TRANSFER SCHEMES

22 The things that may be transferred under a property transfer scheme or a staff transfer scheme under section 14I include—

(a) property, rights and liabilities that could not otherwise be transferred;

(b) property acquired, and rights and liabilities arising, after the making of the scheme;

(c) criminal liabilities.

23 A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular—

(a) create rights, or impose liabilities, in relation to property or rights transferred;

(b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;

(c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;

(d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee.

24 A property transfer scheme may make provision for the shared ownership or use of property.

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25 A staff transfer scheme may make provision which is the same or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

26 A property transfer scheme or a staff transfer scheme may provide—

(a) for the scheme to be modified by agreement after it comes into effect, and

(b) for any such modifications to have effect from the date when the original scheme comes into effect."

SCHEDULE 3

Section 51(2)

PHARMACEUTICAL REMUNERATION

Commencement Information

I516 Sch. 3 partly in force; Sch. 3 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I517 Sch. 3 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

"SCHEDULE 12A

Section 165A(3)

PHARMACEUTICAL REMUNERATION

Interpretation

1 In this Schedule—

(a) "drugs" includes medicines and listed appliances (within the meaning of section 126), and

(b) "pharmaceutical remuneration" means remuneration paid by the Board to persons providing pharmaceutical services or local pharmaceutical services.

Pharmaceutical remuneration to be apportioned among clinical commissioning groups

2 (1) The Board must determine the elements of pharmaceutical remuneration in respect of which apportionments are to be made in relation to a financial year in accordance with this paragraph.

(2) In this Schedule, those elements of pharmaceutical remuneration are referred to as "designated elements".

(3) The Board must notify each clinical commissioning group of a determination under sub-paragraph (1).

(4) The Board must apportion the sums paid by it in respect of each designated element during the financial year among all clinical commissioning groups, in such manner as the Board thinks appropriate.

(5) In apportioning sums under sub-paragraph (4), the Board may, in particular, take into account the financial consequences of orders for the provision of drugs that are attributable to the members of each clinical commissioning group.

(6) Where an amount of pharmaceutical remuneration is apportioned to a clinical commissioning group, the Board—

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(a) may deduct that amount from the sums that it would otherwise pay to the group under section 223G(1), and

(b) if it does so, must notify the group accordingly.

(7) The Secretary of State may direct the Board that an element of pharmaceutical remuneration specified in the direction is not to be included in a determination under sub-paragraph (1).

(8) In determining the amount to be allotted to a clinical commissioning group for the purposes of section 223G, the Board must take into account the effect of this Schedule.

(9) For the purposes of sections 223H and 223I(3) and paragraph 17 of Schedule 1A, any amount of which a clinical commissioning group is notified under sub-paragraph (6) is to be treated as expenditure of the group which is attributable to the performance by it of its functions in the year in question.

Other pharmaceutical remuneration

3 (1) This paragraph applies in relation to pharmaceutical remuneration paid in a financial year other than—

(a) designated elements of such remuneration, and

(b) remuneration of a prescribed description.

(2) The Board may require a person to reimburse the Board for any pharmaceutical remuneration to which this paragraph applies if the drugs or services to which the remuneration relates were—

(a) ordered by that person, or

(b) ordered in the course of the delivery of a service arranged by that person.

(3) Any sum payable to the Board by virtue of sub-paragraph (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

Exercise of functions

4 The Board may, with the consent of the Secretary of State—

(a) direct a Special Health Authority to exercise any functions of the Board under this Schedule, or

(b) arrange for any other person to exercise any of those functions."

SCHEDULE 4

Section 55(1)

AMENDMENTS OF THE NATIONAL HEALTH SERVICE ACT 2006

PART 1

THE HEALTH SERVICE IN ENGLAND

1 (1) For section 2 substitute—

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"**2 General power**

"**2** "**2 General power**

The Secretary of State, the Board or a clinical commissioning group may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on that person by this Act."

(2) For the cross-heading preceding section 2 substitute "General power".

Commencement Information

I518 Sch. 4 para. 1 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)** (with art. 10) (as amended (22.10.2012) by S.I. 2012/2657, art. 15)

I519 Sch. 4 para. 1 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

2 (1) Section 6 (performance of functions outside England) is amended as follows.

(2) For subsection (1) substitute—

"(1) Where the Secretary of State has a duty or power to provide anything under section 2A or 2B or Schedule 1, that thing may be provided outside England."

(3) After subsection (1) insert—

"(1A) Where a clinical commissioning group or the Board has a duty or power to arrange for the provision of anything under section 3, 3A, 3B or 4 or Schedule 1, it may arrange for that thing to be provided outside England."

(4) In subsection (2) for "The Secretary of State's functions" substitute "The functions of the Secretary of State, the Board and clinical commissioning groups".

Commencement Information

I520 Sch. 4 para. 2(1) in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I521 Sch. 4 para. 2(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I522 Sch. 4 para. 2(2)(4) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I523 Sch. 4 para. 2(3) in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)**

3 (1) Section 6A (reimbursement of cost of services provided in another EEA state) is amended as follows.

(2) In subsection (3)(b) after "Secretary of State" insert ", the Board".

(3) In subsection (7) after "Secretary of State" insert ", the Board".

(4) In subsection (8) in each of paragraphs (a) and (b)—

(a) after "Secretary of State" insert ", the Board", and

(b) for "either of them" substitute "any of them".

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(5) In subsection (9), after "Secretary of State" (in the second place it occurs) insert ", the Board".

(6) In subsection (11), in the definition of "responsible authority"—

(a) omit "Strategic Health Authority or",

(b) omit "Primary Care Trust",

(c) before "responsible under" insert "a local authority or clinical commissioning group", and

(d) for "securing" substitute "arranging for".

Commencement Information

I524 Sch. 4 para. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

4 (1) Section 6B (prior authorisation for the purposes of section 6A) is amended as follows.

(2) In subsection (2)(b) after "Secretary of State" insert ", the Board".

(3) In subsection (5), in each of paragraphs (b) and (c) after "the Secretary of State" insert ", the Board".

Commencement Information

I525 Sch. 4 para. 4 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

5 (1) In section 8 (Secretary of State's directions to health service bodies), in subsection (2)—

(a) omit paragraph (a), and

(b) omit paragraph (b).

(2) In the heading to that section after "to" insert "certain".

(3) Before section 8 insert the following cross-heading "Directions to certain NHS bodies".

Commencement Information

I526 Sch. 4 para. 5 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

6 (1) Section 9 (NHS contracts) is amended as follows.

(2) In subsection (4)—

(a) before paragraph (a) insert—

"(za) the Board,

(zb) a clinical commissioning group,",

(b) omit paragraph (a), and

(c) omit paragraph (b).

Commencement Information

I527 Sch. 4 para. 6(1)(2)(b)(2)(c) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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I528 Sch. 4 para. 6(2)(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

7 In section 11 (arrangements to be treated as NHS contracts), in subsection (1)—

(a) after "under which" insert "the Board,",

(b) omit "a Strategic Health Authority," and

(c) omit "a Primary Care Trust".

Commencement Information

I529 Sch. 4 para. 7(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I530 Sch. 4 para. 7(b)(c) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

8 (1) Section 12 (arrangements with other bodies) is amended as follows.

(2) In subsection (1) for "any service under this Act" substitute "anything which the Secretary of State has a duty or power to provide, or arrange for the provision of, under section 2A or 2B or Schedule 1".

(3) For subsection (2) substitute—

"(2) The bodies with whom arrangements may be made under subsection (1) include—

(a) the Board,

(b) clinical commissioning groups,

(c) any other public authorities, and

(d) voluntary organisations."

(4) For subsection (3) substitute—

"(3) The Secretary of State may make available any facilities provided by the Secretary of State under section 2A or 2B or Schedule 1 to any service provider or to any eligible voluntary organisation.

(3A) In subsection (3)—

"eligible voluntary organisation" means a voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968;

"service provider" means a person or body with whom the Secretary of State has made an arrangement under subsection (1)."

(5) In subsection (4)—

(a) after paragraph (a) insert—

"(aa) the Board,

(ab) a clinical commissioning group,

(ac) a local authority,",

(b) omit paragraph (b), and

(c) omit paragraph (c).

(6) After subsection (4) insert—

"(4A) In subsection (4), "local authority" has the same meaning as in section 2B."

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(7) For the cross-heading preceding section 12 substitute "Arrangements with other bodies".

Commencement Information

I531 Sch. 4 para. 8 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

9 After section 12 insert—

"**12ZA Commissioning arrangements by the Board or clinical commissioning groups**

"**12ZA** "**12ZA Commissioning arrangements by the Board or clinical commissioning groups**

(1) This section applies in relation to arrangements made by the Board or a clinical commissioning group in the exercise of functions under section 3, 3A, 3B or 4 or Schedule 1.

(2) The arrangements may be made with any person or body (including public authorities and voluntary organisations).

(3) If the Board or a clinical commissioning group arranges for the provision of facilities by a service provider, it may also make arrangements for those facilities to be made available to another service provider or to an eligible voluntary organisation.

(4) The Board or a clinical commissioning group may make available any of its facilities to—

(a) a service provider, or

(b) an eligible voluntary organisation.

(5) Where facilities are made available under subsection (4) any of the following persons may make available the services of any employee of that person who is employed in connection with the facilities—

(a) the Secretary of State,

(b) the Board,

(c) a clinical commissioning group,

(d) a Special Health Authority, or

(e) a Local Health Board.

(6) Goods or materials may be made available under this section either temporarily or permanently.

(7) Any power to supply goods or materials under this section includes—

(a) a power to purchase or store them, and

(b) a power to arrange with third parties for the supply of goods or materials by those third parties.

(8) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments.

(9) In this section—

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"eligible voluntary organisation" means a voluntary organisation eligible for assistance under section 64 or section 65 of the Health Services and Public Health Act 1968;

"service provider" means a person or body with whom the Board or a clinical commissioning group has made arrangements in the exercise of the functions mentioned in subsection (1)."

Commencement Information

I532 Sch. 4 para. 9 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I533 Sch. 4 para. 9 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

10 (1) Section 12A (direct payments for health care) is amended as follows.

(2) In subsection (1) after "The Secretary of State" insert ", the Board, a clinical commissioning group or a local authority".

(3) In subsection (2)—

(a) for paragraph (a) substitute—

"(a) anything that the Secretary of State or a local authority has a duty or power to provide or arrange under section 2A or 2B or Schedule 1;",

(b) after that paragraph insert—

"(aa) anything that the Board or a clinical commissioning group may or must arrange for the provision of under this Act or any other enactment.", and

(c) omit paragraphs (b) and (c).

(4) In subsection (4)—

(a) for "a Primary Care Trust" substitute "a clinical commissioning group",

(b) for "the trust" substitute "the group", and

(c) at the end insert "; and the references in this subsection to a clinical commissioning group are, so far as necessary for the purposes of regulations under subsection (2E) of that section, to be read as references to the Board."

(5) In subsection (5), omit "or under regulations under subsection (4)".

(6) After subsection (6) insert—

"(7) In this section and sections 12B to 12D, "local authority" has the same meaning as in section 2B."

Commencement Information

I534 Sch. 4 para. 10 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

11 (1) Section 12B (regulations about direct payments) is amended as follows.

(2) In subsection (2), in each of paragraphs (d), (g), (h) and (j), for "or the Primary Care Trust" substitute ", the Board, a clinical commissioning group or a local authority".

(3) In subsection (4) —

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(a) for "or the Primary Care Trust", in the first place it occurs, substitute ", the Board, a clinical commissioning group or a local authority", and

(b) for "or the Primary Care Trust", in the second place it occurs, substitute "the Board, a clinical commissioning group or a local authority (as the case may be)".

(4) In subsection (5)—

(a) in paragraph (a), after "the Secretary of State" insert "or a local authority or as arranged for by the Board or a clinical commissioning group (as the case may be)", and

(b) in paragraph (b) for "a Primary Care Trust with respect to the provision of" substitute "the Board, a clinical commissioning group or a local authority with respect to the arrangement for the provision of".

Commencement Information
I535 Sch. 4 para. 11 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

12 In section 12D (arrangements with other bodies relating to direct payments)—

(a) in subsection (1) after "the Secretary of State" insert ", the Board, a clinical commissioning group or a local authority", and

(b) in subsection (3) after "the Secretary of State" insert ", the Board, a clinical commissioning group or a local authority".

Commencement Information
I536 Sch. 4 para. 12 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 2

NHS Bodies

13 In section 28 (special health authorities), omit subsection (6).

Commencement Information
I537 Sch. 4 para. 13 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

14 In section 29 (exercise of Special Health Authority functions), in subsection (2)(a)—

(a) omit ", section 14", and

(b) omit ", section 19".

Commencement Information
I538 Sch. 4 para. 14 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

15 Omit Chapter 5B of Part 2 (trust special administrators: Primary Care Trusts).

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Commencement Information
I539 Sch. 4 para. 15 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

16 In section 67 (effect of intervention orders), in subsection (1)—

(a) in paragraph (a)—

(i) omit "Strategic Health Authority," and

(ii) omit "Primary Care Trust," and

(b) in paragraph (b)—

(i) omit "Strategic Health Authority," and

(ii) omit "Primary Care Trust,".

Commencement Information
I540 Sch. 4 para. 16 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

17 In section 70 (transfer of residual liabilities)—

(a) in subsection (1)—

(i) omit "a Strategic Health Authority,", and

(ii) omit "a Primary Care Trust,", and

(b) in the heading, at the end insert "of certain health service bodies".

Commencement Information
I541 Sch. 4 para. 17 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

18 (1) Section 71 (schemes for meeting losses and liabilities in respect of certain health service bodies) is amended as follows.

(2) In subsection (2)—

(a) after "are—" insert—

"(za) the Board,

(zb) clinical commissioning groups,",

(b) omit paragraph (a),

(c) omit paragraph (b),

(d) after paragraph (h) (and before the "and" immediately following it) insert—

"(ha) a company formed under section 223 and wholly or partly owned by the Secretary of State or the Board,

(hb) a subsidiary of a company which is formed under that section and wholly owned by the Secretary of State,", and"

(e) in paragraph (i)—

(i) for "paragraphs (a) to (h)", in the first place where it occurs, substitute "paragraphs (za) to (hb)", and

(ii) for "paragraphs (a) to (h)", in the second place where it occurs, substitute "paragraphs (za) to (h)".

(3) In subsection (2A)—

(a) after paragraph (a) insert—

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"(ab) in relation to a company within paragraph (ha) or (hb) of subsection (2), means the company's activities in providing facilities or services to any person or body;", and

(b) in paragraph (b) for "paragraphs (a) to (h)" substitute "paragraphs (za) to (h)".

(4) In subsection (3)(a)—

(a) after "the Secretary of State" insert "or the Board",

(b) omit "Strategic Health Authority,", and

(c) omit "Primary Care Trust,".

(5) In subsection (5), for "(a) to (d)," substitute "(c), (d),".

(6) In subsection (6)—

(a) after "the Secretary of State," insert "the Board or",

(b) omit "Strategic Health Authority," and

(c) omit "Primary Care Trust,".

Commencement Information

I542 Sch. 4 para. 18(1) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I543 Sch. 4 para. 18(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I544 Sch. 4 para. 18(2)(a)(d)(e)(3)(4)(a)(6)(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I545 Sch. 4 para. 18(2)(b)(c)(4)(b)(c)(5)(6)(b)(c) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

19 In section 73 (directions and regulations), in subsection (1) omit paragraphs (c) to (f).

Commencement Information

I546 Sch. 4 para. 19 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

20 Omit Schedule 2.

Commencement Information

I547 Sch. 4 para. 20 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

21 Omit Schedule 3.

Commencement Information

I548 Sch. 4 para. 21 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

22 (1) Schedule 4 (NHS trusts) is amended as follows.

(2) In paragraph (5)(1)(f), omit "Primary Care Trusts,".

(3) In paragraph 6—

(a) in sub-paragraph (1) —

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(i) omit "Strategic Health Authority," and
(ii) omit ", Primary Care Trust", and

(b) in sub-paragraph (2) —
(i) omit "Strategic Health Authority," and
(ii) omit ", Primary Care Trust".

(4) In paragraph 7(3), omit "Strategic Health Authority,".

(5) In paragraph 8—
(a) in sub-paragraph (1), omit ", Primary Care Trust" (in each place where it occurs), and
(b) in sub-paragraph (4), omit ", Primary Care Trust",
(c) in sub-paragraph (5), omit ", Primary Care Trust" (in each place where it occurs),
(d) in sub-paragraph (6)(b), omit ", Primary Care Trust", and
(e) in sub-paragraph (9)(b), omit ", Primary Care Trust".

(6) In paragraph 9—
(a) in sub-paragraph (1)—
(i) omit "a Strategic Health Authority,", and
(ii) omit "a Primary Care Trust,",
(b) in sub-paragraph (3)—
(i) omit "Strategic Health Authority,", and
(ii) omit "Primary Care Trust,",
(c) in sub-paragraph (6)—
(i) omit "a Strategic Health Authority,", and
(ii) omit ", a Primary Care Trust,",
(d) in sub-paragraph (7)—
(i) in paragraph (a), omit "Strategic Health Authority,",
(ii) in that paragraph omit "or belong to a Primary Care Trust", and
(iii) in the words following paragraph (b)—
(a) omit "Strategic Health Authority,", and
(b) omit "Primary Care Trust,".

(7) In paragraph 15, omit sub-paragraphs (2) and (3).

(8) In paragraph 18—
(a) omit "Strategic Health Authority," and
(b) omit "Primary Care Trust,".

(9) In paragraph 29, in sub-paragraph (3) omit "Strategic Health Authority,".

(10) In paragraph 30, in sub-paragraph (1)—
(a) omit "Strategic Health Authority," and
(b) omit "Primary Care Trust,".

Commencement Information
I549 Sch. 4 para. 22 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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23 (1) Schedule 6 (special health authorities established under section 28) is amended as follows.

(2) In paragraph 3(8)—

(a) for "to a Strategic Health Authority" substitute "to the Board", and

(b) for "a Strategic Health Authority" substitute "the Board".

(3) In paragraph 3(12)—

(a) in paragraph (a) for "of a Strategic Health Authority" substitute "of the Board", and

(b) in paragraph (b) omit "or by a Strategic Health Authority".

(4) In paragraph 13 for "a Strategic Health Authority" substitute "the Board".

Commencement Information
I550 Sch. 4 para. 23 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 3

LOCAL AUTHORITIES

24 In section 74 (supply of goods and services by local authorities), in subsection (1)(a)—

(a) at the beginning insert "the Board and",

(b) after "any" insert "clinical commissioning group or,",

(c) omit "Strategic Health Authority," and

(d) omit "or Primary Care Trust".

Commencement Information
I551 Sch. 4 para. 24 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

25 In section 76 (power of local authorities to make payments), in subsection (1)—

(a) after the first "to" insert "the Board, a clinical commissioning group",

(b) omit "a Strategic Health Authority," and

(c) omit "a Primary Care Trust".

Commencement Information
I552 Sch. 4 para. 25 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

26 In section 77 (Care Trusts), in each of subsections (1)(a), (10) and (12) omit "a Primary Care Trust or".

Commencement Information
I553 Sch. 4 para. 26 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

27 In section 78 (directed partnership agreements), in subsection (3)—

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(a) omit paragraph (a), and
(b) omit paragraph (b).

Commencement Information
I554 Sch. 4 para. 27 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

28 (1) Section 80 (supply of goods and services by the Secretary of State) is amended as follows.

(2) In subsection (1)—
(a) after "The Secretary of State" insert ", the Board or a clinical commissioning group", and
(b) in paragraph (b) for "he" substitute "the Secretary of State".

(3) In subsection (3)—
(a) in paragraph (a) omit "or by a Primary Care Trust", and
(b) in paragraph (b)—
(i) omit "a Strategic Health Authority," and
(ii) omit "a Primary Care Trust,".

(4) After subsection (3) insert—

"(3A) The Board or a clinical commissioning group may make available to persons falling within subsection (1)—
(a) any facilities the provision of which is arranged by the Board or (as the case may be) the clinical commissioning group under this Act (including by virtue of section 7A),
(b) any facilities of the Board or (as the case may be) the group, and
(c) the services of persons employed by the Board or (as the case may be) the group."

(5) In subsection (4) after "carry out" insert ", and the Board or a clinical commissioning group may arrange for the carrying out of,".

(6) In subsection (5), for "The Secretary of State" substitute "The Board".

(7) In subsection (6)—
(a) in paragraph (a), after "provided" insert "by the Secretary of State",
(b) in paragraph (b)—
(i) omit "a Strategic Health Authority," and
(ii) omit "a Primary Care Trust," and
(c) in paragraph (c)—
(i) omit "a Strategic Health Authority," and
(ii) omit "a Primary Care Trust,".

(8) After subsection (6) insert—

"(6A) The Board and each clinical commissioning group must make available to local authorities—

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(a) any services (other than the services of any person) or other facilities the provision of which is arranged by the Board or (as the case may be) the clinical commissioning group under this Act,

(b) the services of persons employed by the Board or (as the case may be) the group, and

(c) any facilities of the Board or (as the case may be) the group,

so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health."

(9) In subsection (7)—

(a) for "The Secretary of State" substitute "The Board",

(b) at the end of paragraph (c) insert "or", and

(c) omit paragraph (e) and the word "or" immediately preceding it.

(10) After that subsection insert—

"(8) The Secretary of State may arrange to make available to local authorities the services of persons providing Special Health Authorities or Local Health Boards with services of a kind provided as part of the health service, so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.

(9) The Board or a clinical commissioning group may arrange to make available to local authorities the services of persons providing services pursuant to arrangements made under this Act by the Board or (as the case may be) the clinical commissioning group, so far as is reasonably necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health.

(10) The reference in subsection (9) to arrangements made by the Board or (as the case may be) a clinical commissioning group includes a reference to arrangements so made by virtue of section 7A."

(11) In the title to section 80, after "Secretary of State" insert ", the Board and clinical commissioning groups".

(12) Until the commencement of section 34, subsection (8) of section 80 of the National Health Service Act 2006 (as inserted by sub-paragraph (10)) has effect as if after "Special Health Authorities" there were inserted ", Primary Care Trusts".

Commencement Information

I555 Sch. 4 para. 28 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

29 (1) Section 81 (conditions of supply under section 80) is amended as follows.

(2) In subsection (1)—

(a) for the words from the beginning to "that section" substitute "Before a person makes the services of any officer available under section 80(3)(b), (3A)(c), (6)(b) or (c) or (6A)(b), the person must",

(b) in paragraph (a) for "the Secretary of State" substitute "the person", and

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(c) in paragraph (b) at the beginning insert "where the person is the Secretary of State and is not the officer's employer,".

(3) In subsection (2)—

(a) for "The Secretary of State" substitute "The person concerned", and

(b) for "he" substitute "it".

(4) In subsection (3)—

(a) omit "Strategic Health Authorities,", and

(b) omit "Primary Care Trusts,".

(5) In subsection (4) for "the Secretary of State" substitute "the person who makes the services available".

(6) In subsection (5) —

(a) for the words from the beginning to "section 80(6)" substitute "A person who makes services or facilities available under section 80(6) or (6A) may make such charges in respect of them", and

(b) for "the Secretary of State" substitute "the person".

Commencement Information

I556 Sch. 4 para. 29 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 4

MEDICAL SERVICES

30 (1) Section 83 (duty relating to primary medical services) is amended as follows.

(2) For subsections (1) and (2) substitute—

"(1) The Board must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to secure the provision of primary medical services throughout England.

(2) The Board may (in addition to any other power conferred on it) make such arrangements for the provision of primary medical services as it considers appropriate; and it may, in particular, make contractual arrangements with any person.

(2A) Arrangements made for the purposes of subsection (1) or (2) may include arrangements for the performance of a service outside England."

(3) In subsection (3) of that section, for "Each Primary Care Trust" substitute "The Board".

(4) Omit subsection (4).

(5) For the cross-heading preceding that section substitute "Duty of the Board in relation to primary medical services".

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Commencement Information
I557 Sch. 4 para. 30 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

31 (1) Section 84 (general medical services contracts: introductory) is amended as follows.

(2) In subsection (1), for "A Primary Care Trust" substitute "The Board".

(3) In subsections (3) and (5), for "the Primary Care Trust" substitute "the Board".

(4) In subsection (4), for paragraph (b) substitute—

"(b) services to be performed outside England."

Commencement Information
I558 Sch. 4 para. 31 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

32 In section 86 (persons eligible to enter into general medical services contracts), in subsection (1), for "A Primary Care Trust" substitute "The Board".

Commencement Information
I559 Sch. 4 para. 32 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

33 In section 87 (general medical services contracts: payments), in subsection (3)(d), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I560 Sch. 4 para. 33 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

34 (1) In section 89 (general medical services contracts: required terms), in subsection (4)(a), for "a Primary Care Trust" substitute "the Board".

(2) The variations to contract terms that may be imposed by virtue of subsection (2)(d) of that section include, in particular, variations in consequence of the establishment of clinical commissioning groups.

Commencement Information
I561 Sch. 4 para. 34 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

35 (1) Section 91 (persons performing primary medical services) is amended as follows.

(2) In the following provisions, for "a Primary Care Trust" substitute "the Board"—

(a) subsection (1), in each place it occurs,
(b) subsection (3)(j),
(c) subsection (4)(a), (b) and (d), and
(d) subsection (6)(a) and (b).

(3) In subsection (2), for paragraph (b) substitute—

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"(b) the Board is responsible for a medical service if it secures its provision by or under any enactment."

(4) In subsection (3), in paragraph (c), omit the words from "as to" to ", and".

Commencement Information

I562 Sch. 4 para. 35 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

36 (1) Section 92 (arrangements by Strategic Health Authorities for the provision of primary medical services) is amended as follows.

(2) For subsection (1) substitute—

"(1) The Board may make agreements, other than arrangements pursuant to section 83(2) or general medical services contracts, under which primary medical services are provided."

(3) Omit subsection (6).

(4) Omit subsection (7).

(5) For the title to that section substitute "Arrangements by the Board for the provision of primary medical services".

(6) The provision which may be made by virtue of section 304(10)(a) of this Act in an order under section 306 of this Act providing for the commencement of this paragraph includes, in particular, provision enabling the National Health Service Commissioning Board to direct Primary Care Trusts to exercise its functions under section 92 pending the commencement of section 34 of this Act.

Commencement Information

I563 Sch. 4 para. 36 partly in force; Sch. 4 para. 36 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I564 Sch. 4 para. 36 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

37 (1) Section 93 (participants in section 92 arrangements) is amended as follows.

(2) In subsection (1)—

(a) for "A Strategic Health Authority" substitute "The Board", and

(b) omit paragraph (g).

(3) In subsection (3), in the definition of "NHS employee", in paragraph (b), omit "Primary Care Trust or".

(4) In that subsection, in the definition of "qualifying body", for "(e) or (g)" substitute "or (e)".

Commencement Information

I565 Sch. 4 para. 37 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

38 (1) Section 94 (regulations about section 92 arrangements) is amended as follows.

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(2) In subsection (2), for "Strategic Health Authorities" substitute "the Board".

(3) In subsection (3), after paragraph (c) insert—

"(ca) make provision with respect to the performance outside England of services to be provided in accordance with section 92 arrangements,".

(4) In subsection (6), for "a Primary Care Trust" substitute "the Board".

(5) The variations of arrangements which may be imposed by virtue of subsection (3)(f) include, in particular, variations in consequence of the establishment of clinical commissioning groups.

Commencement Information
I566 Sch. 4 para. 38 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

39 Omit section 95 (transfer of liabilities relating to section 92 arrangements).

Commencement Information
I567 Sch. 4 para. 39 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

40 (1) Section 96 (assistance and support) is amended as follows.

(2) In subsection (1)—

(a) for "A Primary Care Trust" substitute "The Board", and

(b) before paragraph (a) insert—

"(za) primary medical services pursuant to section 83(2),".

(3) In subsection (2)—

(a) for "a Primary Care Trust" substitute "the Board", and

(b) for "the Primary Care Trust" substitute "the Board".

Commencement Information
I568 Sch. 4 para. 40 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

41 (1) Section 97 (Local Medical Committees) is amended as follows.

(2) In subsection (1), for the words from the beginning to "other Primary Care Trusts" substitute "The Board may recognise a committee formed for an area".

(3) In subsection (3)—

(a) in paragraph (a), omit sub-paragraph (i), and

(b) in paragraph (b), for "the Primary Care Trust" substitute "the Board".

(4) In subsection (6), for "a Primary Care Trust" substitute "the Board".

(5) Omit subsection (7).

(6) In subsection (10)—

(a) for "A Primary Care Trust" substitute "The Board", and

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(b) in paragraphs (a) and (b), for "the Primary Care Trust" substitute "the Board".

Commencement Information
I569 Sch. 4 para. 41 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 5

DENTAL SERVICES

42 (1) Section 99 (duty relating to primary dental services) is amended as follows.

(2) For subsection (1) substitute—

"(1) The Board must, to the extent that it considers necessary to meet all reasonable requirements, exercise its powers so as to secure the provision of primary dental services throughout England.

(1A) Arrangements made for the purposes of subsection (1) may include arrangements for the performance of a service outside England."

(3) Omit subsection (2).

(4) In subsection (3)—
(a) for "Each Primary Care Trust" substitute "The Board", and
(b) for "for which it makes provision" substitute "for which provision is made".

(5) Omit subsection (4).

(6) For the cross-heading preceding that section substitute "Duty of the Board in relation to primary dental services".

Commencement Information
I570 Sch. 4 para. 42 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

43 (1) Section 100 (general dental services contracts: introductory) is amended as follows.

(2) In subsection (1), for "A Primary Care Trust" substitute "The Board".

(3) In subsections (3) and (4), for "the Primary Care Trust" substitute "the Board".

(4) In subsection (3), in paragraph (a), after "dental services" insert "or services which are to be performed outside England".

Commencement Information
I571 Sch. 4 para. 43 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

44 In section 102 (persons eligible to enter into general dental services contracts), in subsection (1), for "A Primary Care Trust" substitute "The Board".

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I572 Sch. 4 para. 44 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

45 In section 103 (general dental services contracts: payments), in subsection (3)(d), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I573 Sch. 4 para. 45 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

46 In section 104 (general dental services contracts: required terms), in subsection (3) for "a Primary Care Trust" substitute "the Board".

Commencement Information
I574 Sch. 4 para. 46 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

47 (1) Section 106 (persons performing primary dental services) is amended as follows.

(2) In the following provisions, for "a Primary Care Trust" substitute "the Board"—
(a) subsection (1), in each place it occurs,
(b) subsection (3)(j),
(c) subsection (4)(a), (b) and (d), and
(d) subsection (6)(a) and (b).

(3) In subsection (2), for paragraph (b) substitute—
"(b) the Board is responsible for a dental service if it secures its provision by or under any enactment."

(4) In subsection (3), in paragraph (c), omit the words from "as to" to ", and".

Commencement Information
I575 Sch. 4 para. 47 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

48 (1) Section 107 (arrangements by Strategic Health Authorities for the provision of primary dental services) is amended as follows.

(2) For subsection (1) substitute—

"(1) The Board may make agreements, other than general dental services contracts, under which primary dental services are provided."

(3) Omit subsection (7).

(4) For the title to that section substitute "Arrangements by the Board for the provision of primary dental services".

(5) The provision which may be made by virtue of section 304(10)(a) of this Act in an order under section 306 of this Act providing for the commencement of this paragraph includes, in particular, provision enabling the National Health Service

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Commissioning Board to direct Primary Care Trusts to exercise its functions under section 107 pending the commencement of section 34 of this Act.

Commencement Information

I576 Sch. 4 para. 48 partly in force; Sch. 4 para. 48 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I577 Sch. 4 para. 48 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

49 (1) Section 108 (participants in section 107 arrangements) is amended as follows.

(2) In subsection (1)—

(a) for "A Strategic Health Authority" substitute "The Board", and

(b) omit paragraph (g).

(3) In subsection (3), in the definition of "NHS employee", in paragraph (b), omit "Primary Care Trust or".

Commencement Information

I578 Sch. 4 para. 49 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

50 (1) Section 109 (regulations about section 107 arrangements) is amended as follows.

(2) In subsection (2), for "Strategic Health Authorities" substitute "the Board".

(3) In subsection (3), after paragraph (c) insert—

"(ca) make provision with respect to the performance outside England of services to be provided in accordance with section 107 arrangements,".

(4) In subsection (6), for "a Primary Care Trust" substitute "the Board".

Commencement Information

I579 Sch. 4 para. 50 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

51 Omit section 110 (transfer of liabilities relating to section 107 arrangements).

Commencement Information

I580 Sch. 4 para. 51 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

52 (1) Section 112 (assistance and support) is amended as follows.

(2) In subsection (1), for "A Primary Care Trust" substitute "The Board".

(3) In subsection (2)—

(a) for "a Primary Care Trust" substitute "the Board", and

(b) for "the Primary Care Trust" substitute "the Board".

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Commencement Information
I581 Sch. 4 para. 52 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

53 (1) Section 113 (Local Dental Committees) is amended as follows.

(2) In subsection (1), for the words from the beginning to "other Primary Care Trusts" substitute "The Board may recognise a committee formed for an area".

(3) In subsection (3)(b), for "the Primary Care Trust" substitute "the Board".

(4) In subsection (6), for "a Primary Care Trust" substitute "the Board".

(5) Omit subsection (7).

(6) In subsection (10)—

(a) for "A Primary Care Trust" substitute "The Board", and

(b) in paragraphs (a) and (b), for "the Primary Care Trust" substitute "the Board".

Commencement Information
I582 Sch. 4 para. 53 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 6

OPHTHALMIC SERVICES

54 (1) Section 115 (duty relating to primary ophthalmic services) is amended as follows.

(2) In subsection (1), for the words from the beginning to "area," substitute "The Board must exercise its powers so as to secure the provision throughout England".

(3) After that subsection insert—

"(1A) Arrangements made for the purposes of subsection (1) may include arrangements for the performance of a service outside England."

(4) For subsection (4) substitute—

"(4) The Board may (in addition to any other power conferred on it) make such arrangements for the provision of primary ophthalmic services as it considers appropriate; and it may, in particular, make contractual arrangements with any person.

(4A) Arrangements made for the purposes of subsection (4) may include arrangements for the performance of a service outside England."

(5) In subsection (5), for "Each Primary Care Trust" substitute "The Board".

(6) Omit subsection (6).

(7) In subsection (9), in paragraph (b), for "(d)" substitute "(e)".

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(8) For the cross-heading preceding that section substitute "Duty of the Board in relation to primary ophthalmic services".

Commencement Information
I583 Sch. 4 para. 54 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

55 (1) Section 117 (general ophthalmic services contracts: introductory) is amended as follows.

(2) In subsection (1), for "A Primary Care Trust" substitute "The Board".

(3) In subsections (3) and (5), for "the Primary Care Trust" substitute "the Board".

(4) In subsection (4), for paragraph (b) substitute—

"(b) services which are to be performed outside England."

Commencement Information
I584 Sch. 4 para. 55 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

56 In section 118 (persons eligible to enter into general ophthalmic services contracts), in subsection (1), for "A Primary Care Trust" substitute "The Board".

Commencement Information
I585 Sch. 4 para. 56 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

57 In section 119 (exclusion of contractors), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I586 Sch. 4 para. 57 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

58 In section 120 (general ophthalmic services contracts: payments), in subsection (3)(d), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I587 Sch. 4 para. 58 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

59 In section 121 (general ophthalmic services contracts: other required terms), in subsection (3)(a), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I588 Sch. 4 para. 59 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

60 (1) Section 123 (persons performing primary ophthalmic services) is amended as follows.

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(2) In the following provisions, for "a Primary Care Trust" substitute "the Board"—

(a) subsection (1), in each place it occurs,

(b) subsection (3)(j),

(c) subsection (4)(a), (b) and (d), and

(d) subsection (7)(a) and (b).

(3) In subsection (2), for paragraph (b) substitute—

"(b) the Board is responsible for an ophthalmic service if it secures its provision by or under any enactment."

(4) In subsection (3), in paragraph (c), omit the words from "as to" to ", and".

Commencement Information

I589 Sch. 4 para. 60 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

61 (1) Section 124 (primary ophthalmic services: assistance and support) is amended as follows.

(2) In subsection (1)—

(a) for "A Primary Care Trust" substitute "The Board", and

(b) at the end insert "or primary ophthalmic services that fall within section 115(4)".

(3) In subsection (2)—

(a) for "a Primary Care Trust" substitute "the Board", and

(b) for "the Primary Care Trust" substitute "the Board".

Commencement Information

I590 Sch. 4 para. 61 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

62 (1) Section 125 (Local Optical Committees) is amended as follows.

(2) In subsection (1), for the words from the beginning to "other Primary Care Trusts" substitute "The Board may recognise a committee formed for an area".

(3) In subsection (3)—

(a) in paragraph (a), omit ", whether under section 115(4)(a), or", and

(b) in paragraph (b), for "the Primary Care Trust" substitute "the Board".

(4) In subsection (7), for "a Primary Care Trust" substitute "the Board".

(5) In subsection (10)—

(a) for "A Primary Care Trust" substitute "The Board", and

(b) in paragraphs (a) and (b), for "the Primary Care Trust" substitute "the Board".

Commencement Information

I591 Sch. 4 para. 62 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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PART 7

PHARMACEUTICAL SERVICES

63 (1) Section 126 (arrangements for pharmaceutical services) is amended as follows.

(2) In subsection (1), for "Each Primary Care Trust" substitute "The Board".

(3) In subsection (3), for the words from "as respects" to "that area" substitute "for the provision to persons who are in England".

(4) In subsection (6), for "a Primary Care Trust" substitute "the Board".

(5) Omit subsection (7).

Commencement Information
I592 Sch. 4 para. 63 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

64 (1) Section 127 (arrangements for additional pharmaceutical services) is amended as follows.

(2) In subsections (1)(a) and (b) and (2), for "a Primary Care Trust", substitute "the Board".

(3) In subsection (1)(a), for "within or outside its area" substitute "in England".

(4) In subsection (2), omit the words from "(whether" to the end.

Commencement Information
I593 Sch. 4 para. 64 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

65 (1) Section 128 (terms and conditions of arrangements under section 127) is amended as follows.

(2) In subsection (1), for "the Primary Care Trust to which they apply" substitute "the Board".

(3) In subsection (4), for "A Primary Care Trust" substitute "The Board".

(4) In subsection (5), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I594 Sch. 4 para. 65 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

66 (1) Section 129 (regulations as to pharmaceutical services) is amended as follows.

(2) In subsection (1), for "a Primary Care Trust" substitute "the Board".

(3) In subsection (2)—

(a) in paragraph (a)—

(i) for "a Primary Care Trust" substitute "the Board", and

(ii) for "the area of the Primary Care Trust" substitute "England",

(b) in paragraph (b), for "a Primary Care Trust" substitute "the Board", and

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(c) in paragraph (c), for "the Primary Care Trust" substitute "the Board".

(4) After subsection (2ZA) (inserted by section 207(3)) insert—

"(2ZB) Regulations under subsection (2)(a) may, in particular, require a list of persons to be prepared by reference to the area in which the premises from which the services are provided are situated (and regulations imposing that requirement must prescribe the description of area by reference to which the list is to be prepared)."

(5) In subsection (2A), for "The Primary Care Trust" substitute "The Board",

(6) In subsections (2C), (3A), (4), (5) and (8), for "the Primary Care Trust", in each place it appears, substitute "the Board".

(7) In subsection (6)—

(a) in paragraphs (za), (a), (b), (c), (d), (g), (h), (i), (j) and (k), for "a Primary Care Trust" substitute "the Board",

(b) in paragraphs (b), (e) and (k), for "the Primary Care Trust", in each place it appears, substitute "the Board", and

(c) in paragraph (f), for "that Primary Care Trust" substitute "the Board".

(8) In subsection (6)(c)—

(a) for "the Primary Care Trust", in the first place it appears, substitute "the Board", and

(b) omit "in the area of the Primary Care Trust".

(9) In subsection (10A), for "Primary Care Trusts" substitute "The Board".

Commencement Information

I595 Sch. 4 para. 66 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I596 Sch. 4 para. 66 partly in force; Sch. 4 para. 66 in force for specified purposes at Royal Assent, see s. 306(1)(d)

67 In section 130 (regulations about appeals from decisions on applications for inclusion in pharmaceutical list), in subsection (2)—

(a) for "a Primary Care Trust" substitute "the Board", and

(b) for "the Primary Care Trust" substitute "the Board".

Commencement Information

I597 Sch. 4 para. 67 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

68 (1) Section 131 (power to charge fee to applicants) is amended as follows.

(2) In subsection (1), for "a Primary Care Trust" substitute "the Board".

(3) In subsections (2)(b), (3)(b) and (5), for "the Primary Care Trust" substitute "the Board".

(4) In subsection (3)(a), omit the words from "and such" to the end.

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Commencement Information
I598 Sch. 4 para. 68 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

69 (1) Section 132 (persons authorised to provide pharmaceutical services) is amended as follows.

(2) In subsections (1) and (4)(a), (b), (c), (d) and (e), for "a Primary Care Trust" substitute "the Board".

(3) In subsection (3)—
(a) for "each Primary Care Trust" substitute "the Board", and
(b) for "the Primary Care Trust" substitute "the Board".

(4) In subsection (4), after paragraph (a) insert—
"(aa) requiring a list of medical practitioners referred to in subsection (3) to be prepared by reference to an area of a prescribed description,".

(5) In subsection (5)—
(a) for "a Primary Care Trust" substitute "the Board", and
(b) for "the Primary Care Trust" substitute "the Board".

Commencement Information
I599 Sch. 4 para. 69 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

70 (1) Section 133 (inadequate provision of pharmaceutical services) is amended as follows.

(2) In subsection (1)(a)—
(a) for "the area, or part of the area, of a Primary Care Trust" substitute "any part of England", and
(b) omit "area or".

(3) In subsection (1)(b), for "any such area or part" substitute "any part of England".

(4) In subsection (2)(a), for "the Primary Care Trust" substitute "the Board".

Commencement Information
I600 Sch. 4 para. 70 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

71 (1) Section 134 (pilot schemes) is amended as follows.

(2) In subsection (1), for "Primary Care Trusts" substitute "The Board".

(3) In subsection (2)—
(a) in paragraph (a), for "a Primary Care Trust" substitute "the Board",
(b) after that paragraph insert "and",
(c) in paragraph (b), omit "(otherwise than by the Primary Care Trust)", and
(d) omit paragraph (c) and the preceding "and".

(4) In subsection (5), for "a Primary Care Trust" substitute "the Board".

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Commencement Information
I601 Sch. 4 para. 71 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

72 In section 136 (designation of priority neighbourhoods or premises), in subsections (1) and (2)(b), for "a Primary Care Trust" substitute "the Board."

Commencement Information
I602 Sch. 4 para. 72 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

73 In section 137 (reviews of pilot schemes), in subsection (3)(a), for "the Primary Care Trust concerned" substitute "the Board".

Commencement Information
I603 Sch. 4 para. 73 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

74 (1) Section 138 (variation and termination of pilot schemes) is amended as follows.

(2) In subsection (1), for "Primary Care Trusts" substitute "the Board".

(3) In subsections (2) and (3), for "the Primary Care Trust concerned" substitute "the Board".

Commencement Information
I604 Sch. 4 para. 74 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

75 (1) Section 140 (funding of preparatory work) is amended as follows.

(2) In subsection (1), for "Primary Care Trusts" substitute "the Board".

(3) In subsection (3)(b) and (c), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I605 Sch. 4 para. 75 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

76 (1) In section 144 (local pharmaceutical services schemes)—

(a) for "Primary Care Trusts" substitute "the Board or the Secretary of State", and

(b) omit "or Strategic Health Authorities".

(2) In consequence of the repeal made by sub-paragraph (1)(b), omit section 29(4) of the Health Act 2009.

Commencement Information
I606 Sch. 4 para. 76 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

77 (1) Section 148 (conditional inclusion in pharmaceutical lists) is amended as follows.

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(2) In subsection (1), in paragraph (a), for "the Primary Care Trust in whose list he is included" substitute "the Board".

(3) In subsections (1)(b), (c) and (e), (3)(a) and (b)(ii) and (iii) and (4), for "the Primary Care Trust", in each place it appears, substitute "the Board".

(4) In subsection (6), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I607 Sch. 4 para. 77 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

78 (1) Section 150A (notices and penalties) is amended as follows.

(2) In subsection (1)—

(a) for "a Primary Care Trust" substitute "the Board", and

(b) for "the Primary Care Trust" substitute "the Board".

(3) In subsection (2), for "Primary Care Trusts" substitute "the Board".

Commencement Information
I608 Sch. 4 para. 78 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

79 (1) Section 151 (disqualification of practitioners) is amended as follows.

(2) In subsection (1), for "a Primary Care Trust" substitute "the Board".

(3) In subsection (5), for "the Primary Care Trust" substitute "the Board".

(4) In subsection (6), for "The Primary Care Trust" substitute "The Board".

Commencement Information
I609 Sch. 4 para. 79 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

80 (1) Section 152 (contingent removal) is amended as follows.

(2) In subsections (1) and (3), for "the Primary Care Trust" substitute "the Board".

(3) In subsection (4), for "The Primary Care Trust" substitute "The Board".

Commencement Information
I610 Sch. 4 para. 80 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

81 In section 154 (suspension), in subsections (1), (3), (4), (6)(b) and (c) and (8) (in each place it appears), for "the Primary Care Trust" substitute "the Board".

Commencement Information
I611 Sch. 4 para. 81 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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82 (1) Section 155 (suspension pending removal) is amended as follows.

(2) In subsections (1), (3) and (6), for "the Primary Care Trust" substitute "the Board".

(3) In subsection (5), for "The Primary Care Trust" substitute "The Board".

Commencement Information
I612 Sch. 4 para. 82 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

83 (1) Section 157 (review of decisions) is amended as follows.

(2) In subsection (1), for "The Primary Care Trust" substitute "The Board".

(3) In subsections (2)(a) and (3), for "the Primary Care Trust" substitute "the Board".

Commencement Information
I613 Sch. 4 para. 83 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

84 (1) Section 158 (appeals) is amended as follows.

(2) In subsection (1), for "a Primary Care Trust" substitute "the Board".

(3) In subsections (2) and (6), for "The Primary Care Trust" substitute "The Board".

(4) In subsections (3), (4) and (5)(a) and (b) for "the Primary Care Trust" substitute "the Board".

(5) In subsection (7), for "Primary Care Trusts" substitute "the Board".

Commencement Information
I614 Sch. 4 para. 84 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

85 (1) Section 159 (national disqualification) is amended as follows.

(2) In subsection (1), for "each Primary Care Trust", in each place it appears, substitute "the Board".

(3) In subsection (3), for "a Primary Care Trust" substitute "the Board".

(4) In subsection (4)—

(a) for "The Primary Care Trust" substitute "The Board", and

(b) for "the Primary Care Trust" substitute "the Board".

(5) In subsection (5), for "the Primary Care Trust's" substitute "the Board's".

(6) In subsection (6)—

(a) in paragraph (a), for "no Primary Care Trust or" substitute "neither the Board nor a", and

(b) in paragraph (b), for "each Primary Care Trust" substitute "the Board (if he is included in a list prepared by it)".

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I615 Sch. 4 para. 85 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

86 In section 160 (notification of decisions), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I616 Sch. 4 para. 86 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

87 In section 161 (withdrawal from lists), in paragraphs (a) and (b), for "a Primary Care Trust" substitute "the Board".

Commencement Information
I617 Sch. 4 para. 87 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

88 (1) Section 162 (regulations about decisions under Chapter 6 of Part 7) is amended as follows.

(2) In subsections (1) and (2)(b), for "a Primary Care Trust" substitute "the Board".

(3) In subsections (2)(c) and (3), for "the Primary Care Trust" substitute "the Board".

Commencement Information
I618 Sch. 4 para. 88 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

89 (1) Section 164 (remuneration for persons providing pharmaceutical services) is amended as follows.

(2) In subsection (3)(b), for "any Primary Care Trust" substitute "the Board".

(3) In subsection (4A)(a)—

(a) for "a Primary Care Trust" substitute "the Board", and

(b) for "to persons who provide" substitute "for providing".

Commencement Information
I619 Sch. 4 para. 89 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

90 (1) Section 166 (indemnity cover) is amended as follows.

(2) In subsection (2)(b)—

(a) for "a Primary Care Trust" substitute "the Board", and

(b) for "the Primary Care Trust", in each place it appears, substitute "the Board".

(3) In subsection (3), in paragraph (a) of the definition of "indemnity cover", for "a Primary Care Trust" substitute "the Board".

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Commencement Information
I620 Sch. 4 para. 90 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

91 (1) Section 167 (local pharmaceutical committees) is amended as follows.

(2) In subsection (1), for the words from the beginning to "other Primary Care Trusts," substitute "The Board may recognise a committee formed for an area".

(3) In subsections (2)(a) and (3)(a), omit "in the Primary Care Trust's area".

(4) In subsections (2)(a) and (b), (3)(a) and (b), (9), (10) and (11), for "the Primary Care Trust" substitute "the Board".

(5) In subsections (6) and (7), for "a Primary Care Trust" substitute "the Board".

(6) In subsection (9), for "A Primary Care Trust" substitute "The Board".

Commencement Information
I621 Sch. 4 para. 91 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

92 (1) Schedule 11 (pilot schemes) is amended as follows.

(2) In paragraph 1 (initiation of pilot schemes), in sub-paragraph (1)(a), for "a Primary Care Trust" substitute "the Board".

(3) In paragraph 2 (preliminary steps)—

(a) in sub-paragraph (1), for "the Primary Care Trust concerned" substitute "the Board",

(b) in sub-paragraphs (2), (3), (4) and (5)(a) and (b), for "a Primary Care Trust" substitute "the Board",

(c) in sub-paragraph (3)(b), for "the Primary Care Trust" substitute "the Board", and

(d) in sub-paragraph (5)(d)—

(i) for "Primary Care Trusts" substitute "the Board", and

(ii) for "them" substitute "it".

(4) In paragraph 3 (approvals)—

(a) in sub-paragraphs (2) and (3)(b), for "the Primary Care Trust" substitute "the Board", and

(b) in sub-paragraph (3)(a), for "the Primary Care Trust concerned" substitute "the Board".

(5) In paragraph 4 (preliminary approval)—

(a) in sub-paragraphs (1) and (4), for "a Primary Care Trust" substitute "the Board", and

(b) in sub-paragraph (2), for "The Primary Care Trust" substitute "The Board".

(6) In paragraph 5 (effect of proposals on existing services)—

(a) in sub-paragraph (1)(a)—

(i) for "the Primary Care Trust", in the first place it appears, substitute "the Board", and

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(ii) for "the area of the Primary Care Trust" substitute "the area concerned",

(b) in sub-paragraph (1)(b), for the words from "supplied" to the end substitute "prepared under sub-paragraph (3)",

(c) in sub-paragraph (3)—

(i) for "a Primary Care Trust" substitute "the Board",

(ii) for "the area of another Primary Care Trust" substitute "another area", and

(iii) for "consult that other Primary Care Trust about" substitute "prepare an assessment of the likely effect on those services of the implementation of", and

(d) omit sub-paragraph (4).

(7) In paragraph 7 (making a scheme)—

(a) in sub-paragraphs (1), (2) and (4), for "the Primary Care Trust concerned" substitute "the Board", and

(b) in sub-paragraph (1), for "the Primary Care Trust must" substitute "the Board must".

(8) Any pilot scheme under Chapter 2 of Part 7 of the National Health Service Act 2006 having effect immediately before the commencement of this paragraph is to continue to have effect as if it had been established by the Board; and nothing in this paragraph or paragraphs 68 to 75 affects the validity of anything done under or for the purposes of the scheme.

Commencement Information

I622 Sch. 4 para. 92 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

93 (1) Schedule 12 (LPS schemes) is amended as follows.

(2) In paragraph 1 (provision of local pharmaceutical services)—

(a) in sub-paragraph (1)—

(i) for "Primary Care Trusts" substitute "The Board or the Secretary of State", and

(ii) omit "or Strategic Health Authorities",

(b) in sub-paragraph (2)—

(i) in paragraph (a), for "a Primary Care Trust" substitute "the Board or the Secretary of State (the "commissioner")",

(ii) in that paragraph, omit "or Strategic Health Authority (the "commissioning body")", and

(iii) in paragraph (b), for "the commissioning body" substitute "the commissioner",

(c) omit sub-paragraph (2A),

(d) for sub-paragraph (2B) substitute—

"(2B) The Secretary of State may establish an LPS scheme only where the other party is the Board.

(2C) The Board may provide local pharmaceutical services under an LPS scheme only in such circumstances as may be prescribed.",

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(e) in each of sub-paragraphs (5) and (6), for "a Primary Care Trust" substitute "the Board", and

(f) in sub-paragraph (5), omit "in its area".

(3) In paragraph 2 (designation of priority neighbourhoods or premises)—

(a) in each of sub-paragraphs (1) and (2)(b), for "a Primary Care Trust" substitute "the Board", and

(b) in sub-paragraph (1), omit "or Strategic Health Authority".

(4) In paragraph 3 (regulations)—

(a) in sub-paragraph (2), for "the commissioning body" substitute "the commissioner", and

(b) in sub-paragraph (3)(k)—

(i) for "Primary Care Trusts" substitute "the Board or the Secretary of State", and

(ii) omit "or Strategic Health Authorities".

(5) In consequence of the repeals made by this paragraph, omit section 29(7), (8)(a) and (c), (10), (12) and (15) of the Health Act 2009.

(6) Any LPS scheme under Chapter 3 of Part 7 of the National Health Service Act 2006 having effect immediately before the commencement of this paragraph is to continue to have effect as if it had been established by the Board; and nothing in this paragraph or paragraph 76 affects the validity of anything done under or for the purposes of the scheme.

Commencement Information
I623 Sch. 4 para. 93 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 8

CHARGING

94 In section 176 (dental charging)—

(a) in subsection (3), for "a Primary Care Trust or Special Health Authority" substitute "the Board", and

(b) in subsection (4)(a), omit sub-paragraph (i).

Commencement Information
I624 Sch. 4 para. 94 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

95 In section 177 (exemptions from dental charging), in subsection (4), omit paragraph (a).

Commencement Information
I625 Sch. 4 para. 95 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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96 (1) Section 180 (payments in respect of costs of optical appliances) is amended as follows.

(2) In subsection (1), for "him or a relevant body" substitute "the Board".

(3) In subsection (3), in paragraph (a)—

(a) for "himself or such relevant body as may be prescribed" substitute "the Board", and

(b) for "he or the prescribed body" substitute "the Board".

(4) In paragraph (b) of that subsection—

(a) for "him or such relevant body as may be prescribed" substitute "the Board", and

(b) for "him or by the prescribed body" substitute "the Board".

(5) After subsection (6) insert—

"(6A) The Board may direct a Special Health Authority, or such other body as may be prescribed, to exercise any of the Board's functions under regulations under this section."

(6) Omit subsection (10).

(7) In subsection (11), at the end insert "in accordance with the regulations".

(8) Omit subsection (12).

(9) For the title to section 180 substitute "Payments in respect of costs of optical appliances and sight tests".

Commencement Information

I626 Sch. 4 para. 96 partly in force; Sch. 4 para. 96 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I627 Sch. 4 para. 96 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

97 (1) Section 181 (provision supplementary to section 180) is amended as follows.

(2) In subsection (3), omit the words from "(whether" to the end.

(3) Omit subsection (9).

Commencement Information

I628 Sch. 4 para. 97 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

98 (1) Section 183 (payment of travelling expenses) is amended as follows.

(2) In paragraph (a) —

(a) after "the Secretary of State" insert ", the Board, a clinical commissioning group,", and

(b) omit ", a Primary Care Trust,".

(3) In paragraph (b)—

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(a) after "by" insert "the Board,",
(b) omit "a Primary Care Trust", and
(c) before the first "to" insert "or a clinical commissioning group", and
(d) omit the words from "and" to "Trust,".

(4) In paragraph (c)—
(a) after "by" insert "the Board,",
(b) omit "a Primary Care Trust", and
(c) before the first "to" insert "or a clinical commissioning group".

Commencement Information
I629 Sch. 4 para. 98 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

99 In section 185 (charges for more expensive supplies), in subsection (2)—
(a) after "the Secretary of State," insert "the Board, a clinical commissioning group, a local authority,", and
(b) omit "a Primary Care Trust,".

Commencement Information
I630 Sch. 4 para. 99 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

100 In section 186 (charges for repairs and replacements in certain cases), in subsection (2)—
(a) after "the Secretary of State," insert "the Board, a clinical commissioning group, a local authority," and
(b) omit "a Primary Care Trust,".

Commencement Information
I631 Sch. 4 para. 100 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

101 In section 187 (charges for designated services or facilities) for the words from "designated" to the end substitute "of a kind mentioned in section 3(1)(d) or (e) (whether provided in pursuance of those provisions or any other provision of this Act)".

Commencement Information
I632 Sch. 4 para. 101 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

102 In section 188 (sums otherwise payable to those providing services), in subsection (2) —
(a) after the first "by" insert "the Board or a clinical commissioning group", and
(b) omit "a Primary Care Trust".

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Commencement Information

I633 Sch. 4 para. 102 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 9

FRAUD ETC.

103 (1) Section 195 (compulsory disclosure of documents) is amended as follows.

(2) In subsection (2) for "section 2(1)(b)" substitute "section 2".

(3) In subsection (3) —

(a) for "section 2(1)(b)" substitute "section 2",

(b) in paragraph (a) after "("NHS services")" insert "or in arranging for the provision of such services",

(c) in paragraph (d) after "NHS services" insert "or with arranging for the provision of such services", and

(d) in paragraph (f) after "NHS services" insert "or with arranging for the provision of such services".

Commencement Information

I634 Sch. 4 para. 103 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

104 (1) Section 196 (persons and bodies about which provision is made by Part 10) is amended as follows.

(2) In subsection (2), for "section 28(6)" substitute "section 275(1)".

(3) In subsection (3)—

(a) before paragraph (a) insert—

"(za) the Board,

(zb) a clinical commissioning group,"

(b) omit paragraph (a), and

(c) omit paragraph (c).

(4) After subsection (5) insert—

"(5A) A "public health service contractor" means any person providing services of any description under arrangements made in the exercise of the public health functions of the Secretary of State or a local authority."

Commencement Information

I635 Sch. 4 para. 104(1) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I636 Sch. 4 para. 104(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I637 Sch. 4 para. 104(2)(3)(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I638 Sch. 4 para. 104(2)(3)(b)(c)(4) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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105 (1) Section 197 (notice requiring production of documents) is amended as follows.

(2) In subsection (1)(a) after "health service provider" insert ", public health service contractor".

(3) In subsection (3)(d) after "health service provider" insert ", public health service contractor".

Commencement Information
I639 Sch. 4 para. 105 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

106 In section 201 (disclosure of information), in subsection (3)(a) for "any of the Secretary of State's functions" substitute "any of the functions of the Secretary of State, the Board, a clinical commissioning group or a local authority".

Commencement Information
I640 Sch. 4 para. 106 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

107 (1) Section 210 (interpretation of Part 10) is amended as follows.

(2) In subsection (1) after "health service provider" insert ", "public health service contractor"".

(3) In subsection (2)(a)—
(a) after "in relation to" insert "the Secretary of State, local authorities,", and
(b) after "health service providers" insert ", public health service contractors".

Commencement Information
I641 Sch. 4 para. 107 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 10

PROPERTY AND FINANCE

108 (1) Section 211 (acquisition, use and maintenance of property) is amended as follows.

(2) In subsection (4) for "A local social services authority" substitute "A local authority".

(3) After that subsection insert—

"(4A) In subsection (4), "local authority" has the same meaning as in section 2B."

Commencement Information
I642 Sch. 4 para. 108 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

109 In section 213 (transfers of trust property), in subsection (2)(c)—
(a) after "for" insert "the Board or a clinical commissioning group,", and
(b) omit "a Primary Care Trust,."

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Commencement Information

I643 Sch. 4 para. 109(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I644 Sch. 4 para. 109(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

110 (1) Section 214 (transfer of functions and property to or from special trustees) is amended as follows.

(2) In subsection (1)—

(a) after the first "by" insert "the Board, a clinical commissioning group,", and

(b) omit "a Primary Care trust,".

(3) In subsection (3)(a)—

(a) after "for" insert "the Board or a clinical commissioning group,", and

(b) omit "a Primary Care Trust,".

Commencement Information

I645 Sch. 4 para. 110(1) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I646 Sch. 4 para. 110(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I647 Sch. 4 para. 110(2)(a)(3)(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I648 Sch. 4 para. 110(2)(b)(3)(b) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

111 (1) Section 215 (trustees and property under section 222) is amended as follows.

(2) Omit subsection (2)(b) and the preceding "and".

(3) In subsection (3)—

(a) before paragraph (a) insert—

"(za) on trust for any purposes of the Board for which trustees have been appointed under paragraph 11 of Schedule A1,

(zb) on trust for any purposes of a clinical commissioning group for which trustees have been appointed under paragraph 15 of Schedule 1A,", and

(b) omit paragraph (a).

(4) In subsection (4)—

(a) after the second "and" insert "the Board, clinical commissioning group,",

(b) omit "the Primary Care Trust," (in each place it occurs), and

(c) after the second "by" insert "the Board, clinical commissioning group,".

Commencement Information

I649 Sch. 4 para. 111(1) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I650 Sch. 4 para. 111(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I651 Sch. 4 para. 111(2)(3)(b)(4)(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I652 Sch. 4 para. 111(3)(a)(4)(a)(c) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

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112 In section 216 (application of trust property: further provisions), in subsection (3), after "or 214" insert "of this Act or section 300 or 302 of the Health and Social Care Act 2012".

Commencement Information

I653 Sch. 4 para. 112 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

I654 Sch. 4 para. 112 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

113 In section 217 (trusts: supplementary provisions), in subsection (1)—

(a) after paragraph (e) insert—

"(ea) paragraph 11 of Schedule A1,

(eb) paragraph 15 of Schedule 1A,",

(b) omit paragraph (f), and

(c) omit paragraph (g).

Commencement Information

I655 Sch. 4 para. 113(a) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I656 Sch. 4 para. 113(a) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I657 Sch. 4 para. 113(b)(c) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

114 In section 218 (private trusts for hospitals), in subsection (4)—

(a) in paragraph (b) omit "or Primary Care Trust",

(b) in paragraph (c) omit "or Primary Care Trust" (in both places where it occurs), and

(c) for paragraph (d) substitute —

"(d) in any other case—

(i) where the hospital is vested in the Secretary of State, the Special Health Authority exercising functions of the Secretary of State in respect of it or, where there is no such Special Health Authority, the Secretary of State,

(ii) where the Welsh Ministers have functions in respect of the hospital, the Special Health Authority or Local Health Board exercising those functions."

Commencement Information

I658 Sch. 4 para. 114 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

115 In section 220 (trust property previously held for general hospital purposes), in subsection (2), after "or 214" insert "of this Act or section 300 or 302 of the Health and Social Care Act 2012".

Commencement Information

I659 Sch. 4 para. 115 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

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I660 Sch. 4 para. 115 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

116 (1) Section 222 (power to raise money) is amended as follows.

(2) In subsection (3) for "the Secretary of State" substitute "the appropriate authority".

(3) After subsection (3) insert—

"(3A) In subsection (3) "appropriate authority" means—

(a) in relation to a clinical commissioning group, the Board, and

(b) in relation to any other body to which this section applies, the Secretary of State."

(4) In subsection (9), for "section 224 or 226" substitute "section 225".

Commencement Information

I661 Sch. 4 para. 116 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

117 (1) In section 223 (formation of companies), in each of subsections (1), (2) and (5) after "Secretary of State" insert "or the Board".

(2) After that section insert—

"**223A Application of section 223 to clinical commissioning groups**

"**223A** "**223A Application of section 223 to clinical commissioning groups**

(1) Section 223 applies in relation to a clinical commissioning group as it applies in relation to the Board.

(2) But the powers conferred by that section are exercisable by a clinical commissioning group only for the purpose of securing improvement—

(a) in the physical and mental health of the people for whom it has responsibility for the purposes of section 3, or

(b) in the prevention, diagnosis and treatment of illness in such people."

Commencement Information

I662 Sch. 4 para. 117(1) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I663 Sch. 4 para. 117(2) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

118 Omit section 224 (means of meeting expenditure of Strategic Health Authorities).

Commencement Information

I664 Sch. 4 para. 118 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

119 (1) Section 226 (financial duties of Strategic Health Authorities and Special Health Authorities) is amended as follows.

(2) Omit subsection (1).

(3) In subsection (3) —

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) omit "Strategic Health Authority or", and
(b) for "subsection (1) or (2)" substitute "subsection (2)".

(4) In subsection (4) omit "Strategic Health Authority or" (in each place where it occurs).

(5) In subsection (5) omit "Strategic Health Authority or".

(6) In subsection (6) omit "Strategic Health Authority or".

(7) In subsection (7)—
(a) in paragraph (a) omit "specified Strategic Health Authority or",
(b) omit paragraph (b)(i) and the word "or" immediately following it, and
(c) omit paragraph (c)(i) and the word "or" immediately following it, and
(d) in the words following paragraph (c) omit "Strategic Health Authority or".

(8) In the heading to the section, omit "Strategic Health Authorities and".

Commencement Information
I665 Sch. 4 para. 119 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

120 (1) Section 227 (resource limits for Strategic Health Authorities and Special Health Authorities) is amended as follows.

(2) In subsection (1), omit "Strategic Health Authority and each".

(3) In subsection (2)(b) omit "Strategic Health Authority or".

(4) In subsection (3) omit "Strategic Health Authority or".

(5) In subsection (4) for "subsections (1) and (2)" substitute "subsection (2)".

(6) In the heading to the section, omit "Strategic Health Authorities and".

Commencement Information
I666 Sch. 4 para. 120 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

121 Omit sections 228 to 231 (funding of Primary Care Trusts etc).

Commencement Information
I667 Sch. 4 para. 121 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

122 In section 234 (special arrangement as to payment of remuneration), omit subsection (4).

Commencement Information
I668 Sch. 4 para. 122 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

123 (1) Section 236 (payment for medical examination before application for admission to hospital under the Mental Health Act) is amended as follows.

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(2) In subsection (1), for "the Secretary of State" substitute "the prescribed clinical commissioning group".

(3) In subsection (2)(b)—

(a) after "report made" insert "—

(i)",

(b) omit "a Primary Care Trust,",

(c) before "NHS trust" insert "an", and

(d) at the end insert ", or

(ii) pursuant to arrangements made by the National Health Service Commissioning Board or a clinical commissioning group, or

(iii) pursuant to arrangements made in the exercise (by any person) of the public health functions of the Secretary of State or a local authority."

Commencement Information

I669 Sch. 4 para. 123 partly in force; Sch. 4 para. 123 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I670 Sch. 4 para. 123 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

124 Omit Schedule 14 (further provision about expenditure of Primary Care Trusts).

Commencement Information

I671 Sch. 4 para. 124 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

125 (1) Schedule 15 (accounts and audits) is amended as follows.

(2) In paragraph 1(1)—

(a) omit paragraph (a),

(b) omit paragraph (c), and

(c) omit paragraph (g).

(3) In paragraph 5, omit sub-paragraph (2).

(4) Omit paragraph 7.

(5) In paragraph 8(3) omit "or 7".

(6) Omit paragraph 9.

Commencement Information

I672 Sch. 4 para. 125(1)-(3) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 4, 5, 7-9)

I673 Sch. 4 para. 125(4)-(6) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)** (with art. 11(1))

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PART 11

PUBLIC INVOLVEMENT AND SCRUTINY

126 (1) Section 242 (public involvement and consultation) is amended as follows.

(2) In subsection (1A)—

(a) omit paragraph (a), and

(b) omit paragraph (b).

(3) Omit subsections (4) and (5).

Commencement Information

I674 Sch. 4 para. 126 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

127 Omit sections 242A and 242B (duties of Strategic Health Authorities in relation to involvement of users).

Commencement Information

I675 Sch. 4 para. 127 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PART 12

MISCELLANEOUS

128 After section 254 insert—

"Support functions of the Secretary of State

Support functions of the Secretary of State

254A (1) The Secretary of State may, for the purpose of assisting any person exercising functions in relation to the health service or providing services for its purposes—

(a) provide (or otherwise make available) to the person goods, materials or other facilities;

(b) facilitate the recruitment and management of the person's staff;

(c) develop or operate information or communication systems;

(d) do such other things to facilitate or support the carrying out of the person's functions or other activities as the Secretary of State considers appropriate;

(e) arrange for any other person to do anything mentioned in paragraphs (a) to (d) or to assist the Secretary of State in doing any such thing.

(2) The power conferred by subsection (1)(a) includes power to purchase goods and materials for the purpose of providing them or making them available.

(3) The Secretary of State may, in connection with anything done under subsection (1), make available the services of any person employed by the Secretary of State.

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(4) The powers conferred by this section may be exercised on such terms, including terms as to the making of payments to or by the Secretary of State, as may be agreed.

(5) In this section, "the health service" does not include that part of the health service that is provided in pursuance of the public health functions of the Secretary of State or local authorities."

Commencement Information

I676 Sch. 4 para. 128 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

129 (1) Section 256 (power of Primary Care Trusts to make payments towards expenditure on community services) is amended as follows.

(2) In subsection (1) for "A Primary Care Trust" substitute "The Board or a clinical commissioning group".

(3) In subsection (3)—

(a) for "A Primary Care Trust" substitute "The Board or a clinical commissioning group", and

(b) for "the Primary Care Trust" substitute "the Board or (as the case may be) the clinical commissioning group".

(4) After subsection (5) insert—

"(5A) The Secretary of State may by directions to the Board specify the minimum amount which the Board must spend in a financial year in making payments under—

(a) this section;

(b) subsection (1) of this section;

(c) subsection (3) of this section.

(5B) The Secretary of State may by directions to the Board specify—

(a) a body or description of bodies to whom payments under subsection (1) or (3), or under either or both of those subsections, must be made by the Board in a financial year;

(b) functions or activities, or descriptions of functions or activities, in respect of which such payments must be made by the Board in a financial year;

(c) the minimum amount which the Board must spend in a financial year in making such payments—

(i) to a body or description of bodies specified in relation to the year under paragraph (a);

(ii) in respect of functions or activities, or descriptions of functions or activities, specified in relation to the year under paragraph (b);

(iii) to a body or description of bodies specified in relation to the year under paragraph (a) in respect of functions or activities or descriptions of functions or activities so specified under paragraph (b)."

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Commencement Information

I677 Sch. 4 para. 129 partly in force; Sch. 4 para. 129 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I678 Sch. 4 para. 129 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

130 In section 257 (payments in respect of voluntary organisations under section 256), in subsection (2) for "the Primary Care Trust" substitute "the Board or the clinical commissioning group".

Commencement Information

I679 Sch. 4 para. 130 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

131 (1) Section 258 (university clinical teaching and research) is amended as follows.

(2) In subsection (1)—

(a) for "The Secretary of State must exercise his functions under this Act" substitute "The functions under this Act of the Secretary of State, the Board and each clinical commissioning group must be exercised", and

(b) for "he" substitute "the Secretary of State, the Board or the clinical commissioning group (as the case may be)".

(3) In subsection (2), in paragraph (a)—

(a) after "exercisable by" insert "the Board,",

(b) after "a" insert "clinical commissioning group,",

(c) omit "Strategic Health Authority,", and

(d) omit "Primary Care Trust,".

Commencement Information

I680 Sch. 4 para. 131 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

132 (1) Section 259 (sale of medical practices) is amended as follows.

(2) In subsection (4), in paragraph (e), for "section 83(2)(b)" substitute "section 83(2)".

(3) After that subsection insert—

"(4A) The reference in subsection (4)(e) to arrangements under section 83(2) of this Act includes a reference to arrangements made under section 83(2)(b) of this Act before the commencement of paragraph 30 of Schedule 4 to the Health and Social Care Act 2012 (sub-paragraph (2) of which replaces section 83(2))."

(4) In subsection (5), in the definition of "relevant area"—

(a) after " "relevant area"" insert "—

(a)", and

(b) at the end insert ";

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(b) in relation to the Board, in a case where a person has at any time provided or performed services by arrangement or contract with the Board, means the prescribed area (at the prescribed time).”

Commencement Information
I681 Sch. 4 para. 132 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

133 Omit section 268 (persons displaced by health service development), and the cross-heading which precedes it.

Commencement Information
I682 Sch. 4 para. 133 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

134 In section 271 (territorial limit of exercise of functions), in the words in brackets in subsection (3)(a), after “directions to” insert “certain”.

Commencement Information
I683 Sch. 4 para. 134 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

135 After section 271 insert—

“**271A Services to be treated as services of the Crown for certain purposes**

“**271A** “**271A Services to be treated as services of the Crown for certain purposes**

(1) Services to which this section applies are to be treated as services of the Crown for the purposes of—

(a) Schedule 1 to the Registered Designs Act 1949 (provisions as to the use of registered designs for the services of the Crown etc.), and

(b) sections 55 to 59 of the Patents Act 1977 (use of patented inventions for the services of the Crown).

(2) This section applies to services provided in pursuance of—

(a) the functions of the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1, or

(b) the public health functions of a local authority.”

Commencement Information
I684 Sch. 4 para. 135 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

136 (1) Section 272 (orders, regulations, rules and directions) is amended as follows.

(2) In subsection (3)—

(a) omit paragraph (b), and

(b) omit paragraph (d).

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(3) In subsection (5)—

(a) omit "a PCT order, or", and

(b) before paragraph (a) insert—

"(za) section 14A(1),".

Commencement Information

I685 Sch. 4 para. 136 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

137 (1) Section 273 (further provision about orders and directions) is amended as follows.

(2) In subsection (3) for "by a Strategic Health Authority" substitute "by the Board".

(3) In subsection (4)(c)(ii)—

(a) after "8," insert "13Z1,", and

(b) omit "15,".

Commencement Information

I686 Sch. 4 para. 137 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)** (with art. 12)

138 (1) Section 275 (interpretation) is amended as follows.

(2) In subsection (1)—

(a) before the definition of "dental practitioner" insert—

""the Board" means the National Health Service Commissioning Board,

"clinical commissioning group" means a body established under section 14D of this Act,",

(b) in the definition of "health service hospital" omit "a Primary Care Trust,", and

(c) after the definition of "modifications" insert—

""NHS body" means—

(a) the Board,

(b) a clinical commissioning group,

(c) a Special Health Authority,

(d) an NHS trust,

(e) an NHS foundation trust, and

(f) a Local Health Board."

(3) In subsection (3)—

(a) omit "or 15",

(b) omit "Strategic Health Authority," (in both places where it occurs), and

(c) omit "Primary Care Trust or" (in both places where it occurs).

(4) Until the commencement of section 33, the definition of "NHS body" in section 275 of the National Health Service Act 2006 has effect as if it included a reference to a Strategic Health Authority.

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(5) Until the commencement of section 34, the definition of "NHS body" in section 275 of the National Health Service Act 2006 has effect as if it included a reference to a Primary Care Trust.

Commencement Information

I687 Sch. 4 para. 138(1) (2)(b) (3) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I688 Sch. 4 para. 138(2)(a)(c)(4)(5) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)** (with art. 13)

139 (1) Section 276 (index of defined expressions) is amended as follows.

(2) Omit the entry relating to "NHS body".

(3) After the entry for "LPS scheme" insert—

"NHS constitution	section 1B(2)"

(4) Omit the entry relating to "PCT order".

(5) After the entry relating to "provider, in relation to an NHS contract" insert—

"public health functions of the Secretary of State	section 1H(5)(a)
public health functions of local authorities	section 1H(5)(b)".

Commencement Information

I689 Sch. 4 para. 139(1) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I690 Sch. 4 para. 139(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I691 Sch. 4 para. 139(2) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I692 Sch. 4 para. 139(3)-(5) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

SCHEDULE 5

Section 55(2)

PART 1: AMENDMENTS OF OTHER ENACTMENTS

Voluntary Hospitals (Paying Patients) Act 1936 (c. 17)

1 In section 1 of the Voluntary Hospitals (Paying Patients) Act 1936 (definitions)—

(a) in the definition of "voluntary hospital", for ", NHS foundation trust or a Primary Care Trust" substitute "or an NHS foundation trust", and

(b) omit the definition of "Primary Care Trust".

Commencement Information

I693 Sch. 5 para. 1 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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National Assistance Act 1948 (c. 29)

2 The National Assistance Act 1948 is amended as follows.

Commencement Information
I694 Sch. 5 para. 2 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

3 (1) Section 24 (local authority's liability for provision of accommodation) is amended as follows.

(2) In subsections (6A) and (6B)—
(a) after "by a" insert "clinical commissioning group or", and
(b) omit "Primary Care Trust or".

(3) After subsection (6B), insert—

"(6C) The references in subsections (6A) and (6B) to a clinical commissioning group are, so far as necessary for the purposes of regulations under section 117(2E) of the Mental Health Act 1983, to be read as references to the National Health Service Commissioning Board."

Commencement Information
I695 Sch. 5 para. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

4 In section 26 (provision of accommodation in premises maintained by voluntary organisations), in subsection (1C)—
(a) after "such" insert "clinical commissioning group or", and
(b) omit "Primary Care Trust or".

Commencement Information
I696 Sch. 5 para. 4 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PROSPECTIVE

Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c. 65)

5 In Part 1 of Schedule 2 to the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (capacities in respect of which payments under Part 5 of the Act may be made, and paying authorities), in paragraph 15—
(a) in the first column (headed "capacity"), after "Officer of" insert "the National Health Service Commissioning Board, a clinical commissioning group,",
(b) in that column, omit "a Strategic Health Authority,",
(c) in the second column (headed "paying authority"), after "The" insert "National Health Service Commissioning Board, clinical commissioning group,", and
(d) in that column, omit "Strategic Health Authority,".

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Commencement Information

I697 Sch. 5 para. 5(a)(c) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I698 Sch. 5 para. 5(b)(d) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Public Records Act 1958 (c. 51)

6 In Schedule 1 to the Public Records Act 1958 (bodies the records of which are public records), in paragraph 3(2) in the Table, in the second column of the first entry relating to the Department of Health—

(a) after "Authorities including" insert "the National Health Service Commissioning Board, clinical commissioning groups,",

(b) after "records of trust property passing to" insert "the National Health Service Commissioning Board, a clinical commissioning group,",

(c) after "section 161 of the National Health Service (Wales) Act 2006" (in the second place it occurs) insert "or section 300 of the Health and Social Care Act 2012",

(d) after "or held by" insert "the National Health Service Commissioning Board, a clinical commissioning group or", and

(e) after "that Act, or" (in the second place where it occurs) insert "by virtue of section 2 and section 13X of, or paragraph 20 of Schedule 1A to, that Act, or under".

Commencement Information

I699 Sch. 5 para. 6 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)** (with art. 14)

Public Bodies (Admission to Meetings) Act 1960 (c. 67)

7 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies to which the Act applies), in paragraph 1—

(a) omit paragraph (ea),

(b) before paragraph (g) insert—

"(fa) the National Health Service Commissioning Board, except as regards the exercise of functions under the National Health Service (Service Committees and Tribunal) Regulations 1992, or any regulations amending or replacing those Regulations;", and

(c) omit paragraph (gg).

Commencement Information

I700 Sch. 5 para. 7(a)(c) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I701 Sch. 5 para. 7(b) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

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Parliamentary Commissioner Act 1967 (c. 13)

8 In Schedule 3 to the Parliamentary Commissioner Act 1967 (matters not subject to investigation), in paragraph 8—

(a) in sub-paragraph (1)—

(i) after "Secretary of State by" insert "a local authority, the National Health Service Commissioning Board, a clinical commissioning group",

(ii) omit "a Strategic Health Authority,", and

(iii) omit ", a Primary Care Trust", and

(b) in sub-paragraph (2)—

(i) after "action taken by" insert "a local authority, the National Health Service Commissioning Board, a clinical commissioning group or",

(ii) omit "a Strategic Health Authority,", and

(iii) omit "or Primary Care Trust".

Commencement Information

I702 Sch. 5 para. 8(a)(i)(b)(i) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I703 Sch. 5 para. 8(a)(i)(b)(i) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-10, Sch. paras. 1, 2)

I704 Sch. 5 para. 8(a)(ii)(iii)(b)(ii)(iii) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-10, Sch. paras. 1, 2)

Abortion Act 1967 (c. 87)

9 In section 1 of the Abortion Act 1967 (location of treatment for termination of pregnancy), in subsection (3) omit "a Primary Care Trust or".

Commencement Information

I705 Sch. 5 para. 9 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Leasehold Reform Act 1967 (c. 88)

10 In section 28 of the Leasehold Reform Act 1967 (land required for public purposes) —

(a) in subsection (5), in paragraph (d)—

(i) after "to" insert "the National Health Service Commissioning Board, any clinical commissioning group,",

(ii) omit "any Strategic Health Authority,", and

(iii) omit ", any Primary Care Trust", and

(b) in subsection (6), in paragraph (c)—

(i) after "in the case of" insert "the National Health Service Commissioning Board, a clinical commissioning group,",

(ii) omit "a Strategic Health Authority,", and

(iii) omit ", Primary Care Trust".

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Commencement Information

I706 Sch. 5 para. 10(a)(i)(b)(i) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I707 Sch. 5 para. 10(a)(ii)(iii)(b)(ii)(iii) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health Services and Public Health Act 1968 (c. 46)

11 The Health Services and Public Health Act 1968 is amended as follows.

Commencement Information

I708 Sch. 5 para. 11 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I709 Sch. 5 para. 11 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

12 (1) Section 63 (provision of instruction for officers of hospital authorities etc.) is amended as follows.

(2) In subsection (1)—

(a) after "servants of" insert "the National Health Service Commissioning Board or a clinical commissioning group,",

(b) omit "a Strategic Health Authority,", and

(c) omit ", Primary Care Trust".

(3) In subsection (2)—

(a) in paragraph (a) before "or the council" insert ", the National Health Service Commissioning Board, a clinical commissioning group", and

(b) in paragraph (b) for "a Primary Care Trust" substitute "the National Health Service Commissioning Board".

(4) In subsection (5A)—

(a) omit "Strategic Health Authority" (in each place where it occurs), and

(b) omit ", Primary Care Trust" (in each place where it occurs).

(5) In subsection (5B)—

(a) omit paragraph (za), and

(b) omit paragraph (bb).

Commencement Information

I710 Sch. 5 para. 12(1) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I711 Sch. 5 para. 12(1) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I712 Sch. 5 para. 12(2)(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I713 Sch. 5 para. 12(2)(b)(c)(3)-(5) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

13 In section 64 (financial assistance to certain voluntary organisations), in subsection (3)(b)—

(a) after "City of London" insert "or a service for the provision of which the National Health Service Commissioning Board or a clinical commissioning

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group has, by virtue of the National Health Service Act 2006, a duty or power to make arrangements",

(b) for "a Primary Care Trust or local Health Board are" substitute "a local Health Board is",

(c) omit "Chapter 1 of Part 7 of the National Health Service Act 2006, or", and

(d) omit "Primary Care Trust or".

Commencement Information

I714 Sch. 5 para. 13 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Employers' Liability (Compulsory Insurance) Act 1969 (c. 57)

14 In section 3 of the Employers' Liability (Compulsory Insurance) Act 1969 (employers exempted from insurance), in subsection (2)(a)—

(a) after "National Health Service and Community Care Act 1990," insert "the National Health Service Commissioning Board, a clinical commissioning group established under section 14D of the National Health Service Act 2006,", and

(b) omit ", a Primary Care Trust established under section 18 of the National Health Service Act 2006".

Commencement Information

I715 Sch. 5 para. 14(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Local Authority Social Services Act 1970 (c. 42)

15 In Schedule 1 to the Local Authority Social Services Act 1970 (social services functions) in the entry relating to the Children Act 1989, in the column headed "Nature of functions"—

(a) after "accommodated" insert "pursuant to arrangements made by the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006 or", and

(b) omit "Primary Care Trusts,".

Commencement Information

I716 Sch. 5 para. 15 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Chronically Sick and Disabled Persons Act 1970 (c. 44)

16 (1) Section 17 of the Chronically Sick and Disabled Persons Act 1970 (separation of younger from older patients) is amended as follows.

(2) In subsection (1) for "The Secretary of State" substitute "The Welsh Ministers".

(3) In subsection (2) (as substituted by the National Health Service Reorganisation Act 1973)—

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(a) for "The Secretary of State" substitute "The Welsh Ministers",
(b) for "each House of Parliament" substitute "the National Assembly for Wales",
(c) for "as he considers" substitute "as they consider", and
(d) for "in him" substitute "in them".

Commencement Information
I717 Sch. 5 para. 16 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Local Government Act 1972 (c. 70)

17 In section 113 of the Local Government Act 1972 (placing of staff of local authorities at disposal of certain persons)—

(a) in subsection (1A)—
(i) after "with" insert "the Secretary of State, the National Health Service Commissioning Board,",
(ii) after "Local Health Board," (in each place where it occurs) insert "clinical commissioning group,",
(iii) omit "Primary Care Trust," (in each place where it occurs),
(iv) in paragraph (a), after "disposal of" insert "the Secretary of State, the National Health Service Commissioning Board,", and
(v) in paragraph (b), after "employed by" insert "the Secretary of State, the National Health Service Commissioning Board,", and

(b) in subsection (4)—
(i) after "above", insert " "Secretary of State" means the Secretary of State in relation to the exercise of functions under section 2A or 2B of, or paragraph 7C, 8 or 12 of Schedule 1 to, the National Health Service Act 2006,",
(ii) before " "NHS trust"" insert " "clinical commissioning group" means a body established under section 14D of the National Health Service Act 2006, and", and
(iii) omit the words from "and "Primary Care Trust"" to the end.

Commencement Information
I718 Sch. 5 para. 17 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Local Government Act 1974 (c. 7)

18 In section 26 of the Local Government Act 1974 (matters subject to investigation by Local Commissioner), in subsection (1), after paragraph (c) insert—

"(d) an alleged or apparent failure in a service provided by the authority in pursuance of arrangements under section 7A of the National Health Service Act 2006;
(e) an alleged or apparent failure to provide a service in pursuance of such arrangements."

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Commencement Information

I719 Sch. 5 para. 18 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Safety at Work etc. Act 1974 (c. 37)

19 (1) Section 60 of the Health and Safety at Work etc. Act 1974 (supplementary provision about the Employment Medical Advisory Service) is amended as follows.

(2) In subsection (1) for "each Primary Care Trust and Local Health Board" substitute "the National Health Service Commissioning Board or each clinical commissioning group (in relation to England) and each Local Health Board (in relation to Wales)".

(3) In subsection (2)—

(a) omit "for one of their", and

(b) for " "each" to "its"" substitute " "the National" to "arranges"".

Commencement Information

I720 Sch. 5 para. 19 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

House of Commons Disqualification Act 1975 (c. 24)

20 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership of the House)—

(a) omit the entry relating to the chairman or any member of a Primary Care Trust,

(b) in the entry relating to the chairman or any member of any Strategic Health Authority or Special Health Authority, omit "Strategic Health Authority, or", and

(c) at the appropriate place insert— " Chairman or non-executive member of the National Health Service Commissioning Board. "

Commencement Information

I721 Sch. 5 para. 20(a)(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I722 Sch. 5 para. 20(c) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

Acquisition of Land Act 1981 (c. 67)

21 The Acquisition of Land Act 1981 is amended as follows.

Commencement Information

I723 Sch. 5 para. 21 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I724 Sch. 5 para. 21 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

22 In section 16 (land excluded from compulsory purchase), in subsection (3)—

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(a) after paragraph (a) insert—

"(aa) the National Health Service Commissioning Board;

(ab) a clinical commissioning group established under section 14D of the National Health Service Act 2006;", and"

(b) omit paragraph (c).

Commencement Information

I725 Sch. 5 para. 22(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I726 Sch. 5 para. 22(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

23 In section 17 (special parliamentary procedure applying to compulsory purchase orders concerning certain land), in subsection (4) in the definition of "statutory undertakers"—

(a) omit paragraph (ad), and

(b) before paragraph (b) insert—

"(ae) the National Health Service Commissioning Board,

(af) a clinical commissioning group established under section 14D of the National Health Service Act 2006,".

Commencement Information

I727 Sch. 5 para. 23(a) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I728 Sch. 5 para. 23(b) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

Mental Health Act 1983 (c. 20)

24 The Mental Health Act 1983 is amended as follows.

Commencement Information

I729 Sch. 5 para. 24 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

25 In section 19 (regulations as to transfers of patients), in subsection (3)—

(a) for "NHS foundation trust,", in each place it appears, substitute "NHS foundation trust or", and

(b) omit "or Primary Care Trust" in each place it appears.

Commencement Information

I730 Sch. 5 para. 25 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

26 In section 23 (discharge of patients), in subsection (5)(a)—

(a) for ", Special Health Authority", in each place it appears, substitute "or Special Health Authority",

(b) omit "or Primary Care Trust" in each place it appears, and

(c) omit ", trust" in each place it appears.

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Commencement Information
I731 Sch. 5 para. 26 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

27 In section 32 (regulations for purposes of Part 2 of that Act), in subsection (3), omit ", Primary Care Trusts".

Commencement Information
I732 Sch. 5 para. 27 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

28 (1) Section 39 (power of court to request information from hospitals) is amended as follows.

(2) In subsection (1)—
(a) omit "Primary Care Trust or" in each place it appears,
(b) in paragraph (a), after the first "the" insert "clinical commissioning group or",
(c) in paragraph (b), at the beginning insert "the National Health Service Commissioning Board or",
(d) in that paragraph, after "or any other" insert "clinical commissioning group or",
(e) after "such information as that" insert "clinical commissioning group or",
(f) after "Local Health Board or", in each place it appears, insert "the National Health Service Commissioning Board or the", and
(g) after "order, and that" insert "clinical commissioning group or".

(3) After subsection (1) insert—

"(1ZA) A request under this section to the National Health Service Commissioning Board may relate only to services or facilities the provision of which the Board arranges."

(4) In consequence of the repeals made by sub-paragraph (2), omit paragraph 46 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002.

Commencement Information
I733 Sch. 5 para. 28 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

29 In section 134 (patients' correspondence), in subsection (3)(e)—
(a) at the beginning insert "the National Health Service Commissioning Board, a clinical commissioning group,",
(b) omit "Strategic Health Authority,",
(c) for ", Special Health Authority" substitute "or Special Health Authority", and
(d) omit "or Primary Care Trust".

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Commencement Information
I734 Sch. 5 para. 29 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

30 In section 139 (protection for acts done in pursuance of that Act), in subsection (4) —

(a) after "the Secretary of State or against" insert "the National Health Service Commissioning Board, a clinical commissioning group,",
(b) omit "Strategic Health Authority,",
(c) for ", Special Health Authority" substitute "or Special Health Authority", and
(d) omit "or Primary Care Trust".

Commencement Information
I735 Sch. 5 para. 30 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-10, Sch. paras. 1, 3)

31 (1) In section 145 (interpretation), in subsection (1)—

(a) in the definition of "the managers", in paragraph (a)—
(i) after "the National Health Service (Wales) Act 2006," (in the second place where it occurs) insert "the Secretary of State where the Secretary is responsible for the administration of the hospital or",
(ii) omit "Primary Care Trust,", and
(iii) omit "Strategic Health Authority,",
(b) in paragraph (bb) of that definition, omit "a Primary Care Trust or",
(c) omit the definition of "Primary Care Trust", and
(d) omit the definition of "Strategic Health Authority".

(2) In consequence of the repeals made by sub-paragraph (1)—

(a) omit paragraph 49 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002, and
(b) omit paragraph 70(e) and (g) of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006.

Commencement Information
I736 Sch. 5 para. 31 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Public Health (Control of Disease) Act 1984 (c. 22)

32 In section 13 of the Public Health (Control of Disease) Act 1984 (regulations for control of certain diseases), in subsection (4)(a)—

(a) omit "Strategic Health Authorities,", and
(b) omit ", Primary Care Trusts".

Commencement Information
I737 Sch. 5 para. 32 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Dentists Act 1984 (c. 24)

33 The Dentists Act 1984 is amended as follows.

Commencement Information
I738 Sch. 5 para. 33 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

34 In section 26B (guidance for dentists), in subsection (8) omit paragraph (a).

Commencement Information
I739 Sch. 5 para. 34 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

35 In section 36M (guidance for dental care professionals), in subsection (8) omit paragraph (a).

Commencement Information
I740 Sch. 5 para. 35 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

36 In section 40 (definition of "business of dentistry"), in subsection (2)(aa)—

(a) omit "under section 92 of the National Health Service Act 2006 or",

(b) after "section 100" insert "of the National Health Service Act 2006 or an agreement under section 107",

(c) omit "under section 50 of the National Health Service (Wales) Act 2006 or", and

(d) after "section 57" insert "of the National Health Service (Wales) Act 2006 or an agreement under section 64".

Commencement Information
I741 Sch. 5 para. 36 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

37 In section 50D (rules: consultation), in subsection (4) omit paragraph (a).

Commencement Information
I742 Sch. 5 para. 37 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)

38 The Disabled Persons (Services, Consultation and Representation) Act 1986 is amended as follows.

Commencement Information
I743 Sch. 5 para. 38 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

39 In section 2 (rights of authorised representatives of disabled persons)—

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(a) in subsection (5) in paragraph (a)—

(i) after "hospital accommodation" (in the first place it occurs) insert "provided pursuant to arrangements made by the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006 or",

(ii) for "the Secretary of State under section (3)(1)(a)" substitute "the Secretary of State under section 2A or 2B", and

(iii) omit "by a Primary Care Trust established under that Act,",

(b) in subsection (7) in paragraph (a), after "provision of services" insert ", or the arrangement for the provision of services,", and

(c) in subsection (9) in the definition of "health authority", in paragraph (a)—

(i) after "means" insert "the National Health Service Commissioning Board, a clinical commissioning group or",

(ii) omit "a Strategic Health Authority,", and

(iii) omit "or a Primary Care Trust".

Commencement Information

I744 Sch. 5 para. 39 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

40 In section 7 (persons discharged from hospital), in subsection (9)—

(a) in the definition of "health authority", in paragraph (a) for "a Primary Care Trust" substitute "a clinical commissioning group", and

(b) in the definition of "the managers"—

(i) in paragraph (a)(i) for ", an NHS foundation trust or a Primary Care Trust" substitute "or an NHS foundation trust",

(ii) in the words following paragraph (a)(iii) after "means the" insert "Secretary of State where the Secretary of State is responsible for the administration of the hospital, or means the",

(iii) in those words omit "Strategic Health Authority,", and

(iv) omit paragraph (bb).

Commencement Information

I745 Sch. 5 para. 40 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

41 In section 11 (reports to Parliament)—

(a) in subsection (1ZA) omit "subsection (1ZB) extends to England and Wales only and", and

(b) omit subsection (1ZB).

Commencement Information

I746 Sch. 5 para. 41 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

42 In section 16 (interpretation), in subsection (1)—

(a) omit the definition of "Primary Care Trust", and

(b) omit the definition of "Strategic Health Authority".

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Commencement Information
I747 Sch. 5 para. 42 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Dartford-Thurrock Crossing Act 1988 (c. 20)

43 In section 19 of the Dartford-Thurrock Crossing Act 1988 (exemption from tolls), in paragraph (b)—

(a) omit "a Strategic Health Authority established under section 13 of the National Health Service Act 2006,",

(b) for "that Act" substitute "the National Health Service Act 2006", and

(c) omit "a Primary Care Trust established under section 18 of the National Health Service Act 2006,".

Commencement Information
I748 Sch. 5 para. 43 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Copyright, Designs and Patents Act 1988 (c. 48)

44 In section 48 of the Copyright, Designs and Patents Act 1988 (material communicated to the Crown in the course of public business), in subsection (6)—

(a) after "the National Health Service and Community Care Act 1990," insert "the National Health Service Commissioning Board, a clinical commissioning group established under section 14D of the National Health Service Act 2006,", and

(b) omit "a Primary Care Trust established under section 18 of the National Health Service Act 2006,".

Commencement Information
I749 Sch. 5 para. 44(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**
I750 Sch. 5 para. 44(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Medicines Act 1988 (c. 49)

45 In section 7 of the Health and Medicines Act 1988 (extension of powers for financing health service), in subsection (3)(i) omit the words from the second "the" to "trust, or".

Commencement Information
I751 Sch. 5 para. 45 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Road Traffic Act 1988 (c. 52)

46 In section 144 of the Road Traffic Act 1988 (exception to requirement for third party insurance), in subsection (2)(da) omit "by a Primary Care Trust established under section 18 of the National Health Service Act 2006".

Commencement Information
I752 Sch. 5 para. 46 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Children Act 1989 (c. 41)

47 The Children Act 1989 is amended as follows.

Commencement Information
I753 Sch. 5 para. 47 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

48 In section 21 (provision of accommodation for children in police protection etc), in subsection (3)—

(a) for "Secretary of State," substitute "Secretary of State or",

(b) omit "or a Primary Care Trust" (in each place where it occurs), and

(c) after "arrangements made by" insert "the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006 or".

Commencement Information
I754 Sch. 5 para. 48 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

49 In section 24 (persons qualifying for advice and assistance), in subsection (2)—

(a) in paragraph (d), in sub-paragraph (i) omit "or Primary Care Trust", and

(b) in that paragraph, in sub-paragraph (ii) after "provided" insert "pursuant to arrangements made by the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006 or".

Commencement Information
I755 Sch. 5 para. 49 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-10, Sch. paras. 1, 4)

F83 50 . . . . . .

Textual Amendments
F83 Sch. 5 para. 50 omitted (6.4.2016) by virtue of The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **286**

51 In section 27 (co-operation between authorities), in subsection (3)—

(a) after paragraph (c) insert—

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"(ca) the National Health Service Commissioning Board;", and"

(b) in paragraph (d)—

(i) after "any" insert "clinical commissioning group,", and

(ii) omit ", Primary Care Trust".

Commencement Information

I756 Sch. 5 para. 51 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

52 In section 29 (recoupment of cost of providing services), in subsection (8) in paragraph (c)—

(a) for "Secretary of State," substitute "Secretary of State or",

(b) omit "or a Primary Care Trust" (in both places where it occurs),

(c) after "arrangements made by" insert "the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006 or by", and

(d) omit "a Strategic Health Authority,".

Commencement Information

I757 Sch. 5 para. 52 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

53 In section 47 (local authority's duty to investigate), in subsection (11)—

(a) after paragraph (c) insert—

"(ca) the National Health Service Commissioning Board;", and"

(b) in paragraph (d)—

(i) after "any" insert "clinical commissioning group,", and

(ii) omit ", Primary Care Trust".

Commencement Information

I758 Sch. 5 para. 53 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

54 In section 80 (inspection of children's homes)—

(a) in subsection (1), in paragraph (d) —

(i) omit ", Primary Care Trust", and

(ii) after "NHS foundation trust" insert "or pursuant to arrangements made by the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006",

(b) in subsection (5), in paragraph (e) omit "Primary Care Trust,", and

(c) after that paragraph insert—

"(ea) person providing accommodation for a child pursuant to arrangements made by the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006;".

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Commencement Information
I759 Sch. 5 para. 54 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

55 In section 85 (children accommodated by health authorities)—

(a) in subsection (1) omit "Primary Care Trust,", and

(b) after subsection (2) insert—

"(2ZA) Where a child is provided with accommodation—

(a) by a body which is not mentioned in subsection (1), and

(b) pursuant to arrangements made by the Secretary of State, the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006,

subsections (1) and (2) apply in relation to the Secretary of State, the Board or (as the case may be) the clinical commissioning group as if it were the accommodating authority."

Commencement Information
I760 Sch. 5 para. 55 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-10, Sch. paras. 1, 4)

56 (1) Section 105 (interpretation) is amended as follows.

(2) In subsection (1)—

(a) before the definition of "community home" insert—

""clinical commissioning group" means a body established under section 14D of the National Health Service Act 2006;",

(b) omit the definition of "Primary Care Trust", and

(c) omit the definition of "Strategic Health Authority".

(3) After subsection (7) insert—

"(7A) References in this Act to a hospital or accommodation made available or provided pursuant to arrangements made by the Secretary of State under the National Health Service Act 2006 are references to a hospital or accommodation made available or provided pursuant to arrangements so made in the exercise of the public health functions of the Secretary of State (within the meaning of that Act).

(7B) References in this Act to arrangements made by the National Health Service Commissioning Board or a clinical commissioning group under the National Health Service Act 2006 include references to arrangements so made by virtue of section 7A of that Act."

Commencement Information
I761 Sch. 5 para. 56 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Local Government and Housing Act 1989 (c. 42)

57 In section 2 of the Local Government and Housing Act 1989 (politically restricted posts), in subsection (6), after paragraph (za) insert—

"(zb) the director of public health appointed under section 73A(1) of the National Health Service Act 2006;".

Commencement Information

I762 Sch. 5 para. 57 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service and Community Care Act 1990 (c. 19)

58 The National Health Service and Community Care Act 1990 is amended as follows.

Commencement Information

I763 Sch. 5 para. 58 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

59 In section 47 (assessment of needs for community care services), in subsection (3)—

(a) before paragraph (a) insert—

"(za) that there may be a need for the provision to that person, pursuant to arrangements made under the National Health Service Act 2006 by such clinical commissioning group as may be determined in accordance with regulations, of any services (including services that may be provided pursuant to such arrangements by virtue of section 7A of that Act),",

(b) in paragraph (a), omit "Primary Care Trust or",

(c) in that paragraph omit "the National Health Service Act 2006 or",

(d) in the text following paragraph (b), omit "Primary Care Trust," (in both places where it occurs), and

(e) in that text, before "Health Authority" (in both places it occurs) insert "clinical commissioning group,".

Commencement Information

I764 Sch. 5 para. 59 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

60 In section 49 (transfer of staff to local authorities), in subsection (4)(b)—

(a) omit "Strategic Health Authority,", and

(b) omit "Primary Care Trust,".

Commencement Information

I765 Sch. 5 para. 60 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

61 In section 60 (removal of crown immunities), in subsection (7)—

(a) in paragraph (a) omit the words from "a Strategic" to "2006 or", and

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(b) in paragraph (aa) for "that Act" substitute "the National Health Service Act 2006".

Commencement Information
I766 Sch. 5 para. 61 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Access to Health Records Act 1990 (c. 23)

62 The Access to Health Records Act 1990 is amended as follows.

Commencement Information
I767 Sch. 5 para. 62 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

63 In section 1, in subsection (2) (meaning of "holder" in relation to a health record)—

(a) in paragraph (a)—

(i) for "a Primary Care Trust or" substitute "the National Health Service Commissioning Board or a", and

(ii) omit "Trust or", and

(b) in paragraph (aa)—

(i) for "a Primary Care Trust, Strategic Health Authority or" substitute "the National Health Service Commissioning Board or a", and

(ii) omit "Trust, Authority or".

Commencement Information
I768 Sch. 5 para. 63 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-10, Sch. paras. 1, 5)

64 In section 11 (interpretation)—

(a) in the definition of "health service body", in paragraph (a)—

(i) omit "Strategic Health Authority,",

(ii) for ", Local" substitute "or Local", and

(iii) omit "or Primary Care Trust",

(b) omit the definition of "Primary Care Trust", and

(c) omit the definition of "Strategic Health Authority".

Commencement Information
I769 Sch. 5 para. 64 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

London Local Authorities Act 1991 (c. xiii)

65 In section 4 of the London Local Authorities Act 1991 (interpretation) in the definition of "establishment for special treatment", in paragraph (d) for "by a Primary Care Trust established under section 18 of the National Health Service Act 2006" substitute "by any person in pursuance of arrangements made by the National Health Service Commissioning Board or by a clinical commissioning group under

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the National Health Service Act 2006 (including by virtue of section 7A of that Act)".

Commencement Information

I770 Sch. 5 para. 65 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)

66 In section 279 of the Trade Union and Labour Relations (Consolidation) Act 1992 (health service practitioners)—

(a) in subsection (1), in paragraph (a) for "a Primary Care Trust" substitute "the National Health Service Commissioning Board",

(b) in that paragraph, after "or" (in the first place it occurs) insert "a",

(c) in the words after paragraph (b) in that subsection, omit "authority or",

(d) in subsection (2), in paragraph (a) for "a Primary Care Trust, Strategic Health Authority or" substitute "the National Health Service Commissioning Board or a",

(e) in paragraph (b) of that subsection, for "a Primary Care Trust or" substitute "the National Health Service Commissioning Board or a",

(f) in that paragraph, for "entered into by him with a Primary Care Trust" substitute "entered into by him with the National Health Service Commissioning Board", and

(g) in the words after that paragraph, omit "Trust, Authority or."

Commencement Information

I771 Sch. 5 para. 66 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health Service Commissioners Act 1993 (c. 46)

67 The Health Service Commissioners Act 1993 is amended as follows.

Commencement Information

I772 Sch. 5 para. 67 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I773 Sch. 5 para. 67 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

68 In section 2 (health service bodies subject to investigation), in subsection (1)—

(a) omit paragraph (a),

(b) omit paragraph (da), and

(c) after paragraph (db) insert—

"(dc) the National Health Service Commissioning Board,

(dd) clinical commissioning groups."

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Commencement Information

I774 Sch. 5 para. 68(a)(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 6-9)

I775 Sch. 5 para. 68(c) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

69 In section 2A (health service providers subject to investigation), in subsection (1)(a) for "a Primary Care Trust" substitute "the National Health Service Commissioning Board".

Commencement Information

I776 Sch. 5 para. 69 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 6-9)

70 (1) Section 14 (reports etc. by the Commissioner) is amended as follows.

(2) In subsection (1)—

(a) at the end of paragraph (c) insert "and", and

(b) omit paragraph (e) and the preceding "and".

(3) In subsection (2A)—

(a) at the end of paragraph (d) insert "and", and

(b) omit paragraph (f) and the preceding "and".

(4) In subsection (2C)—

(a) at the end of paragraph (d) insert "and", and

(b) omit paragraph (f) and the preceding "and".

(5) Omit subsection (2E)(e).

(6) In subsection (2G)—

(a) at the end of paragraph (c) insert "and", and

(b) omit paragraph (e) and the preceding "and".

Commencement Information

I777 Sch. 5 para. 70 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 6-9)

Health Authorities Act 1995 (c. 17)

71 In Schedule 2 to the Health Authorities Act 1995 (property, rights and liabilities), in paragraph 2—

(a) in sub-paragraphs (1), (2), (6) and (7) omit "Primary Care Trust,", and

(b) in sub-paragraphs (1), (2), (6) and (7) omit "Strategic Health Authority,".

Commencement Information

I778 Sch. 5 para. 71 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Employment Rights Act 1996 (c. 18)

72 The Employment Rights Act 1996 is amended as follows.

Commencement Information

I1779 Sch. 5 para. 72 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I1780 Sch. 5 para. 72 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

73 In section 43K (extension of meaning of "worker" etc for Part 4A)—

(a) in subsection (1)(ba) for "a Primary Care Trust" (in each place where it occurs) substitute "the National Health Service Commissioning Board",

(b) in subsection (1)(c)(i) for "a Primary Care Trust" substitute "the National Health Service Commissioning Board", and

(c) in subsection (2)(aa) for "the Primary Care Trust or" substitute "the National Health Service Commissioning Board, or the".

Commencement Information

I1781 Sch. 5 para. 73 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

74 In section 50 (right to time off for public duties), in subsection (8)—

(a) before paragraph (a) insert—

"(za) the National Health Service Commissioning Board,

(zb) a clinical commissioning group established under section 14D of the National Health Service Act 2006," and"

(b) in paragraph (b)—

(i) omit "a Strategic Health Authority established under section 13 of the National Health Service Act 2006,", and

(ii) omit "or a Primary Care Trust established under section 18 of the National Health Service Act 2006,".

Commencement Information

I1782 Sch. 5 para. 74(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I1783 Sch. 5 para. 74(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

75 In section 218 (change of employer), in subsection (10)—

(a) before paragraph (a) insert—

"(za) the National Health Service Commissioning Board,

(zb) a clinical commissioning group established under section 14D of the National Health Service Act 2006,"

(b) omit paragraph (a),

(c) in paragraph (b) for "that Act" substitute "the National Health Service Act 2006",

(d) omit paragraph (bb), and

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(e) in paragraph (c) for "that Act" substitute "the National Health Service Act 2006".

Commencement Information

I784 Sch. 5 para. 75(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I785 Sch. 5 para. 75(b)-(e) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Housing Grants, Construction and Regeneration Act 1996 (c. 53)

76 In section 3 of the Housing Grants, Construction and Regeneration Act 1996, in subsection (2)(f) (persons ineligible for grants)—

(a) at the beginning insert "the National Health Service Commissioning Board, a clinical commissioning group,",

(b) omit "a Strategic Health Authority,", and

(c) omit ", Primary Care Trust".

Commencement Information

I786 Sch. 5 para. 76(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I787 Sch. 5 para. 76(b)(c) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Education Act 1996 (c. 56)

77 The Education Act 1996 is amended as follows.

Commencement Information

I788 Sch. 5 para. 77 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

78 (1) Section 322 (duty of certain bodies to help local authorities) is amended as follows.

(2) In subsection (1)—

(a) after "another local authority," insert "the National Health Service Commissioning Board, a clinical commissioning group or",

(b) omit "or a Primary Care Trust", and

(c) for "the board, authority or trust" substitute "that body".

(3) In subsection (2), for "An authority, a board or a trust" substitute "A body".

(4) In subsection (3), in paragraph (a)—

(a) after "request is made of" insert "the National Health Service Commissioning Board, a clinical commissioning group or",

(b) omit "or Primary Care Trust", and

(c) for "that board or trust" substitute "that body".

(5) In subsection (4)—

(a) for "an authority, a board" substitute "a local authority, the National Health Service Commissioning Board, a clinical commissioning group or a Local Health Board", and

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(b) omit "or a trust".

Commencement Information
I789 Sch. 5 para. 78 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

79 (1) Section 332 (duty of certain NHS bodies to notify parent) is amended as follows.

(2) In subsection (1)—
(a) after "where" insert "a clinical commissioning group," and
(b) omit "a Primary Care Trust,".

(3) In subsection (2) for "trust" (in each place where it occurs) substitute "other body".

(4) In subsection (3) for "trust" substitute "other body".

Commencement Information
I790 Sch. 5 para. 79 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

80 In section 579 (general interpretation), in subsection (1) in the definition of "school buildings" in paragraph (c) for the words from "for enabling" to "functions" substitute "for the carrying out of functions".

Commencement Information
I791 Sch. 5 para. 80 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Audit Commission Act 1998 (c. 18)

81 In section 33 of the Audit Commission Act 1998, in subsection (8) (bodies not subject to certain Commission studies)—
(a) omit paragraph (a), and
(b) omit paragraph (b).

Commencement Information
I792 Sch. 5 para. 81 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Data Protection Act 1998 (c. 29)

82 In section 69 of the Data Protection Act 1998 (meaning of "health professional")—
(a) in subsection (1), in paragraph (k) for "such a body" substitute "a health service body",
(b) in subsection (3), omit paragraph (a),
(c) in that subsection, before paragraph (b) insert—
"(aa) the Secretary of State in relation to the exercise of functions under section 2A or 2B of, or paragraph 7C, 8 or 12 of Schedule 1 to, the National Health Service Act 2006,

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(ab) a local authority in relation to the exercise of functions under section 2B or 111 of, or any of paragraphs 1 to 7B or 13 of Schedule 1 to, that Act,", and

(d) in that subsection, omit paragraph (bb).

Commencement Information
I793 Sch. 5 para. 82 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Crime and Disorder Act 1998 (c. 37)

83 The Crime and Disorder Act 1998 is amended as follows.

Commencement Information
I794 Sch. 5 para. 83 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

84 In section 5 (authorities responsible for crime and disorder strategies), in subsection (1)(e) for "Primary Care Trust" substitute "clinical commissioning group".

Commencement Information
I795 Sch. 5 para. 84 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

85 In section 38 (local provision of youth justice services), in subsection (2)(b)—

(a) after "local probation board" insert ", clinical commissioning group or", and

(b) omit ", Strategic Health Authority,", and

(c) omit "or Primary Care Trust".

Commencement Information
I796 Sch. 5 para. 85 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

86 In section 39 (Youth Offending Teams), in subsection (3)(b)—

(a) after "local probation board" insert ", clinical commissioning group or",

(b) omit ", Strategic Health Authority,", and

(c) omit "or Primary Care Trust".

Commencement Information
I797 Sch. 5 para. 86 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

87 In that section, in subsection (5)(d)—

(a) after "nominated by" insert "a clinical commissioning group or", and

(b) omit "a Primary Care Trust or".

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Commencement Information
I798 Sch. 5 para. 87 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

88 In section 41 (the Youth Justice Board), in subsection (10)—

(a) after "provider of probation services," insert "a clinical commissioning group,",

(b) for ", a Strategic Health Authority," substitute "and", and

(c) omit "and a Primary Care Trust".

Commencement Information
I799 Sch. 5 para. 88 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

89 In section 42 (supplementary provisions), in subsection (3)—

(a) after "provider of probation services," insert "a clinical commissioning group,",

(b) for ", a Strategic Health Authority," substitute "or", and

(c) omit "or a Primary Care Trust".

Commencement Information
I800 Sch. 5 para. 89 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

90 In section 115, in subsection (2) (disclosure of information to relevant authorities)—

(a) omit paragraph (ea),

(b) after paragraph (f) insert—

"(fa) the National Health Service Commissioning Board;

(fb) a clinical commissioning group;", and

(c) omit paragraph (g).

Commencement Information
I801 Sch. 5 para. 90 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health Act 1999 (c. 8)

91 The Health Act 1999 is amended as follows.

Commencement Information
I802 Sch. 5 para. 91 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

92 In section 61 (English and Scottish border provisions)—

(a) in subsection (2)—

(i) after "Secretary of State" insert ", the National Health Service Commissioning Board",

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(ii) after "any" insert "clinical commissioning group",
(iii) omit "Strategic Health Authority", and
(iv) omit "or Primary Care Trust", and

(b) in subsection (5)—
(i) after "any" insert "clinical commissioning group", and
(ii) omit "Primary Care Trust".

Commencement Information
I803 Sch. 5 para. 92 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

93 In Schedule 4 (amendments relating to Primary Care Trusts)—
(a) omit paragraphs 1, 74, and 86, and the cross-heading preceding each paragraph, and
(b) omit paragraphs 3(c), 82 and 85(2).

Commencement Information
I804 Sch. 5 para. 93 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Greater London Authority Act 1999 (c. 29)

94 In section 309E of the Greater London Authority Act 1999, in subsection (5) (bodies to be included among relevant bodies for purposes of Mayor of London's health inequalities strategy)—
(a) omit paragraph (f),
(b) omit paragraph (g), and
(c) before paragraph (h) insert—
"(ga) the Secretary of State in relation to the exercise of functions under section 2A or 2B of, or paragraph 7C, 8 or 12 of Schedule 1 to, the National Health Service Act 2006,
(gb) the National Health Service Commissioning Board,
(gc) any clinical commissioning group (established under section 14D of the National Health Service Act 2006) for an area wholly or partly in Greater London,".

Commencement Information
I805 Sch. 5 para. 94 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Care Standards Act 2000 (c. 14)

95 In section 121 of the Care Standards Act 2000 (interpretation), in subsection (1) in the definition of "National Health Service body"—
(a) omit "a Strategic Health Authority,", and
(b) omit ", a Primary Care Trust".

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Commencement Information
I806 Sch. 5 para. 95 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Government Resources and Accounts Act 2000 (c. 20)

96 (1) Section 14 of the Government Resources and Accounts Act 2000 (summarised accounts) is amended as follows.

(2) In subsection (1) omit "paragraph 7 of Schedule 15 to the National Health Service Act 2006 or".

(3) Omit subsection (3).

(4) In subsection (4) for "that subsection" substitute "subsection (1)".

Commencement Information
I807 Sch. 5 para. 96 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)** (with art. 11(2))

Local Government Act 2000 (c. 22)

97 In section 21C of the Local Government Act 2000 (reports and recommendations of overview and scrutiny committees: duties of certain bodies), in subsection (6)—

(a) before paragraph (b) insert—

"(aa) the National Health Service Commissioning Board,

(ab) a clinical commissioning group, or", and

(b) omit paragraph (c) and the preceding "or".

Commencement Information
I808 Sch. 5 para. 97 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Regulation of Investigatory Powers Act 2000 (c. 23)

[F84]98 . . . . . .

Textual Amendments
F84 Sch. 5 para. 98 repealed (30.8.2018) by Investigatory Powers Act 2016 (c. 25), s. 272(1), **Sch. 10 Pt. 8** (with Sch. 9 paras. 7, 8, 10); S.I. 2018/940, reg. 2(1)(h)(ii) (with reg. 2(2))

>Freedom of Information Act 2000 (c. 36)

99 In Part 3 of Schedule 1 to the Freedom of Information Act 2000 (NHS in England and Wales)—

(a) omit paragraph 36A,

(b) before paragraph 38 insert—

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"37A The National Health Service Commissioning Board.

37B A clinical commissioning group established under section 14D of the National Health Service Act 2006.", and

(c) omit paragraph 39.

Commencement Information

I809 Sch. 5 para. 99(a)(c) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I810 Sch. 5 para. 99(b) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

International Development Act 2002 (c. 1)

100 In Schedule 1 to the International Development Act 2002 (statutory bodies with powers under section 9 of that Act)—

(a) before the entry for a Health Board insert— " the National Health Service Commissioning Board a clinical commissioning group ",

(b) omit the entry for a Primary Care Trust, and

(c) omit the entry for a Strategic Health Authority.

Commencement Information

I811 Sch. 5 para. 100(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I812 Sch. 5 para. 100(b)(c) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service Reform and Health Care Professions Act 2002 (c. 17)

101 The National Health Service Reform and Health Care Professions Act 2002 is amended as follows.

Commencement Information

I813 Sch. 5 para. 101 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

102 Omit Schedule 1 (English health authorities: change of name to Strategic Health Authorities).

Commencement Information

I814 Sch. 5 para. 102 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

103 Omit Schedule 2 (consequential amendments concerning the reallocation of functions to Primary Care Trusts).

Commencement Information

I815 Sch. 5 para. 103 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Adoption and Children Act 2002 (c. 38)

104 The Adoption and Children Act 2002 is amended as follows.

Commencement Information
I816 Sch. 5 para. 104 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

105 In section 4 (assessments etc for adoption support services), in subsection (9)—

(a) before paragraph (a) insert—

"(za) there may be a need for the provision to that person of services that may be provided pursuant to arrangements made by a clinical commissioning group under the National Health Service Act 2006 (including by virtue of section 7A of that Act),",

(b) in paragraph (a) omit "a Primary Care Trust", and

(c) in the text following paragraph (b)—

(i) after "notify that" insert "clinical commissioning group,", and

(ii) omit "Primary Care Trust,".

Commencement Information
I817 Sch. 5 para. 105 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

106 In section 8 (bodies which cannot be adoption support agencies), in subsection (2)—

(a) before paragraph (d) insert—

"(ca) the National Health Service Commissioning Board,", and"

(b) in paragraph (d)—

(i) omit ", Primary Care Trust", and

(ii) before "(in Wales," insert ", clinical commissioning group".

Commencement Information
I818 Sch. 5 para. 106 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Nationality, Immigration and Asylum Act 2002 (c. 41)

107 In section 133(4) of the Nationality, Immigration and Asylum Act 2002 (power of medical inspector to disclose information to health service bodies), in paragraph (a)—

(a) omit sub-paragraph (i),

(b) before sub-paragraph (ii) insert—

"(ia) the National Health Service Commissioning Board,

(ib) a clinical commissioning group established under section 14D of the National Health Service Act 2006,

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(ic) a local authority in relation to the exercise of functions under section 2B or 111 of, or any of paragraphs 1 to 7B or 13 of Schedule 1 to, the National Health Service Act 2006,", and

(c) omit sub-paragraph (iii).

Commencement Information
I819 Sch. 5 para. 107 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Community Care (Delayed Discharges etc.) Act 2003 (c. 5)

108 The Community Care (Delayed Discharges etc.) Act 2003 is amended as follows.

Commencement Information
I820 Sch. 5 para. 108 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

109 In section 1 (meaning of "NHS body" and "qualifying hospital patient") in subsection (1), in the definition of "NHS body" in paragraph (b) omit "a Primary Care Trust (in England) or".

Commencement Information
I821 Sch. 5 para. 109 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

110 In section 9 (dispute resolution)—

(a) in subsection (1) omit "by Strategic Health Authorities in England and",

(b) at the end of that subsection insert "in relation to Wales",

(c) in subsection (2) omit —

(i) "Strategic Health Authority or", and

(ii) "Authority or",

(d) in subsection (3)—

(i) for "the appropriate Minister considers" substitute "the Welsh Ministers consider",

(ii) omit "a Strategic Health Authority or", and

(iii) omit "Authority or", and

(e) in subsection (4)(a) omit "Strategic Health Authority or".

Commencement Information
I822 Sch. 5 para. 110 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Licensing Act 2003 (c. 17)

111 The Licensing Act 2003 is amended as follows.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I823 Sch. 5 para. 111 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

112 In section 5(3) (statement of licensing policy)—

(a) in paragraph (ba) omit "Primary Care Trust or", and

(b) after that paragraph insert—

"(bb) each local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of an area any part of which is in the licensing authority's area,".

Commencement Information
I824 Sch. 5 para. 112 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

113 In section 13(4) (authorised persons, interested parties and responsible authorities)—

(a) in paragraph (ba) omit "Primary Care Trust or", and

(b) after that paragraph insert—

"(bb) the local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of any area in which the premises are situated,".

Commencement Information
I825 Sch. 5 para. 113 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

114 In section 16 (applicant for premises licence), in subsection (3), in the definition of "health service body" omit paragraph (b).

Commencement Information
I826 Sch. 5 para. 114 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

115 In section 69(4) (authorised persons, interested parties and responsible authorities)—

(a) in paragraph (ba) omit "Primary Care Trust or", and

(b) after that paragraph insert—

"(bb) the local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of any area in which the premises are situated,".

Commencement Information
I827 Sch. 5 para. 115 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

116 In section 172B(4) (procedural requirements for early morning alcohol restriction order)—

(a) in paragraph (d) omit "Primary Care Trust or", and

(b) after that paragraph insert—

"(da) the local authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of an area any part of which is in the area specified in the order,".

Commencement Information

I828 Sch. 5 para. 116 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Sexual Offences Act 2003 (c. 42)

117 In section 42 of the Sexual Offences Act 2003 (care workers: interpretation) in subsection (5), in the definition of "National Health Service body"—

(a) after paragraph (b) insert—

"(ba) the Secretary of State in relation to the exercise of functions under section 2A or 2B of, or paragraph 7C, 8 or 12 of Schedule 1 to, the National Health Service Act 2006,

(bb) a local authority in relation to the exercise of functions under section 2B or 111 of, or any of paragraphs 1 to 7B, or 13 of Schedule 1 to, the National Health Service Act 2006,", and

(b) omit paragraph (c).

Commencement Information

I829 Sch. 5 para. 117 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Social Care (Community Health and Standards) Act 2003 (c. 43)

118 The Health and Social Care (Community Health and Standards) Act 2003 is amended as follows.

Commencement Information

I830 Sch. 5 para. 118 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

119 In section 71 (reporting to Secretary of State and regulator)—

(a) in subsection (2), after "special measures" insert "or request another person to take special measures", and

(b) omit subsections (3) and (4).

Commencement Information

I831 Sch. 5 para. 119 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

120 In section 113 (complaints about health care), in subsection (1), after paragraph (c) insert—

"(d) anything done by the National Health Service Commissioning Board or a clinical commissioning group in pursuance of arrangements made under section 7A of the National Health Service Act 2006."

Commencement Information

I832 Sch. 5 para. 120 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

121 In section 148 (interpretation of Part 2), in the definition of "English NHS body"—

(a) omit paragraph (a),

(b) omit paragraph (b), and

(c) before paragraph (d) insert—

"(ca) the National Health Service Commissioning Board;

(cb) a clinical commissioning group;".

Commencement Information

I833 Sch. 5 para. 121 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

122 In section 160 (provision of information)—

(a) in subsection (1), after paragraph (g) insert—

"(h) if the injured person received NHS treatment pursuant to arrangements made by a clinical commissioning group under section 3 or 3A of the National Health Service Act 2006, the clinical commissioning group.", and

(b) in subsection (4), in the definition of "responsible body" omit paragraph (a) (ii) and the word "or preceding it.'.

Commencement Information

I834 Sch. 5 para. 122 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

123 In section 165 (power to apply provisions about recovery of charges to non-NHS hospitals), in subsection (3)(b)—

(a) omit sub-paragraph (i), and

(b) before sub-paragraph (ii) insert—

"(ia) the National Health Service Commissioning Board,

(ib) a clinical commissioning group,".

Commencement Information

I835 Sch. 5 para. 123 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Criminal Justice Act 2003 (c. 44)

124 In section 325 of the Criminal Justice Act 2003 (arrangements for assessing etc risks posed by certain offenders)—

(a) after subsection (6)(b) insert—

"(ba) the National Health Service Commissioning Board,",

(b) after subsection (6)(d) insert—

"(da) every local authority (in its capacity as a person exercising functions for the purposes of the health service) any part of whose area falls within the relevant area,",

(c) in subsection (6)(f) omit "or Strategic Health Authority", and

(d) in subsection (6)(g)—

(i) after "every" insert "clinical commissioning group or", and

(ii) omit "Primary Care Trust or".

Commencement Information

I836 Sch. 5 para. 124 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Carers (Equal Opportunities) Act 2004 (c. 15)

125 (1) Section 3 of the Carers (Equal Opportunities) Act 2004 (co-operation between authorities) is amended as follows.

(2) In subsection (2)(b) after "by" (in the second place it occurs) insert "or in pursuance of arrangements made by".

(3) In subsection (3) after "provide" insert "or arrange for the provision of".

(4) In subsection (5)—

(a) omit the "and" at the end of paragraph (c) and insert—

"(ca) the Secretary of State, in relation to the exercise of functions under section 2A or 2B of, or paragraph 7C, 8 or 12 of Schedule 1 to, the National Health Service Act 2006,

(cb) the National Health Service Commissioning Board, and", and

(b) in paragraph (d)—

(i) after "any" insert "clinical commissioning group,", and

(ii) omit "Primary Care Trust,".

Commencement Information

I837 Sch. 5 para. 125 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Domestic Violence, Crime and Victims Act 2004 (c. 28)

126 In section 9 of the Domestic Violence, Crime and Victims Act 2004 (establishment and conduct of domestic homicide reviews), in the list in subsection (4)(a)—

(a) after the entry for local probation boards insert—

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"the National Health Service Commissioning Board;

clinical commissioning groups established under section 14D of the National Health Service Act 2006;",

(b) omit the entry for Strategic Health Authorities, and

(c) omit the entry for Primary Care Trusts.

Commencement Information

I838 Sch. 5 para. 126 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Children Act 2004 (c. 31)

127 The Children Act 2004 is amended as follows.

Commencement Information

I839 Sch. 5 para. 127 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

128 In section 10 (co-operation to improve wellbeing), in subsection (4)—

(a) after paragraph (d) insert—

"(da) the National Health Service Commissioning Board;",

(b) after paragraph (da) (as inserted by paragraph (a) above) insert—

"(db) any clinical commissioning group for an area any part of which falls within the area of the authority;", and

(c) omit paragraph (e).

Commencement Information

I840 Sch. 5 para. 128 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

129 In section 11 (arrangements to safeguard and promote welfare), in subsection (1)—

(a) after paragraph (b) insert—

"(ba) the National Health Service Commissioning Board;"

(b) after paragraph (ba) (as inserted by paragraph (a) above) insert—

"(bb) a clinical commissioning group;",

(c) omit paragraph (c), and

(d) omit paragraph (e).

Commencement Information

I841 Sch. 5 para. 129 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

130 In section 12A (establishment of children's trust boards), after subsection (7) at the end insert "otherwise than by virtue of section 10(4)(da) or (db)".

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Commencement Information
I842 Sch. 5 para. 130 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

131 In section 13 (establishment of Local Safeguarding Children Boards), in subsection (3)—

(a) after paragraph (d) insert—

"(da) the National Health Service Commissioning Board;",

(b) after paragraph (da) (as inserted by paragraph (a) above) insert—

"(db) any clinical commissioning group for an area any part of which falls within the area of the authority;", and

(c) omit paragraph (e).

Commencement Information
I843 Sch. 5 para. 131 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Civil Contingencies Act 2004 (c. 36)

132 (1) Schedule 1 to the Civil Contingencies Act 2004 (lists of Category 1 and 2 responders) is amended as follows.

(2) In Part 1 (which contains the general list of Category 1 responders)—

(a) after the cross-heading "Health" insert—

"4A The National Health Service Commissioning Board.", and

(b) omit paragraph 7.

(3) In Part 3 (which contains the general list of Category 2 responders)—

(a) after the cross-heading "Health" insert—

"29ZA A clinical commissioning group established under section 14D of the National Health Service Act 2006.", and

(b) omit paragraph 29A.

Commencement Information
I844 Sch. 5 para. 132 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Mental Capacity Act 2005 (c. 9)

133 The Mental Capacity Act 2005 is amended as follows.

Commencement Information
I845 Sch. 5 para. 133 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

134 In section 35 (appointment of independent mental capacity advocates)—

(a) in subsection (1), for "appropriate authority" substitute "responsible authority",

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(b) in subsection (4), for "appropriate authority" substitute "responsible authority", and

(c) after subsection (6) insert—

"(6A) In subsections (1) and (4), "the responsible authority" means—

(a) in relation to the provision of the services of independent mental capacity advocates in the area of a local authority in England, that local authority, and

(b) in relation to the provision of the services of independent mental capacity advocates in Wales, the Welsh Ministers.

(6B) In subsection (6A)(a), "local authority" has the meaning given in section 64(1) except that it does not include the council of a county or county borough in Wales."

Commencement Information

I846 Sch. 5 para. 134 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

135 In section 64 (interpretation), in subsection (1) in the definition of "local authority", after "except in" insert "section 35(6A)(a) and".

Commencement Information

I847 Sch. 5 para. 135 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

136 (1) Schedule A1 (hospital and care home residents: deprivation of liberty) is amended as follows.

(2) In paragraph 176 (meaning of "managing authority"), in sub-paragraph (1)—

(a) in paragraph (a) omit "Primary Care Trust,",

(b) in that paragraph omit "Strategic Health Authority,",

(c) after that paragraph insert—

"(aa) in relation to England, if the hospital falls within paragraph (a)(i) or (ii) and no Special Health Authority has responsibility for its administration, the Secretary of State;", and

(d) in paragraph (b) omit "Primary Care Trust,".

(3) In paragraph 180 (supervisory bodies: hospitals in England)—

(a) for sub-paragraph (2) substitute—

"(2) If the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.",

(b) in sub-paragraph (3), after "If" insert "the relevant person is not ordinarily resident in England and",

(c) in sub-paragraph (4), for "the Primary Care Trust" substitute "the local authority",

(d) after sub-paragraph (4) insert—

"(4A) Local authority" means—

(a) the council of a county;

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(b) the council of a district for which there is no county council;
(c) the council of a London borough;
(d) the Common Council of the City of London;
(e) the Council of the Isles of Scilly.", and

(e) in sub-paragraph (5), for "Primary Care Trusts" substitute "local authorities".

(4) In paragraph 181 (supervisory bodies: hospitals in Wales), for sub-paragraph (3) substitute—

"(3) But if the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.

(4) "Local authority" means—
(a) the council of a county;
(b) the council of a district for which there is no county council;
(c) the council of a London borough;
(d) the Common Council of the City of London;
(e) the Council of the Isles of Scilly."

(5) Before paragraph 183 insert the following heading— " Supervisory bodies: determination of place of ordinary residence ".

(6) In that paragraph—
(a) in sub-paragraph (1), for "paragraph" substitute "paragraphs 180, 181 and", and
(b) in sub-paragraph (2), after "by virtue of sub-paragraph (1)" insert "to any determination of where a person is ordinarily resident for the purposes of paragraph 182".

Commencement Information
I848 Sch. 5 para. 136 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Childcare Act 2006 (c. 21)

137 In section 4 of the Childcare Act 2006 (duty of local authority and relevant partners to work together), in subsection (1)—
(a) before paragraph (a) insert—
"(za) the National Health Service Commissioning Board;", and"
(b) in paragraph (a)—
(i) at the beginning insert "a clinical commissioning group",
(ii) omit "a Strategic Health Authority", and
(iii) omit "or Primary Care Trust".

Commencement Information
I849 Sch. 5 para. 137 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Emergency Workers (Obstruction) Act 2006 (c. 39)

138 In section 1 of the Emergency Workers (Obstruction) Act 2006 (obstructing emergency workers)—

(a) in subsection (5), in paragraph (a)—

(i) after "Wales," insert "the Secretary of State in the exercise of public health functions, a local authority in the exercise of public health functions, the National Health Service Commissioning Board, a clinical commissioning group,", and

(ii) omit ", Primary Care Trust", and

(b) after that subsection insert—

"(6) In subsection (5)(a) above "public health functions"—

(a) in relation to the Secretary of State, has the same meaning as in section 1H(5)(a) of the National Health Service Act 2006;

(b) in relation to a local authority, has the same meaning as in section 1H(5)(b) of that Act."

Commencement Information

I850 Sch. 5 para. 138 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service (Consequential Provisions) Act 2006 (c. 43)

139 In Schedule 1 to the National Health Service (Consequential Provisions) Act 2006—

(a) omit paragraphs 2(b), 30 (and the cross-heading preceding it), 47(b), 54(b), 90(e), 112(a), 125(c), 141(a), 170(b), 179(b)(iv), 180(c), 211(d), 228(a), 233(c), 234(c), 271(c) and 294 (which make amendments relating to Primary Care Trusts), and

(b) omit paragraphs 90(g), 125(e), 131(c)(i), 179(b)(i), 180(a)(i), 211(a), 228(c), 233(a), 234(a) and 271(e) (which make amendments relating to Strategic Health Authorities).

Commencement Information

I851 Sch. 5 para. 139 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

NHS Redress Act 2006 (c. 44)

140 The NHS Redress Act 2006 is amended as follows.

Commencement Information

I852 Sch. 5 para. 140 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

141 In section 1, in subsection (3)—

(a) after paragraph (a) insert—

"(aa) the National Health Service Commissioning Board,

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(ab) a clinical commissioning group,",

(b) omit paragraph (b),

(c) omit paragraph (c), and

(d) in paragraph (d) for "(b) or (c)" substitute "(aa) or (ab)".

Commencement Information

I853 Sch. 5 para. 141 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

142 In section 18 (interpretation), in subsection (1) omit the definition of "designated Strategic Health Authority".

Commencement Information

I854 Sch. 5 para. 142 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Safeguarding Vulnerable Groups Act 2006 (c. 47)

143 The Safeguarding Vulnerable Groups Act 2006 is amended as follows.

Commencement Information

I855 Sch. 5 para. 143 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

144 In section 6 (regulated activity providers)—

(a) omit subsection (8D), and

(b) before subsection (9) insert—

"(8E) The National Health Service Commissioning Board or a clinical commissioning group does not make arrangements for another to engage in a regulated activity by virtue of anything the Board or the clinical commissioning group does under section 12A or 12D, or regulations under section 12A or 12B, of the National Health Service Act 2006 (direct payments for health services)."

Commencement Information

I856 Sch. 5 para. 144 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

145 In section 17 (NHS employment) in subsection (3)—

(a) before paragraph (a) insert—

"(za) the National Health Service Commissioning Board;

(zb) a clinical commissioning group;",

(b) omit paragraph (b), and

(c) omit paragraph (f).

Commencement Information

I857 Sch. 5 para. 145 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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146 In section 22 (controlled activity relating to vulnerable adults), in subsection (6) in the definition of "hospital services" omit paragraph (d).

Commencement Information
I858 Sch. 5 para. 146 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PROSPECTIVE

Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19)

147 In section 6 of the Corporate Manslaughter and Corporate Homicide Act 2007 (emergencies), in subsection (7) in the definition of "relevant NHS body"—

(a) before paragraph (a) insert—

"(za) the National Health Service Commissioning Board;", and

(b) in paragraph (a)—

(i) at the beginning insert "a clinical commissioning group,"

(ii) omit "a Strategic Health Authority,", and

(iii) omit "Primary Care Trust,".

Commencement Information
I859 Sch. 5 para. 147(a)(b)(i) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**
I860 Sch. 5 para. 147(b)(ii)(iii) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Local Government and Public Involvement in Health Act 2007 (c. 28)

148 The Local Government and Public Involvement in Health Act 2007 is amended as follows.

Commencement Information
I861 Sch. 5 para. 148 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

149 (1) Section 222 (arrangements relating to local care services) is amended as follows.

(2) In subsection (3)—

(a) after paragraph (c) insert "or

(ca) a clinical commissioning group.",

(b) omit paragraph (d), and

(c) omit paragraph (e) and the preceding "or".

(3) After that subsection insert—

"(3A) The arrangements must not be made with the National Health Service Commissioning Board."

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I862 Sch. 5 para. 149 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

150 In section 224 (duties of services-providers to respond to local involvement networks)—

(a) for "services-provider", in each place it appears, substitute "responsible person",

(b) in subsection (2), before paragraph (a) insert—

"(za) the National Health Service Commissioning Board;

(zb) a clinical commissioning group;",

(c) in that subsection, omit paragraph (c), and

(d) in the title, for "services-providers" substitute "responsible persons".

Commencement Information
I863 Sch. 5 para. 150 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

151 In section 225 (duties of services-providers to allow entry by local involvement networks), in subsection (7), omit paragraph (c).

Commencement Information
I864 Sch. 5 para. 151 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

152 In section 227 (annual reports), in subsection (4)(b)—

(a) omit "each Primary Care Trust,",

(b) omit "and",

(c) omit "each Strategic Health Authority,", and

(d) omit the words from "any" to the end.

Commencement Information
I865 Sch. 5 para. 152 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Criminal Justice and Immigration Act 2008 (c. 4)

153 In section 119 of the Criminal Justice and Immigration Act 2008 (offence of causing nuisance or disturbance on NHS premises), in subsection (4) in the definition of "relevant English NHS body", omit paragraph (b).

Commencement Information
I866 Sch. 5 para. 153 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Social Care Act 2008 (c. 14)

154 The Health and Social Care Act 2008 is amended as follows.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information

I867 Sch. 5 para. 154 in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

155 In section 30 (urgent procedure for cancellation), in subsection (3)—

(a) before paragraph (a) insert—

"(za) in any case where regulations so provide, to the National Health Service Commissioning Board,",

(b) in paragraph (a)—

(i) at the beginning insert "in any case where regulations so provide,",

(ii) after "such" insert "clinical commissioning group", and

(iii) omit "Primary Care Trust", and

(c) omit paragraph (b).

Commencement Information

I868 Sch. 5 para. 155 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

156 In section 39 (bodies required to be notified of certain matters), in subsection (1)—

(a) before paragraph (a) insert—

"(za) in any case where regulations so provide, to the National Health Service Commissioning Board,",

(b) in paragraph (a)—

(i) at the beginning insert "in any case where regulations so provide,",

(ii) after "such" insert "clinical commissioning group", and

(iii) omit "Primary Care Trust", and

(c) omit paragraph (b).

Commencement Information

I869 Sch. 5 para. 156 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

F85 157 . . . . . .

Textual Amendments

F85 Sch. 5 para. 157 omitted (1.10.2014) by virtue of Care Act 2014 (c. 23), **ss. 91(9)(f)**, 127(1); S.I. 2014/1714, art. 4

158 In section 48 (special reviews and investigations)—

(a) in subsection (2) after paragraph (b) (and before the "or" immediately following it) insert—

"(ba) the exercise of the functions of the National Health Service Commissioning Board or a clinical commissioning group in arranging for the provision of NHS care under the National Health Service Act 2006,", and

(b) in subsection (8) omit paragraph (a) and the word "or" immediately following it.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information

I870 Sch. 5 para. 158 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

F86 159 . . . . . .

Textual Amendments

F86 Sch. 5 para. 159 omitted (1.10.2014) by virtue of Care Act 2014 (c. 23), **ss. 91(9)(f)**, 127(1); S.I. 2014/1714, art. 4

160 In section 54 (studies as to economy, efficiency etc)—

(a) omit subsection (2)(b), and

(b) in subsection (5) after "reference to" insert "the National Health Service Commissioning Board, a clinical commissioning group or".

Commencement Information

I871 Sch. 5 para. 160 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

161 In section 59 (additional functions) at the end insert—

"(3) The references in subsection (1) to English NHS bodies do not include references to the National Health Service Commissioning Board or clinical commissioning groups."

Commencement Information

I872 Sch. 5 para. 161 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

162 In section 64 (power to require documents and information), in subsection (2)(b)—

(a) after "commissioned by" insert "—

(i) the National Health Service Commissioning Board,

(ii) a clinical commissioning group, or

(iii)",

and

(b) omit "a Primary Care Trust".

Commencement Information

I873 Sch. 5 para. 162 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PROSPECTIVE

F87 163 . . . . . .

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F87 Sch. 5 para. 163 omitted (1.10.2014) by virtue of Care Act 2014 (c. 23), **ss. 91(9)(f)**, 127(1); S.I. 2014/1714, art. 4

PROSPECTIVE

F88 164 . . . . . .

Textual Amendments

F88 Sch. 5 para. 164 omitted (1.10.2014) by virtue of Care Act 2014 (c. 23), **ss. 91(9)(f)**, 127(1); S.I. 2014/1714, art. 4

165 In section 81 (publication of programme of reviews etc), in subsection (2) after paragraph (a) and before the "and" immediately following it insert—

"(aa) the National Health Service Commissioning Board,".

Commencement Information

I874 Sch. 5 para. 165 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

166 (1) Section 97 (general interpretation of Part 1) is amended as follows.

(2) In subsection (1) in the definition of "English NHS body"—

(a) omit paragraph (a),

(b) omit paragraph (b), and

(c) before paragraph (d) insert—

"(ca) the National Health Service Commissioning Board,

(cb) a clinical commissioning group,".

(3) In that subsection in the definition of "English NHS provider" omit paragraph (a).

(4) In that subsection in the definition of "NHS care"—

(a) after "health care" insert "—

(a) commissioned by the National Health Service Commissioning Board or by a clinical commissioning group (whether from an English NHS provider or not), or

(b)", and

(b) omit from "provided by" to the end.

(5) After subsection (2) insert—

"(2A) Any reference in this Part to health care commissioned by the National Health Service Commissioning Board or by a clinical commissioning group is a reference to health care provided by other persons pursuant to arrangements made by the Board or a clinical commissioning group under

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the National Health Service Act 2006 (including arrangements so made by virtue of section 7A of that Act)."

(6) Omit subsection (3).

Commencement Information
I875 Sch. 5 para. 166 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

167 In section 153 (directions to certain NHS bodies) in subsection (1)—
(a) omit paragraph (a), and
(b) omit paragraph (b).

Commencement Information
I876 Sch. 5 para. 167 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Education and Skills Act 2008 (c. 25)

168 The Education and Skills Act 2008 is amended as follows.

Commencement Information
I877 Sch. 5 para. 168 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

169 In section 16 (supply of information by public bodies), in subsection (2)—
(a) omit paragraph (c),
(b) omit paragraph (d), and
(c) before paragraph (e) insert—
"(da) a clinical commissioning group,".

Commencement Information
I878 Sch. 5 para. 169 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

170 In section 77 (supply of information by public bodies), in subsection (2)—
(a) omit paragraph (c),
(b) omit paragraph (d), and
(c) before paragraph (e) insert—
"(da) a clinical commissioning group,".

Commencement Information
I879 Sch. 5 para. 170 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Autism Act 2009 (c. 15)

171 In section 4 of the Autism Act 2009 (interpretation), in subsection (1), in the definition of "NHS body"—

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(a) omit paragraph (a),
(b) omit paragraph (b), and
(c) before paragraph (d) insert—

"(ca) the National Health Service Commissioning Board;

(cb) a clinical commissioning group;".

Commencement Information
I880 Sch. 5 para. 171 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Local Democracy, Economic Development and Construction Act 2009 (c. 20)

F89 172 . . . . . .

Textual Amendments
F89 Sch. 5 para. 172 omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), **ss. 102(2)(c)**, 115(3)(k)

Health Act 2009 (c. 21)

173 The Health Act 2009 is amended as follows.

Commencement Information
I881 Sch. 5 para. 173 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**
I882 Sch. 5 para. 173 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

174 In each of the following provisions for "NHS services" substitute "health services"—
(a) the title to Part 1,
(b) section 2(3), (4)(a) and (b), (5)(a) and (b) and (7), and
(c) the definitions of "carers", "patients" and "staff" in section 3(7).

Commencement Information
I883 Sch. 5 para. 174 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

175 (1) Section 2 (duty to have regard to NHS constitution) is amended as follows.

(2) In subsection (1), for "NHS functions" substitute "health service functions".

(3) In subsection (2)—
(a) omit paragraph (a),
(b) omit paragraph (b), and
(c) before paragraph (d) insert—

"(ca) the National Health Service Commissioning Board;
(cb) clinical commissioning groups;

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(cc) local authorities (within the meaning of section 2B of the National Health Service Act 2006);".

(4) In subsection (3), for "an "NHS function"" substitute "a "health service function"".

(5) In subsection (4)—

(a) before paragraph (a) insert—

"(za) provides health services under arrangements made by the National Health Service Commissioning Board or a clinical commissioning group under or by virtue of section 3, 3A, 3B or 4 of, or Schedule 1 to, the National Health Service Act 2006,",

(b) omit the word "or" at the end of paragraph (a), and

(c) after paragraph (b) insert ", or

(c) provides health services under arrangements made by a local authority for the purposes of its functions under or by virtue of section 2B or 6C(1) of, or Schedule 1 to, that Act."

(6) In subsection (5) for "subsection (4)(a) or (b)" substitute "subsection (4)(za), (a), (b) or (c)".

Commencement Information

I884 Sch. 5 para. 175(1) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

I885 Sch. 5 para. 175(1)(3)(c) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I886 Sch. 5 para. 175(2)(3)(a)(b)(4)-(6) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I887 Sch. 5 para. 175(3)(c) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

176 (1) Section 3 (availability and review of NHS constitution) is amended as follows.

(2) In subsection (3), omit paragraph (d).

(3) Omit subsection (8).

Commencement Information

I888 Sch. 5 para. 176 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

177 (1) Section 8 (duty of providers to publish information) is amended as follows.

(2) In subsection (1) for "NHS services" (in each place where it occurs) substitute "relevant health services".

(3) Omit subsection (2)(a).

(4) In subsection (3) for paragraphs (a) to (c) substitute—

"(a) provides health services as mentioned in section 2(4)(za) or (a), or

(b) in pursuance of a contract, agreement or arrangements as mentioned in section 2(4)(za) or (a), makes arrangements for another person to provide health services,".

(5) For subsection (6) substitute—

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"(6) In this section—

"health services" has the same meaning as in Chapter 1;

"relevant health services" means health services the provision of which is arranged by the National Health Service Commissioning Board or a clinical commissioning group under or by virtue of section 3, 3A, 3B or 4 of, or Schedule 1 to, the National Health Service Act 2006 or under or by virtue of Parts 4 to 7 of that Act."

Commencement Information
I889 Sch. 5 para. 177 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

178 In section 9 (supplementary provision about the duty to publish information), in subsection (3), for "a Strategic Health Authority" substitute "Monitor".

Commencement Information
I890 Sch. 5 para. 178 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

179 In section 36 (disclosure of information by Her Majesty's Revenue and Customs), in subsection (3) after paragraph (a) insert—

"(aa) the National Health Service Commissioning Board;".

Commencement Information
I891 Sch. 5 para. 179 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Equality Act 2010 (c. 15)

180 The Equality Act 2010 is amended as follows.

Commencement Information
I892 Sch. 5 para. 180 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**
I893 Sch. 5 para. 180 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

181 In section 1 (public sector duty regarding socio-economic inequalities), in subsection (3)—

(a) omit paragraph (h), and

(b) omit paragraph (i).

Commencement Information
I894 Sch. 5 para. 181 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

182 In Part 1 of Schedule 19 (bodies subject to public sector equality duty), in the group of entries that includes entries for bodies whose functions relate to the health service—

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(a) at the beginning insert—

"The National Health Service Commissioning Board.

A clinical commissioning group established under section 14D of the National Health Service Act 2006.",

(b) in the entry for an NHS trust, for "that Act" substitute "the National Health Service Act 2006",

(c) omit the entry for a Primary Care Trust, and

(d) omit the entry for a Strategic Health Authority.

Commencement Information

I895 Sch. 5 para. 182(a) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

I896 Sch. 5 para. 182(b)-(d) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Child Poverty Act 2010 (c. 9)

183 In section 20 of the Child Poverty Act 2010 (partner authorities), in subsection (2)—

(a) after paragraph (e) insert—

"(ea) a clinical commissioning group;",

(b) omit paragraph (f), and

(c) omit paragraph (g).

Commencement Information

I897 Sch. 5 para. 183 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Charities Act 2011 (c. 25)

184 In section 149 of the Charities Act 2011 (audit or examination of English NHS charity accounts), in subsection (7)—

(a) omit paragraph (a),

(b) omit paragraph (b),

(c) before paragraph (c) insert—

"(ba) the National Health Service Commissioning Board,

(bb) a clinical commissioning group,

(bc) trustees for the National Health Service Commissioning Board appointed in pursuance of paragraph 11 of Schedule A1 to the National Health Service Act 2006, or

(bd) trustees for a clinical commissioning group appointed in pursuance of paragraph 15 of Schedule 1A to that Act,", and

(d) omit paragraph (f).

Commencement Information

I898 Sch. 5 para. 184(a)(b)(d) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-10, Sch. paras. 1, 6)

I899 Sch. 5 para. 184(c) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

Status: *This version of this Act contains provisions that are prospective.*
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SCHEDULE 6

Section 55(3)

PART 1: TRANSITIONAL PROVISION

Interpretation

1 (1) This paragraph applies for the purposes of this Schedule.

(2) "The initial period" means the period that—

(a) begins with the commencement of section 25, and

(b) ends with the day specified by the Secretary of State for the purposes of section 14A of the 2006 Act (as inserted by section 25).

(3) "An initial application" means an application under section 14B of that Act which is made during the initial period.

(4) "The Board" means the National Health Service Commissioning Board.

(5) "The 2006 Act" means the National Health Service Act 2006.

Commencement Information

I900 Sch. 6 para. 1 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)**

I901 Sch. 6 para. 1(4) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**

Modification of requirements as to consultation

2 (1) If, at any time before the commencement of section 9, the Secretary of State consults a Special Health Authority as to the making of regulations under section 3B of the 2006 Act (as inserted by section 15), the consultation is to be treated for the purposes of subsection (4)(b) of section 3B as consultation with the Board.

(2) If, at any time before the commencement of section 9, the Secretary of State consults a Special Health Authority about the objectives or requirements to be included in the first mandate published under section 13A of the 2006 Act (as inserted by section 23), the consultation is to be treated for the purposes of subsection (8)(a) of section 13A as consultation with the Board.

Commencement Information

I902 Sch. 6 para. 2(1) in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

I903 Sch. 6 para. 2(2) in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

Directions under section 7 of the 2006 Act

3 (1) This paragraph applies if section 21 is commenced before section 33(1).

(2) Until section 33(1) is commenced, section 7(1) of the 2006 Act has effect as if after "Special Health Authority" there were inserted "or Strategic Health Authority".

(3) Sub-paragraph (4) applies in relation to any direction given under section 7(1) of the 2006 Act to a Strategic Health Authority which has effect immediately before section 21 is commenced.

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(4) Until section 33(1) is commenced, the direction continues to have effect as if given to the Strategic Health Authority under section 7(1) of the 2006 Act (as it has effect by virtue of sub-paragraph (2)).

(5) Sub-paragraph (6) applies in relation to any direction given under section 7(2) of the 2006 Act to a Special Health Authority in respect of the functions of a Strategic Health Authority which has effect immediately before section 21 is commenced.

(6) Until section 33(1) is commenced, the direction continues to have effect as if given to the Special Health Authority in respect of the functions of the Strategic Health Authority under section 7(1) of the 2006 Act.

(7) Any reference in this paragraph to section 7(1) of the 2006 Act is a reference to that provision as amended by section 21.

Commencement Information
I904 Sch. 6 para. 3 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

4 (1) This paragraph applies if section 21 is commenced before section 34(1).

(2) Until section 34(1) is commenced, section 7(1) of the 2006 Act has effect as if after "Special Health Authority" there were inserted "or Primary Care Trust".

(3) Sub-paragraph (4) applies in relation to any direction given under section 7(1) of the 2006 Act to a Primary Care Trust which has effect immediately before section 21 is commenced.

(4) Until section 34(1) is commenced, the direction continues to have effect as if given to the Primary Care Trust under section 7(1) of the 2006 Act (as it has effect by virtue of sub-paragraph (2)).

(5) Sub-paragraph (6) applies in relation to any direction given under section 7(2) of the 2006 Act to a Special Health Authority in respect of the functions of a Primary Care Trust which has effect immediately before section 21 is commenced.

(6) Until section 34(1) is commenced, the direction continues to have effect as if given to the Special Health Authority in respect of the functions of the Primary Care Trust under section 7(1) of the 2006 Act.

(7) Any reference in this paragraph to section 7(1) of the 2006 Act is a reference to that provision as amended by section 21.

Commencement Information
I905 Sch. 6 para. 4 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

5 (1) Sub-paragraph (2) applies in relation to any direction given under section 7(1) of the 2006 Act to a Special Health Authority which has effect immediately before section 21 is commenced.

(2) The direction continues to have effect on and after the commencement of that section as if given under section 7(1) of the 2006 Act (as amended by section 21).

(3) The amendment made by section 21(6) does not affect—

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(a) the validity of any direction made by an instrument in writing which continues to have effect by virtue of sub-paragraph (2),

(b) any power to vary such a direction otherwise than for the purpose of directing the Special Health Authority concerned to exercise an additional function, or

(c) any power to revoke such a direction.

Commencement Information

I906 Sch. 6 para. 5 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

6 Any reference in paragraphs 3 to 5 to the commencement of section 21 is to its commencement by virtue of an order under section 306(4) (and not to its commencement for limited purposes by virtue of section 306(1)(d)).

Commencement Information

I907 Sch. 6 para. 6 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

Exercise of Secretary of State's functions in relation to Primary Care Trusts

7 (1) The Secretary of State may, at any time during the initial period, direct the Board to exercise any functions of the Secretary of State that—

(a) relate to Primary Care Trusts or Strategic Health Authorities, and

(b) are specified in the direction.

(2) Sub-paragraph (1) does not apply to any power or duty of the Secretary of State to make an order or regulations.

(3) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the Board of any function exercisable by it by virtue of sub-paragraph (1) are enforceable by or against the Board (and no other person).

Commencement Information

I908 Sch. 6 para. 7 partly in force; Sch. 6 para. 7 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I909 Sch. 6 para. 7 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)**

Conditional establishment of clinical commissioning groups

8 (1) Regulations may make provision authorising the Board to grant an initial application where the Board is not satisfied as to the matters mentioned in section 14C(2) of the 2006 Act.

(2) In the following provisions of this paragraph, any reference to the grant of an initial application is a reference to the grant of such an application by virtue of the regulations.

(3) The regulations may authorise the Board to impose conditions on the grant of an initial application.

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(4) The regulations may, in relation to a clinical commissioning group established under section 14D of the 2006 Act on the grant of an initial application, authorise the Board—

(a) to direct the group not to exercise any functions specified in the direction;

(b) to give directions to the group about the exercise of any of its functions.

(5) If the regulations authorise the Board to give a direction mentioned in sub-paragraph (4)(a), they may also authorise or require the Board to—

(a) exercise any functions specified in such a direction on behalf of the clinical commissioning group;

(b) arrange for another clinical commissioning group to exercise those functions on behalf of the group.

(6) The 2006 Act applies in relation to a clinical commissioning group established on the grant of an initial application with such modifications as may be specified in the regulations.

(7) The regulations may, in particular, provide for the power in section 14Z21(7) of the 2006 Act to be exercisable by the Board where a clinical commissioning group is failing or has failed to comply with any conditions imposed by virtue of the regulations.

(8) The regulations may make provision requiring the Board to keep under review any conditions imposed or directions given by virtue of the regulations.

(9) The regulations must make provision authorising the Board to vary or remove any conditions imposed, or to vary or revoke any directions given, by virtue of the regulations.

(10) The regulations may make provision—

(a) as to factors which the Board must or may take into account in deciding how to exercise any power conferred on the Board by the regulations;

(b) as to the procedure to be followed by the Board before exercising any such power.

(11) Sub-paragraph (12) applies if all the conditions imposed and directions given in relation to a clinical commissioning group are removed or (as the case may be) revoked.

(12) In relation to any time after the day on which the clinical commissioning group ceases to be subject to any conditions or directions, the group is to be deemed to have been established by virtue of an application granted under section 14C of the 2006 Act.

Modifications etc. (not altering text)

C11 Sch. 6 para. 8(4) modified by 2006 c. 41, s. 14Z24(3) (as inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 26**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9))

Commencement Information

I910 Sch. 6 para. 8 partly in force; Sch. 6 para. 8 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I911 Sch. 6 para. 8 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)**

Status: *This version of this Act contains provisions that are prospective.*
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Exercise of functions of clinical commissioning groups during initial period

9 (1) This paragraph applies to a clinical commissioning group if the application for its establishment is granted under section 14C of the 2006 Act during the initial period.

(2) The Board may direct that, during that period, the clinical commissioning group may only exercise such of its functions as are specified in the direction.

Commencement Information

I912 Sch. 6 para. 9 partly in force; Sch. 6 para. 9 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I913 Sch. 6 para. 9 in force at 1.10.2012 in so far as not already in force by S.I. 2012/1831, **art. 2(2)**

Preparatory work by clinical commissioning groups

10 (1) This paragraph applies to a clinical commissioning group which is prevented by a direction given by virtue of paragraph 8 or 9 of this Schedule from exercising a function.

(2) The giving of the direction does not prevent the group from doing anything that appears to it to be necessary or expedient for the purpose of preparing it to exercise that function.

Commencement Information

I914 Sch. 6 para. 10 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

Arrangements between PCTs and clinical commissioning groups during initial period

11 (1) A Primary Care Trust may at any time during the initial period make arrangements with a clinical commissioning group under which the group exercises any functions of the Primary Care Trust on its behalf.

(2) Any reference (however expressed) in the following provisions of Chapter A2 of Part 2 of the National Health Service Act 2006 to the functions of a clinical commissioning group includes a reference to the functions of a Primary Care Trust that are exercisable by the group by virtue of sub-paragraph (1)—

(a) section 14P(1),
(b) section 14Q,
(c) section 14R(1),
(d) section 14T,
(e) section 14U(1),
(f) section 14V,
(g) section 14W(1),
(h) section 14X,
(i) section 14Y,
(j) section 14Z1(1) and (2),
(k) section 14Z3(7),
(l) section 14Z4(1),

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(m) section 14Z5(2),
(n) section 14Z7(7) insofar as it defines "commissioning functions" in section 14Z8,
(o) sections 14Z17(1), 14Z19(1) and 14Z21(1) and (3),
(p) in Schedule 1A, paragraphs 3(1) and (3), 6 and 12(9)(b).

(3) Arrangements made under sub-paragraph (1) do not affect the liability of the Primary Care Trust for the exercise of any of its functions.

Commencement Information
I915 Sch. 6 para. 11 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

Power to make payments to the Board during initial period

12 (1) The Secretary of State may make payments to the Board of such amounts as the Secretary of State considers appropriate towards meeting the expenditure of the Board which is attributable to the performance by it of its functions during the initial period.

(2) Payments under sub-paragraph (1) may be made at such times and on such terms and conditions as the Secretary of State considers appropriate.

Commencement Information
I916 Sch. 6 para. 12 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

Support for clinical commissioning groups during initial period

13 (1) A Primary Care Trust may provide assistance or support to a clinical commissioning group during the initial period.

(2) The assistance that may be provided includes—
(a) financial assistance, and
(b) making the services of the Trust's employees or any other resources of the Trust available to the group.

(3) Assistance or support provided under this paragraph may be provided on such terms and conditions, including terms as to payment, as the Trust considers appropriate.

(4) The Primary Care Trust may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this paragraph.

(5) A clinical commissioning group must comply with any restrictions imposed under sub-paragraph (4).

Commencement Information
I917 Sch. 6 para. 13 in force at 1.10.2012 by S.I. 2012/1831, **art. 2(2)**

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SCHEDULE 7

Section 56(4)

ABOLITION OF THE HEALTH PROTECTION AGENCY: CONSEQUENTIAL AMENDMENTS

Parliamentary Commissioner Act 1967 (c. 13)

1 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation)—

(a) omit the entry for the Health Protection Agency, and

(b) in the Notes, omit the paragraph on the Health Protection Agency.

Commencement Information

I918 Sch. 7 para. 1 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Superannuation Act 1972 (c. 11)

2 In Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of that Act can apply), omit the entry for the Health Protection Agency.

Commencement Information

I919 Sch. 7 para. 2 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Local Government Act 1972 (c. 70)

3 In section 113 of the Local Government Act 1972 (placing of staff of local authorities at disposal of other local authorities), in subsection (1A) omit "the Health Protection Agency," in each place it occurs.

Commencement Information

I920 Sch. 7 para. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Safety at Work etc. Act 1974 (c. 37)

4 The Health and Safety at Work etc. Act 1974 is amended as follows.

Commencement Information

I921 Sch. 7 para. 4 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

5 In section 16 (approval of codes of practice), in subsection (2)(a) omit the words from "(and, in particular," to the end.

Commencement Information

I922 Sch. 7 para. 5 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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6 In section 50 (exercise of certain powers to make regulations), in subsection (3)(a) omit the words from ", and, in the case of" to "the Health Protection Agency".

Commencement Information
I923 Sch. 7 para. 6 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

House of Commons Disqualification Act 1975 (c. 24)

7 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership of the House), omit the entry for the chairman and any non-executive member of the Health Protection Agency.

Commencement Information
I924 Sch. 7 para. 7 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

8 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (offices disqualifying for membership of the Assembly), omit the entry for the chairman and any non-executive member of the Health Protection Agency.

Commencement Information
I925 Sch. 7 para. 8 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Employment Rights Act 1996 (c. 18)

9 In section 218 of the Employment Rights Act 1996 (change of employer), in subsection (10) omit paragraph (dd).

Commencement Information
I926 Sch. 7 para. 9 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Freedom of Information Act 2000 (c. 36)

10 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities), omit the entry for the Health Protection Agency.

Commencement Information
I927 Sch. 7 para. 10 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
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International Development Act 2002 (c. 1)

11 In Schedule 1 to the International Development Act 2002 (statutory bodies who may exercise certain powers for the purpose of assisting countries outside the UK), omit the entry for the Health Protection Agency.

Commencement Information
I928 Sch. 7 para. 11 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Nationality, Immigration and Asylum Act 2002 (c. 41)

12 (1) Section 133(4) of the Nationality, Immigration and Asylum Act 2002 (power of medical inspector to disclose information to health service bodies) is amended as follows.

(2) In paragraph (a)—

(a) before sub-paragraph (i) insert—

"(ai) the Secretary of State,", and

(b) omit sub-paragraph (vi) and the "or" preceding it.

(3) In paragraph (b)—

(a) after sub-paragraph (i) insert "or", and

(b) omit sub-paragraph (iv) and the "or" preceding it.

(4) In paragraph (c)—

(a) before sub-paragraph (i) insert—

"(ai) the Secretary of State,",

(b) after sub-paragraph (iia) insert "or", and

(c) omit sub-paragraph (iii).

(5) In paragraph (d)—

(a) after sub-paragraph (ii) insert—

"(iia) the Regional Agency for Public Health and Social Well-being established under section 12 of the Health and Social Care (Reform) Act (Northern Ireland) 2009, or", and

(b) omit sub-paragraph (iv) and the ", or" preceding it.

Commencement Information
I929 Sch. 7 para. 12 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Scottish Public Services Ombudsman Act 2002 (asp 11)

13 The Scottish Public Services Ombudsman Act 2002 is amended as follows.

Commencement Information
I930 Sch. 7 para. 13 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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14 In section 7 (matters which may be investigated: restrictions), omit subsection (6A).

Commencement Information
I931 Sch. 7 para. 14 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

15 In Part 2 of Schedule 2 (persons liable to investigation), omit paragraph 90.

Commencement Information
I932 Sch. 7 para. 15 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Civil Contingencies Act 2004 (c. 36)

16 In Schedule 1 to the Civil Contingencies Act 2004, in Part 1 (list of Category 1 responders) for paragraph 9 substitute—

"9 The Secretary of State, in so far as the functions of the Secretary of State include responding to emergencies by virtue of —

(a) the Secretary of State's functions under section 2A of the National Health Service Act 2006,

(b) the Secretary of State's functions under section 58 of the Health and Social Care Act 2012 in so far as it applies in relation to Wales or Scotland, or

(c) arrangements made by the Welsh Ministers or Scottish Ministers under which the Secretary of State exercises on their behalf functions in relation to protecting the public in Wales or Scotland from disease or other dangers to health."

Commencement Information
I933 Sch. 7 para. 16 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service Act 2006 (c. 41)

17 The National Health Service Act 2006 is amended as follows.

Commencement Information
I934 Sch. 7 para. 17 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

18 In section 9 (NHS contracts), in subsection (4) omit paragraph (j).

Commencement Information
I935 Sch. 7 para. 18 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

19 In section 71 (schemes for meeting losses and liabilities of certain health bodies)—

(a) in subsection (2) omit paragraph (g), and

(b) in subsection (5) for ", (f) and (g)" substitute "and (f)".

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Commencement Information
I936 Sch. 7 para. 19 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service (Wales) Act 2006 (c. 42)

20 The National Health Service (Wales) Act 2006 is amended as follows.

Commencement Information
I937 Sch. 7 para. 20 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

21 In section 7 (NHS contracts), in subsection (4) omit paragraph (j).

Commencement Information
I938 Sch. 7 para. 21 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

22 In section 30 (schemes for meeting losses and liabilities of certain health bodies), in subsection (2)—

(a) after paragraph (b) insert "and", and

(b) omit paragraph (e) and the preceding "and".

Commencement Information
I939 Sch. 7 para. 22 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service (Consequential Provisions) Act 2006 (c. 43)

23 In Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (consequential amendments), omit paragraphs 257 to 259 (and the cross-heading preceding them).

Commencement Information
I940 Sch. 7 para. 23 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Social Care Act 2008 (c. 14)

24 In section 159 (functions of Health Protection Agency in relation to biological substances), omit subsections (2) to (6).

Commencement Information
I941 Sch. 7 para. 24 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Health and Personal Social Services (Northern Ireland) Order 1991 (No. 194 (N.I. 1))

25 In article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991 (health and social services contracts), in paragraph (2)(g) omit paragraph (vi).

Commencement Information
I942 Sch. 7 para. 25 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

SCHEDULE 8

Section 61

MONITOR

Membership

1 (1) Monitor is to consist of—
(a) a chair appointed by the Secretary of State,
(b) at least four other members so appointed, and
(c) the chief executive and other members appointed in accordance with paragraph 2.

(2) The number of executive members must be less than the number of non-executive members.

(3) In this Schedule—
(a) references to non-executive members of Monitor are references to the members appointed in accordance with sub-paragraph (1)(a) and (b), and
(b) references to executive members of Monitor are references to the other members.

Commencement Information
I943 Sch. 8 para. 1 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

The chief executive and other executive members: appointment and status

2 (1) The chief executive and the other executive members of Monitor are to be appointed by the non-executive members.

(2) A person may not be appointed as chief executive or as another executive member without the consent of the Secretary of State.

(3) The non-executive members may not appoint more than five executive members without the consent of the Secretary of State.

(4) The chief executive and the other executive members are to be employees of Monitor.

Commencement Information
I944 Sch. 8 para. 2 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

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Non-executive members: tenure

3 (1) A person holds and vacates office as a non-executive member of Monitor in accordance with that person's terms of appointment.

(2) A person may at any time resign from office as a non-executive member by giving notice to the Secretary of State.

(3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds—

(a) incapacity,

(b) misbehaviour, or

(c) failure to carry out his or her duties as a non-executive member.

(4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (3).

(5) A person may not be appointed as a non-executive member for a period of more than four years.

(6) A person who ceases to be a non-executive member is eligible for re-appointment.

Commencement Information

I945 Sch. 8 para. 3 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Suspension from office

4 (1) This paragraph applies where a person is suspended under paragraph 3(4).

(2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice.

(3) The notice may be—

(a) delivered in person (in which case, the person is taken to receive it when it is delivered), or

(b) sent by first class post to the person's last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).

(4) The initial period of suspension must not exceed six months.

(5) The Secretary of State may at any time review the suspension.

(6) The Secretary of State—

(a) must review the suspension if requested in writing by the person to do so, but

(b) need not review the suspension less than three months after the beginning of the initial period of suspension.

(7) Following a review during a period of suspension, the Secretary of State may—

(a) revoke the suspension, or

(b) suspend the person for another period of not more than six months from the expiry of the current period.

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(8) The Secretary of State must revoke the suspension if the Secretary of State—

(a) decides that there are no grounds to remove the person from office under paragraph 3(3), or

(b) decides that there are grounds to do so but does not remove the person from office under that provision.

Commencement Information

I946 Sch. 8 para. 4 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

5 (1) Where a person is suspended from office as the chair under paragraph 3(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair's functions.

(2) Appointment as interim chair is for a term not exceeding the shorter of—

(a) the period ending with either—

(i) the appointment of a new chair, or

(ii) the revocation or expiry of the existing chair's suspension, and

(b) the remainder of the interim chair's term as a non-executive member.

(3) A person who ceases to be the interim chair is eligible for re-appointment.

Commencement Information

I947 Sch. 8 para. 5 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Payment of non-executive members

6 (1) Monitor must pay to its non-executive members such remuneration and allowances as the Secretary of State may determine.

(2) Monitor must pay or make provision for the payment of such pensions, allowances or gratuities as it may, with the approval of the Secretary of State, determine to or in respect of any person who is or has been a non-executive member.

(3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, Monitor must pay compensation to the person of such amount as the Secretary of State may determine.

Commencement Information

I948 Sch. 8 para. 6 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Staff

7 (1) Monitor may appoint such persons to be employees of Monitor as it considers appropriate.

(2) Employees of Monitor are to be paid such remuneration and allowances as Monitor may determine.

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(3) Employees of Monitor are to be appointed on such other terms and conditions as Monitor may determine.

(4) Monitor may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of Monitor.

(5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), Monitor must obtain the approval of the Secretary of State to its policy on that matter.

Commencement Information
I949 Sch. 8 para. 7 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Superannuation

8 (1) Sub-paragraph (2) applies where a person who is an active or deferred member of a scheme under section 1 of the Superannuation Act 1972 is appointed as chair.

(2) The Minister for the Civil Service may determine that the person's office as chair is to be treated for the purposes of the scheme as service in the employment by reference to which the person is a member (whether or not any benefits are payable by virtue of paragraph 6(2)).

(3) Employment with Monitor is among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 can apply; and, accordingly, in Schedule 1 to that Act (in which those kinds of employment are listed), at the end of the list of "Other Bodies" insert— " Monitor ".

(4) Monitor must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to sub-paragraph (2) or (3) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

Commencement Information
I950 Sch. 8 para. 8 partly in force; Sch. 8 para. 8 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I951 Sch. 8 para. 8 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

Committees

9 (1) Monitor may appoint such committees and sub-committees as it considers appropriate.

(2) A committee or sub-committee may consist of or include persons who are not members or employees of Monitor.

(3) Monitor may pay such remuneration and allowances as it determines to any person who—

(a) is a member of a committee or sub-committee, but

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(b) is not an employee of Monitor,

whether or not that person is a non-executive member of Monitor.

Commencement Information

I952 Sch. 8 para. 9 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Procedure

10 (1) Monitor may regulate its own procedure.

(2) The validity of any act of Monitor is not affected by any vacancy among the members or by any defect in the appointment of a member.

Commencement Information

I953 Sch. 8 para. 10 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Exercise of functions

11 (1) Monitor must exercise its functions effectively, efficiently and economically.

(2) Monitor may arrange for the exercise of its functions on its behalf by—

(a) a non-executive member;

(b) an employee (including the chief executive);

(c) a committee or sub-committee.

[F90(2A) Sub-paragraph (2) is subject to provision in rules made under section 51 of the Competition Act 1998 by virtue of paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.**]**

Textual Amendments

F90 Sch. 8 para. 11(2A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 49**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

Commencement Information

I954 Sch. 8 para. 11 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Assistance

12 (1) Monitor may arrange for persons to assist it in the exercise of its functions in relation to—

(a) a particular case, or

(b) cases of a particular description.

(2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

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Commencement Information
I955 Sch. 8 para. 12 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Borrowing

13 (1) Monitor may, with the consent of the Secretary of State, borrow money temporarily by way of overdraft.

(2) But subject to that, and subject to sections 145 and 146 (power to borrow for exercising functions in relation to financial assistance and power of Secretary of State to lend etc.), Monitor may not borrow money.

Commencement Information
I956 Sch. 8 para. 13 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)** (with art. 11)

Acquiring information

14 (1) Monitor may obtain, compile and keep under review information about matters relating to the exercise of its functions.

(2) Where Monitor exercises the power under sub-paragraph (1), it must do so with a view to (among other things) ensuring that it has sufficient information to take informed decisions and to exercise its other functions effectively.

(3) In exercising the power under sub-paragraph (1), Monitor may carry out, commission or support (financially or otherwise) research.

Commencement Information
I957 Sch. 8 para. 14 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

General power

15 Monitor may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions.

Commencement Information
I958 Sch. 8 para. 15 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Finance

16 (1) The Secretary of State may make payments to Monitor out of money provided by Parliament of such amounts as the Secretary of State considers appropriate.

(2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State considers appropriate.

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Commencement Information

I959 Sch. 8 para. 16 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Accounts of NHS foundation trusts

17 (1) Monitor must prepare in respect of each financial year a set of accounts which consolidates the annual accounts of all NHS foundation trusts.

(2) The Secretary of State may, with the approval of the Treasury, direct Monitor to prepare a set of accounts in respect of such period as may be specified in the direction which consolidates any accounts prepared by NHS foundation trusts by virtue of paragraph 25(1A) of Schedule 7 to the National Health Service Act 2006 in respect of that period.

(3) In preparing any consolidated accounts under this paragraph, Monitor must comply with directions given by the Secretary of State with the approval of the Treasury as to—

(a) the content and form of the consolidated accounts;

(b) the methods and principles according to which the consolidated accounts should be prepared.

(4) Monitor must send a copy of any consolidated accounts under this paragraph to the Secretary of State and, if the Secretary of State so directs, the Comptroller and Auditor General—

(a) accompanied by such other reports or information as the Secretary of State may direct, and

(b) within the relevant period.

(5) In sub-paragraph (4)(b), the relevant period is—

(a) in relation to consolidated accounts under sub-paragraph (1), such period after the end of the financial year concerned as the Secretary of State may direct;

(b) in relation to consolidated accounts under sub-paragraph (2), such period as the Secretary of State may direct.

(6) Before giving a direction under sub-paragraph (5), the Secretary of State must consult Monitor.

(7) The Comptroller and Auditor General must—

(a) examine, certify and report on any consolidated accounts sent under this paragraph,

(b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and

(c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.

(8) Monitor must act with a view to securing that NHS foundation trusts—

(a) comply promptly with requests from it or the Secretary of State for information relating to their accounts, and

(b) otherwise act so as to facilitate the preparation of accounts by the Secretary of State.

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(9) This paragraph does not apply to the financial year specified for the purposes of section 155(7) (which provides for the order that commences section 155, which itself relates to the preparation of the accounts of NHS foundation trusts, to specify the first financial year to which that section will apply) or to the subsequent financial years.

Commencement Information

I960 Sch. 8 para. 17 partly in force; Sch. 8 para. 17 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I961 Sch. 8 para. 17 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

Accounts of Monitor

18 (1) Monitor must keep proper accounts and proper records in relation to the accounts.

(2) The Secretary of State may, with the approval of the Treasury, give directions to Monitor as to—

(a) the content and form of its accounts, and

(b) the methods and principles to be applied in the preparation of its accounts.

(3) In sub-paragraph (2), the reference to accounts includes Monitor's annual accounts prepared under paragraph 19 and any interim accounts prepared by virtue of paragraph 20.

Commencement Information

I962 Sch. 8 para. 18 partly in force; Sch. 8 para. 18 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I963 Sch. 8 para. 18 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

19 (1) Monitor must prepare annual accounts in respect of each financial year.

(2) Monitor must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on the annual accounts, and

(b) lay copies of them and the report before Parliament.

Commencement Information

I964 Sch. 8 para. 19 partly in force; Sch. 8 para. 19 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I965 Sch. 8 para. 19 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

20 (1) The Secretary of State may, with the approval of the Treasury, direct Monitor to prepare accounts in respect of such period or periods as may be specified in the direction ("interim accounts").

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(2) Monitor must send copies of any interim accounts to the Secretary of State and, if the Secretary of State so directs, the Comptroller and Auditor General within such period as the Secretary of State may direct.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on any interim accounts sent by virtue of sub-paragraph (2),

(b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and

(c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.

Commencement Information

I966 Sch. 8 para. 20 partly in force; Sch. 8 para. 20 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I967 Sch. 8 para. 20 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

Reports and other information

21 (1) As soon as practicable after the end of each financial year, Monitor must prepare an annual report on how it has exercised its functions during the year.

(2) The report must, in particular—

(a) set out the measures that Monitor has taken to promote economy, efficiency and effectiveness in the use of resources for the exercise of its functions,

(b) include a statement of what it did to comply with the duty under section 63(2) (duty to have regard to Secretary of State's guidance on duty under section 62(9)), and

(c) include a statement of what it did to comply with the duty under section 66(2)(h) (duty to have regard to Secretary of State's guidance on relevant parts of document on improving quality of services).

(3) Monitor must—

(a) lay a copy of the report before Parliament, and

(b) once it has done so, send a copy of it to the Secretary of State.

(4) Monitor must provide the Secretary of State with—

(a) such other reports and information relating to the exercise of Monitor's functions as the Secretary of State may require;

(b) such information about NHS foundation trusts that Monitor has in its possession as the Secretary of State may require.

Commencement Information

I968 Sch. 8 para. 21 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

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Recommendations by Committees in Parliament

22 Monitor must respond in writing to any recommendation about its exercise of its functions that a Committee of either House of Parliament or a Committee of both Houses makes.

Commencement Information
I969 Sch. 8 para. 22 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Seal and evidence

23 (1) The application of Monitor's seal must be authenticated by the signature of the chair or any other person who has been authorised (generally or specifically) for that purpose.

(2) A document purporting to be duly executed under Monitor's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Commencement Information
I970 Sch. 8 para. 23 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Status

24 (1) Monitor must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) Monitor's property must not be regarded as property of, or property held on behalf of, the Crown.

Commencement Information
I971 Sch. 8 para. 24 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

SCHEDULE 9

Section 77

REQUIREMENTS UNDER SECTION 77: UNDERTAKINGS

Procedure

1 (1) Monitor must publish a procedure for entering into section 77 undertakings.

(2) Monitor may revise the procedure and, if it does so, Monitor must publish the procedure as revised.

(3) Monitor must consult such persons as it considers appropriate before publishing or revising the procedure.

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Commencement Information
I972 Sch. 9 para. 1 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

2 (1) Where Monitor accepts a section 77 undertaking, Monitor must publish the undertaking.

(2) But Monitor must not under sub-paragraph (1) publish any part of a section 77 undertaking which contains information which it is satisfied is—

(a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of the person to whom it relates;

(b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person's interests.

Commencement Information
I973 Sch. 9 para. 2 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Variation of terms

3 The terms of a section 77 undertaking (including, in particular, the action specified under it and the period so specified within which the action must be taken) may be varied if both the person giving the undertaking and Monitor agree.

Commencement Information
I974 Sch. 9 para. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Compliance certificates

4 (1) Where Monitor is satisfied that a section 77 undertaking has been complied with, Monitor must issue a certificate to that effect (referred to in this Schedule as a "compliance certificate").

(2) A person who has given a section 77 undertaking may at any time make an application to Monitor for a compliance certificate.

(3) The application must be made in such form, and accompanied by such information, as Monitor requires.

(4) Monitor must decide whether or not to issue a compliance certificate, and give notice to the applicant of its decision, before the end of the period of 14 days beginning with the day after that on which the application is received.

Commencement Information
I975 Sch. 9 para. 4 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

5 (1) An appeal lies to the First-tier Tribunal against a decision of Monitor to refuse an application for a compliance certificate.

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(2) The grounds for an appeal under this paragraph are that the decision was—

(a) based on an error of fact,

(b) wrong in law, or

(c) unfair or unreasonable.

(3) On an appeal under this paragraph, the Tribunal may confirm Monitor's decision or direct that it is not to have effect.

Commencement Information

I976 Sch. 9 para. 5 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Inaccurate, incomplete or misleading information

6 Where Monitor is satisfied that a person who has given a section 77 undertaking has supplied Monitor with inaccurate, misleading or incorrect information in relation to the undertaking—

(a) Monitor may treat the person as having failed to comply with the undertaking, and

(b) if Monitor decides so to treat the person, Monitor must by notice revoke any certificate of compliance given to that person.

Commencement Information

I977 Sch. 9 para. 6 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

SCHEDULE 10

Sections 101 and 142

REFERENCES BY MONITOR TO THE [F91CMA]

Textual Amendments

F91 Word in Sch. 10 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Variation of reference

1 (1) Monitor may, at any time, by notice given to the [F92CMA] vary a reference—

(a) by adding to the matters specified in the reference, or

(b) by excluding from the reference some of the matters so specified.

(2) On receipt of a notice under sub-paragraph (1), [F93the CMA] must give effect to the variation.

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Textual Amendments

F92 Word in Sch. 10 para. 1(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F93 Words in Sch. 10 para. 1(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I978 Sch. 10 para. 1 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Monitor's opinion of public interest etc.

2 Monitor may specify in a reference, or a variation under paragraph 1, for the purpose of assisting the **[**F94CMA**]** in carrying out the investigation on the reference—

(a) any effects adverse to the public interest which Monitor considers the matters specified in the reference or variation have or may be expected to have, and

(b) any changes in relation to those matters by which Monitor considers those effects could be remedied or prevented.

Textual Amendments

F94 Word in Sch. 10 para. 2 substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I979 Sch. 10 para. 2 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Publication etc. of reference

3 As soon as practicable after making a reference, or a variation under paragraph 1, Monitor—

(a) must send a copy of the reference or variation to the relevant persons, and

(b) must publish particulars of the reference or variation.

Commencement Information

I980 Sch. 10 para. 3 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Information

4 (1) Monitor must, for the purpose of assisting the **[**F95CMA**]** in carrying out an investigation on a reference, or in carrying out the function under paragraph 8, give **[**F96the CMA**]**—

(a) such information in Monitor's possession as relates to matters within the scope of the investigation or the carrying out of the function and—

(i) is requested by **[**F96the CMA**]** for that purpose, or

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(ii) is information which Monitor considers it would be appropriate for that purpose to give to **[**F96the CMA**]** without request, and

(b) such other assistance as **[**F96the CMA**]** may require, and as is within Monitor's power to give, in relation to any such matters.

(2) The **[**F97CMA**]** must, for the purpose of carrying out the investigation or the function, take account of such information as is given to it for that purpose under sub-paragraph (1).

Textual Amendments

F95 Word in Sch. 10 para. 4(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(5)(a)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F96 Words in Sch. 10 para. 4(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(5)(a)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F97 Word in Sch. 10 para. 4(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(5)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I981 Sch. 10 para. 4 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Time limits

5 (1) A reference must specify a period within which the **[**F98CMA**]** must make a report on the reference.

(2) A period specified for the purposes of sub-paragraph (1) must not be longer than six months beginning with the date of the reference.

(3) A report of the **[**F99CMA**]** on a reference does not have effect (and no action may be taken in relation to it under paragraph 7) unless the report is made before the end of—

(a) the period specified in the reference, or

(b) such further period as is allowed under sub-paragraph (4).

(4) Monitor may, if it receives representations on the subject from the **[**F100CMA**]** and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend the period by no more than six months.

(5) But Monitor may not make more than one extension under sub-paragraph (4) in relation to the same reference.

(6) Where Monitor makes an extension under sub-paragraph (4), it must send notice of the extension to the relevant persons.

(7) Monitor must also publish the notice.

Textual Amendments

F98 Word in Sch. 10 para. 5(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(6)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F99 Word in Sch. 10 para. 5(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(6)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F100 Word in Sch. 10 para. 5(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(6)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I982 Sch. 10 para. 5 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Reports on references

6 (1) In making a report on a reference, the **[**F101CMA**]**—

(a) must include in the report definite conclusions on the questions in the reference together with such an account of its reasons for those conclusions as it considers expedient for facilitating a proper understanding of those questions and of its conclusions,

(b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, must specify in the report the effects adverse to the public interest which those matters have or may be expected to have, and

(c) where it concludes that any adverse effects so specified could be remedied or prevented by changes in relation to the matters specified in the reference, must specify in the report changes which could remedy or prevent those effects.

(2) For the purposes of paragraphs 7 and 8, a conclusion in a report of the **[**F102CMA**]** is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted **[**F103by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference**]**.

(3) If a member of a group so constituted disagrees with a conclusion in a report made on a reference, the report must, if the member so wishes, include a statement of the member's disagreement and reasons for disagreeing.

(4) A report of the **[**F104CMA**]** on a reference must be sent to Monitor.

(5) On receiving a report on a reference, Monitor must send a copy of it to the Secretary of State.

(6) Not less than 14 days after the Secretary of State receives that copy, Monitor must send a copy to the relevant persons.

(7) Not less than 24 hours after complying with sub-paragraph (6), Monitor must publish the report.

Textual Amendments

F101 Word in Sch. 10 para. 6(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(7)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F102 Word in Sch. 10 para. 6(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(7)(b)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F103 Words in Sch. 10 para. 6(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(7)(b)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F104 Word in Sch. 10 para. 6(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(7)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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Commencement Information
I983 Sch. 10 para. 6 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Changes following report

7 (1) This paragraph applies where a report of the **[**F105CMA**]** on a reference—

(a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest,

(b) specifies effects adverse to the public interest which those matters have or may be expected to have,

(c) includes conclusions to the effect that those effects could be remedied or prevented by changes to the matters specified in the reference, and

(d) specifies changes by which those effects could be remedied or prevented.

(2) Monitor must make such changes to the matters specified in the reference as it considers necessary for the purpose of remedying or preventing the adverse effects specified in the report.

(3) Before making changes under this paragraph, Monitor must have regard to the changes specified in the report.

(4) Before making changes under this paragraph, Monitor must send a notice—

(a) stating that it proposes to make the changes and setting out their effect,

(b) stating the reasons why it proposes to make the changes, and

(c) specifying the period within which representations with respect to the changes may be made.

(5) A period specified for the purposes of sub-paragraph (4)(c) must not be less than 28 days beginning with the day after that on which the notice is published.

(6) Monitor must send the notice to the relevant persons.

(7) Monitor must also publish the notice.

(8) After considering such representations as it receives before the end of the period specified under sub-paragraph (4)(c), Monitor must send a notice to the **[**F105CMA**]**—

(a) specifying the changes it proposes to make to remedy or prevent the adverse effects specified in the report, and

(b) stating the reasons for proposing to make the changes.

(9) Monitor must include with the notice under sub-paragraph (8) a copy of the representations referred to in that sub-paragraph.

(10) If a direction under paragraph 8 is not given to Monitor before the end of the period of four weeks beginning with the date on which it sends the notice under sub-paragraph (8), Monitor must make the changes specified in the notice.

(11) If a direction under that paragraph is given to Monitor before the end of that period, Monitor must make such of the changes as are not specified in the direction.

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Textual Amendments

F105 Word in Sch. 10 para. 7(1)(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(8)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I984 Sch. 10 para. 7 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

[F106CMA's] power to veto changes

Textual Amendments

F106 Word in Sch. 10 para. 8 cross-heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(9)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

8 (1) The **[**F107CMA**]** may, within the period of four weeks beginning with the day on which it is sent a notice under paragraph 7(8), direct Monitor—

(a) not to make the changes set out in the notice, or

(b) not make such of the changes as may be specified in the direction.

(2) Monitor must comply with a direction under sub-paragraph (1).

(3) The Secretary of State may, within that period and on the application of the **[**F108CMA**]**, direct that the period for giving a direction under sub-paragraph (1) (and, accordingly, the period referred to in paragraph 7(10)) is to be extended by 14 days.

(4) The **[**F108CMA**]** may give a direction under sub-paragraph (1) only in respect of such of the changes specified in the notice under paragraph 7(8)(a) as it considers are not necessary for the purpose of remedying or preventing one or more of the adverse effects specified in the report as effects which could be remedied or prevented by changes.

(5) If the **[**F108CMA**]** gives a direction under sub-paragraph (1), it—

(a) must give notice specifying the changes proposed by Monitor, the terms of the direction and the reasons for giving it, and

(b) must itself make such changes to the matters specified in the reference as it considers necessary for the purpose of remedying or preventing the effects referred to in sub-paragraph (6).

(6) The effects mentioned in sub-paragraph (5)(b) are—

(a) in the case of a direction under sub-paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by changes, or

(b) in the case of a direction under sub-paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the changes made by Monitor under paragraph 7(11).

(7) In exercising its function under sub-paragraph (5)(b), the **[**F109CMA**]** must have regard to the matters to which Monitor must have regard when determining the matters specified in the reference.

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(8) Before making changes under sub-paragraph (5)(b), the **[**F109CMA**]** must send a notice—

(a) stating that it proposes to make the changes and specifying them,

(b) stating the reason why it proposes to make them, and

(c) specifying the period within which representations on the proposed changes may be made.

(9) The period specified for the purposes of sub-paragraph (8)(c) must not be less than 28 days beginning with the date on which the notice is published.

(10) The **[**F110CMA**]** must send a notice under sub-paragraph (8) to the relevant persons.

(11) The **[**F110CMA**]** must also publish the notice.

(12) After making changes under this paragraph, the **[**F110CMA**]** must publish a notice—

(a) stating that it has made the changes and specifying them, and

(b) stating the reason why it has made them.

Textual Amendments

F107 Word in Sch. 10 para. 8(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(10)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F108 Words in Sch. 10 para. 8(3)-(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(10)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F109 Words in Sch. 10 para. 8(7)(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(10)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F110 Words in Sch. 10 para. 8(10)-(12) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(10)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I985 Sch. 10 para. 8 partly in force; Sch. 10 para. 8 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I986 Sch. 10 para. 8 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**

Disclosure etc.

9 (1) Before making a report on a reference, giving or sending a notice under paragraph 8(5)(a) or (8) or publishing a notice under paragraph 8(12), the **[**F111CMA**]** must have regard to the following considerations.

(2) The first consideration is the need to exclude from disclosure (so far as practicable) any information the disclosure of which the **[**F112CMA**]** considers is contrary to the public interest.

(3) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information the disclosure of which the **[**F112CMA**]** considers would or might significantly harm the legitimate business interests of the undertaking to which it relates, or

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(b) information relating to the private affairs of an individual whose disclosure the **[**F112CMA**]** considers would or might significantly harm the individual's interests.

(4) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (3)(a) or (b) is necessary for the purposes of the report.

(5) For the purposes of the law relating to defamation, absolute privilege attaches to the report or notice.

Textual Amendments

F111 Word in Sch. 10 para. 9(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(11)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F112 Words in Sch. 10 para. 9(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(11)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I987 Sch. 10 para. 9 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

Powers of investigation

10 (1) The following sections of Part 3 of the Enterprise Act 2002 (mergers) apply, with the modifications in sub-paragraphs **[**F113(2A),**]** (3), (5), (6) and (8) to (11) for the purposes of a reference as they apply for the purposes of references under that Part—

(a) section 109 (attendance of witnesses and production of documents),
(b) section 110 (enforcement of powers under section 109: general),
(c) section 111 (penalties),
(d) section 112 (penalties: main procedural requirements),
(e) section 113 (payments and interest by instalments),
(f) section 114 (appeals in relation to penalties),
(g) section 115 (recovery of penalties),
(h) section 116 (statement of policy),
(i) section 117 (offence of supplying false or misleading information), and
(j) section 125 (offences by bodies corporate) so far as relating to section 117.

(2) Those sections of that Part of that Act apply, with the modifications in sub-paragraphs **[**F114(2A),**]** (4), (5) and (7) to (11), for the purposes of an investigation by the **[**F115CMA**]** in the exercise of its functions under paragraph 8, as they apply for the purposes of an investigation on references under that Part.

[F116(2A) Section 109, in its application by virtue of sub-paragraph (1) or (2), has effect as if—

(a) for subsection (A1), there were substituted—

"(A1) For the purposes of this section, the permitted purposes are the following—

(a) assisting the CMA in carrying out any functions exercisable by it in connection with a reference under Schedule 10 to the Health and Social Care Act 2012;

(b) assisting the CMA in carrying out any functions exercisable by it under paragraph 8 of that Schedule.", and

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(b) subsection (8A) were omitted.**]**

(3) Section 110, in its application by virtue of sub-paragraph (1), has effect as if—

(a) subsection (2) were omitted,

[F117(aa) after subsection (3), there were inserted—

"(3A) No penalty shall be imposed by virtue of subsection (1), (3) or (5) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.",**]**

(b) for subsections (5) to (8) there were substituted—

"(5) Where the Commission considers that a person has intentionally altered, suppressed or destroyed a document which he has been required to produce under section 109, it may impose a penalty in accordance with section 111.", and

(c) in subsection (9), for the words from "or (3)" to "section 65(3))" there were substituted ", (3) or (5)".

(4) Section 110, in its application by virtue of sub-paragraph (2), has effect as if—

(a) the modifications in sub-paragraph (3) were made, **[**F118and**]**

[F119(b) after subsection (3), there were inserted—

"(3A) No penalty shall be imposed by virtue of subsection (1), (3) or (5) if more than 4 weeks have passed since the relevant day; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.

(3AB) The relevant day for the purposes of subsection (3A) is—

(a) the day on which the CMA published a notice under paragraph 8(12) of Schedule 10 to the Health and Social Care Act 2012 in connection with the reference concerned, or

(b) if it has not given a direction under paragraph 8(1) of that Schedule in connection with the reference and within the permitted period, the latest day on which it was possible to give such a notice within that period.".**]**

(5) Section 111, in its application by virtue of sub-paragraph (1) or (2), has effect as if—

(a) in subsection (1), for "or (3)" there were substituted ", (3) or (5)", and

(b) in subsections (3) and (6), after "110(3)" there were inserted "or (5)".

[F120(6) Section 111(5)(b), in its application by virtue of sub-paragraph (1), has effect as if for sub-paragraph (ii) there were substituted—

"(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which it was possible to make the report within the permitted period.".**]**

(7) Section 111(5)(b)(ii), in its application by virtue of sub-paragraph (2), has effect as if for sub-paragraph (ii) there were substituted—

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"(ii) if earlier, the relevant day (which for the purposes of this subsection is to be construed in accordance with section **[**F121110(3AB)**]**)."

(8) Section 112, in its application by virtue of sub-paragraph (1) or (2), has effect as if, in subsection (1), for "or (3)" there were substituted ", (3) or (5)".

(9) Section 114, in its application by virtue of sub-paragraph (1) or (2), has effect as if, in subsection (1), for "or (3)" there were substituted ", (3) or (5)".

(10) Section 115, in its application by virtue of sub-paragraph (1) or (2), has effect as if for "or (3)" there were substituted ", (3) or (5)".

(11) Section 116, in its application by virtue of sub-paragraph (1) or (2), has effect as if, in subsection (2), for "or (3)" there were substituted ", (3) or (5)".

(12) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to the making of orders) have effect for the purposes of the application of those sections by virtue of sub-paragraph (1) or (2) in relation to those sections as applied by virtue of the sub-paragraph concerned.

(13) Accordingly, corresponding provisions of this Act do not have effect in relation to those sections as applied by virtue of the sub-paragraph concerned.

Textual Amendments

F113 Word in Sch. 10 para. 10(1) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(2)** (with art. 3, Sch. 2 para. 2)

F114 Word in Sch. 10 para. 10(2) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(3)** (with art. 3, Sch. 2 para. 2)

F115 Word in Sch. 10 para. 10(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 138(12)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F116 Sch. 10 para. 10(2A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(4)** (with art. 3, Sch. 2 para. 2)

F117 Sch. 10 para. 10(3)(aa) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(5)** (with art. 3, Sch. 2 para. 2)

F118 Word in Sch. 10 para. 10(4)(a) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(6)(a)** (with art. 3, Sch. 2 para. 2)

F119 Sch. 10 para. 10(4)(b) substituted for Sch. 10para. 10(4)(b)(c) (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(6)(a)** (with art. 3, Sch. 2 para. 2)

F120 Sch. 10 para. 10(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(7)** (with art. 3, Sch. 2 para. 2)

F121 Word in Sch. 10 para. 10(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(8)** (with art. 3, Sch. 2 para. 2)

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Commencement Information
I988 Sch. 10 para. 10 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

SCHEDULE 11

Section 107

FURTHER PROVISION ABOUT MONITOR'S ENFORCEMENT POWERS

PART 1

DISCRETIONARY REQUIREMENTS

Procedure

1 (1) Where Monitor proposes to impose a discretionary requirement on a person, Monitor must give notice to that person (a "notice of intent").

(2) A notice of intent must—

(a) state that Monitor proposes to impose the discretionary requirement and set out its effect,

(b) set out the grounds for the proposal to impose the requirement,

(c) explain the effect of section 106 (enforcement undertakings),

(d) set out the circumstances (if any) in which Monitor may not impose the requirement, and

(e) specify the period ("the notice period") within which representations with respect to the proposal may be made to Monitor.

(3) The notice period must be not less than 28 days beginning with the day after that on which the notice of intent is received.

(4) But where Monitor—

(a) proposes to impose a compliance requirement or restoration requirement, and

(b) considers that a shorter notice period is necessary to prevent or minimise further breaches of the kind referred to in section 105(1),

the notice period is to be such shorter period as Monitor may determine, but not less than 5 days beginning with the day after that on which the notice of intent is received.

Commencement Information
I989 Sch. 11 para. 1 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

2 (1) After the end of the notice period Monitor must decide whether to—

(a) impose the discretionary requirement, with or without modifications, or

(b) impose any other discretionary requirement.

(2) Where Monitor decides under sub-paragraph (1) to impose a discretionary requirement on a person Monitor must give notice to that person (a "final notice").

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(3) A final notice must—

(a) state that Monitor has decided to impose the discretionary requirement and set out its effect,

(b) set out the grounds for imposing the requirement,

(c) in the case of a variable monetary penalty, state—

(i) how payment may be made,

(ii) the period ("the payment period") within which payment must be made,

(iii) any discount applicable for early payment of the penalty, and

(iv) the rate of interest payable for late payment of the penalty,

(d) set out the consequences of failing to comply with the requirement, and

(e) explain the right of appeal conferred by paragraph 3.

(4) The payment period must be not less than 28 days beginning with the day after that on which the final notice is received.

(5) Monitor must not decide under sub-paragraph (1) to impose a variable monetary penalty unless the notice of intent was given before the end of the period of 5 years beginning with the day (or, in the case of a continuing breach, the last day) on which the breach giving rise to the imposition of the discretionary requirement occurred.

Commencement Information

I990 Sch. 11 para. 2(1)(2)(3)(a)(b)(d)(e) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

I991 Sch. 11 para. 2(3)(c)(4)(5) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**

3 (1) A person may appeal to the First-tier Tribunal against a decision of Monitor to impose a discretionary requirement.

(2) The grounds for an appeal under this paragraph are—

(a) that the decision was based on an error of fact,

(b) that the decision was wrong in law,

(c) in the case of a decision imposing a variable monetary penalty, that the amount of the penalty is unreasonable,

(d) in the case of a decision to impose a compliance requirement or a restoration requirement, that the nature of the requirement is unreasonable, or

(e) that the decision was unreasonable for any other reason.

(3) The discretionary requirement is suspended pending determination of the appeal.

(4) On an appeal under this paragraph, the Tribunal may—

(a) confirm, vary or withdraw the discretionary requirement,

(b) take such steps as Monitor could take in relation to the breach giving rise to the imposition of the requirement, or

(c) remit the decision whether to confirm the requirement, or any matter relating to that decision, to Monitor.

Commencement Information

I992 Sch. 11 para. 3(1)(2)(a)(b)(d)(e) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

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I993 Sch. 11 para. 3(2)(c) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**

4 Monitor may by notice to a person on whom a discretionary requirement has been imposed—

(a) withdraw the discretionary requirement,

(b) in the case of a variable monetary penalty, reduce the amount of the penalty or extend the payment period, or

(c) in the case of a compliance requirement or a restoration requirement, extend the period specified for taking the steps specified in the requirement.

Commencement Information

I994 Sch. 11 para. 4(a)(c) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

I995 Sch. 11 para. 4(b) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**

Non-compliance penalties

5 (1) If a person fails to comply with a compliance requirement or a restoration requirement Monitor may impose a monetary penalty on that person of such amount as Monitor may determine (a "non-compliance penalty").

(2) Where Monitor proposes to impose a non-compliance penalty on a person Monitor must give notice to that person (a "non-compliance notice").

(3) A non-compliance notice must—

(a) specify the amount of the non-compliance penalty,

(b) set out the grounds for imposing the penalty,

(c) state how payment of the penalty may be made,

(d) state the period ("the payment period") within which payment must be made,

(e) state any discount applicable for early payment of the penalty,

(f) set out the consequences of a failure to pay within the payment period (including any increase in the amount payable), and

(g) explain the right of appeal conferred by paragraph 6.

(4) The payment period must be not less than 28 days beginning with the day after that on which the non-compliance notice is received.

(5) If the whole or any part of a non-compliance penalty is not paid by the time it is required to be paid Monitor may increase the amount payable by no more than 50% of the amount of the penalty.

(6) Monitor may by notice to a person on whom a non-compliance penalty has been imposed reduce the amount of the penalty or extend the payment period.

Commencement Information

I996 Sch. 11 para. 5 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

6 (1) A person may appeal to the First-tier Tribunal against a decision of Monitor to impose a non-compliance penalty.

(2) The grounds for such an appeal are—

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(a) that the decision was based on an error of fact,
(b) that the decision was wrong in law, or
(c) that the decision was, or the amount of the penalty is, unfair or unreasonable.

(3) The non-compliance penalty is suspended pending determination of the appeal.

(4) On an appeal, the Tribunal may—
(a) confirm, vary or withdraw the non-compliance penalty, or
(b) remit the decision whether to confirm the penalty, or any matter relating to that decision, to Monitor.

Commencement Information
I997 Sch. 11 para. 6 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

Recovery of financial penalties

7 (1) Amounts payable to Monitor of the kind mentioned in sub-paragraph (2) are recoverable summarily as a civil debt (but this does not affect any other method of recovery).

(2) The amounts are—
(a) a variable monetary penalty and any interest payable on it, or
(b) a non-compliance penalty.

Commencement Information
I998 Sch. 11 para. 7(1)(2)(b) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**
I999 Sch. 11 para. 7(2)(a) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**

Payments of penalties etc. into Consolidated Fund

8 Monitor must pay any sums it receives in respect of any of the following into the Consolidated Fund—
(a) a variable monetary penalty and any interest payable on it, or
(b) a non-compliance penalty.

Commencement Information
I1000 Sch. 11 para. 8(a) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**
I1001 Sch. 11 para. 8(b) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

PART 2

ENFORCEMENT UNDERTAKINGS

Procedure

9 (1) Monitor must publish a procedure for entering into enforcement undertakings.

Status: *This version of this Act contains provisions that are prospective.*
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(2) Monitor may revise the procedure and if it does so, Monitor must publish the procedure as revised.

(3) Monitor must consult such persons as it considers appropriate before publishing or revising the procedure.

Commencement Information
I1002 Sch. 11 para. 9 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

10 (1) Where Monitor accepts an enforcement undertaking, Monitor must publish the undertaking.

(2) But Monitor must not under sub-paragraph (1) publish any part of an enforcement undertaking which contains information which it is satisfied is—

(a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of the person to whom it relates;

(b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person's interests.

Commencement Information
I1003 Sch. 11 para. 10 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

Variation of terms

11 The terms of an enforcement undertaking (including, in particular, the action specified under it and the period so specified within which the action must be taken) may be varied if both the person giving the undertaking and Monitor agree.

Commencement Information
I1004 Sch. 11 para. 11 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

Compliance certificates

12 (1) Where Monitor is satisfied that an enforcement undertaking has been complied with, Monitor must issue a certificate to that effect (referred to in this Schedule as a "compliance certificate").

(2) A person who has given an enforcement undertaking may at any time make an application to Monitor for a compliance certificate.

(3) The application must be made in such form, and accompanied by such information, as Monitor requires.

(4) Monitor must decide whether or not to issue a compliance certificate, and give notice to the applicant of its decision, before the end of the period of 14 days beginning with the day after that on which the application is received.

Status: *This version of this Act contains provisions that are prospective.*
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Commencement Information
I1005 Sch. 11 para. 12 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

13 (1) An appeal lies to the First-tier Tribunal against a decision of Monitor to refuse an application for a certificate of compliance.

(2) The grounds for an appeal under this paragraph are that the decision was—

(a) based on an error of fact,

(b) wrong in law, or

(c) unfair or unreasonable.

(3) On an appeal under this paragraph, the Tribunal may confirm Monitor's decision or direct that it is not to have effect.

Commencement Information
I1006 Sch. 11 para. 13 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

Inaccurate, incomplete or misleading information

14 Where Monitor is satisfied that a person who has given an enforcement undertaking has supplied Monitor with inaccurate, misleading or incomplete information in relation to the undertaking—

(a) Monitor may treat the person as having failed to comply with the undertaking, and

(b) if Monitor decides so to treat the person, Monitor must by notice revoke any compliance certificate given to that person.

Commencement Information
I1007 Sch. 11 para. 14 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

SCHEDULE 12

Section 120

PROCEDURE ON REFERENCES UNDER SECTION 120

Contents etc. of reference

1 (1) A reference under section 120 must specify—

(a) Monitor's reasons for proposing the method to which the reference relates, and

(b) its representations as to why the grounds referred to in section 121(4) do not apply.

(2) Monitor must give notice of the reference to—

(a) the National Health Service Commissioning Board, and

(b) each objector.

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(3) The notice must be accompanied by a copy of the reference.

(4) In this Schedule, "objector" means—

(a) in relation to a reference made where the condition in section 120(2)(a) is not met, each clinical commissioning group who objected to the proposed method to which the reference relates, and

(b) in relation to a reference made where the condition in section 120(2)(b) or (c) is not met, each relevant provider who objected to that proposed method.

Commencement Information

I1008 Sch. 12 para. 1 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1009 Sch. 12 para. 1 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Representations by objectors

2 (1) If an objector wishes to make representations to the **[**F122CMA**]** on the matters specified in the reference for the purposes of paragraph 1(1), the objector must do so before the end of the period of 10 working days beginning with the day on which the objector receives the notice under paragraph 1(2).

(2) The objector must give Monitor a copy of the representations.

(3) If Monitor wishes to reply to representations under sub-paragraph (1), it must do so before the end of the period of 10 working days beginning with the day on which it receives the copy under sub-paragraph (2).

(4) Monitor must send a copy of its reply to the objector who made the representations.

(5) In this Schedule, "working day" means any day other than—

(a) a Saturday or a Sunday,

(b) Christmas Day or Good Friday, or

(c) a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

Textual Amendments

F122 Word in Sch. 12 para. 2(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1010 Sch. 12 para. 2 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1011 Sch. 12 para. 2 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Functions of ***[****F123CMA****]*** *in relation to reference*

Textual Amendments

F123 Word in Sch. 12 para. 3 cross-heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

3 F124(1) . . . . . .

(2) A group **[**F125constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to a reference under section 120**]** must consist of three members of the **[**F126CMA panel**]**.

F127(3) . . . . . .

F127(4) . . . . . .

F127(5) . . . . . .

F127(6) . . . . . .

(7) A decision of **[**F128the group**]** is effective only if—

(a) all the members of the group are present when it is made, and

(b) at least two members of the group are in favour of it.

Textual Amendments

F124 Sch. 12 para. 3(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(4)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F125 Words in Sch. 12 para. 3(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(4)(b)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F126 Words in Sch. 12 para. 3(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(4)(b)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F127 Sch. 12 para. 3(3)-(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(4)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F128 Words in Sch. 12 para. 3(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(4)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1012 Sch. 12 para. 3 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1013 Sch. 12 para. 3 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Timetable for determination on reference

4 (1) **[**F129The CMA must make its determination on a reference**]** before the end of the period of 30 working days following the last day for the making by Monitor of a reply in accordance with paragraph 2.

(2) If **[**F130the CMA**]** is satisfied that there are good reasons for departing from the normal requirements, it may (on one occasion only) extend that period by not more than 20 working days.

(3) The **[**F131CMA**]** must ensure that an extension under sub-paragraph (2) is notified to—

(a) Monitor,

(b) the National Health Service Commissioning Board, and

(c) every objector who made representations in accordance with paragraph 2.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F129 Words in Sch. 12 para. 4(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(5)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F130 Word in Sch. 12 para. 4(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(5)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F131 Word in Sch. 12 para. 4(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(5)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1014 Sch. 12 para. 4 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1015 Sch. 12 para. 4 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Matters to be considered on determination

5 (1) If the **[**F132CMA**]** considers it necessary to disregard the matters referred to in sub-paragraph (2) in order to secure the making of the determination **[**F133on a reference**]** within the period allowed by paragraph 4, it may do so.

(2) The matters mentioned in sub-paragraph (1) are—

(a) all matters raised by an objector in representations under paragraph 2 that the objector did not raise at the time of the consultation under section 118, and

(b) all matters raised by Monitor in replies under paragraph 2 that it did not include in the reference.

Textual Amendments

F132 Word in Sch. 12 para. 5(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(6)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F133 Words in Sch. 12 para. 5(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(6)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1016 Sch. 12 para. 5 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1017 Sch. 12 para. 5 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Production of documents

6 (1) The **[**F134CMA**]** may by notice require a person to produce to it the documents specified or otherwise identified in the notice.

(2) The power to require the production of a document is a power to require its production—

(a) at the time and place specified in the notice, and

(b) in a legible form.

(3) The **[**F135CMA**]** may take copies of a document produced to it under this paragraph.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F134 Word in Sch. 12 para. 6(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F135 Word in Sch. 12 para. 6(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1018 Sch. 12 para. 6 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1019 Sch. 12 para. 6 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Oral hearings

7 (1) For the purposes of this Schedule, an oral hearing may be held, and evidence may be taken on oath by **[**F136the CMA**]**.

(2) **[**F137The CMA**]** may administer oaths for the purposes of this Schedule.

(3) The **[**F138CMA**]** must give notice to each objector who has made representations in accordance with paragraph 2 of the time and place at which an oral hearing is to be held.

(4) The **[**F139CMA**]** may by notice require a person—

(a) to attend at a time and place specified in the notice, and

(b) to give evidence **[**F140to it**]** at that time and placeF141....

(5) At an oral hearing, the **[**F142CMA**]** may require a person who comes within sub-paragraph (6), if present at the hearing, to give evidence or to make representations.

(6) A person comes within this sub-paragraph if the person is—

(a) an objector who has made representations in accordance with paragraph 2,

(b) a person attending the hearing as a representative of a person mentioned in paragraph (a), or

(c) a person attending the hearing as a representative of Monitor.

(7) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any other person who is present at the hearing and comes within sub-paragraph (6).

(8) If a person is not present at a hearing and so cannot be made subject to a requirement under sub-paragraph (5)—

(a) the **[**F143CMA**]** is not obliged to require the person to attend the hearing, and

(b) the **[**F144CMA**]** may make a determination on the reference without hearing that person's evidence or representations.

(9) Where a person is required under this paragraph to attend at a place more than 10 miles from that person's place of residence, the **[**F145CMA**]** must pay the person the necessary expenses of attending.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F136 Words in Sch. 12 para. 7(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F137 Words in Sch. 12 para. 7(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F138 Word in Sch. 12 para. 7(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F139 Word in Sch. 12 para. 7(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(d)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F140 Words in Sch. 12 para. 7(4)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(d)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F141 Words in Sch. 12 para. 7(4)(b) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(d)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F142 Word in Sch. 12 para. 7(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(e)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F143 Word in Sch. 12 para. 7(8)(a) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(f)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F144 Word in Sch. 12 para. 7(8)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(f)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F145 Word in Sch. 12 para. 7(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(8)(g)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1020 Sch. 12 para. 7 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1021 Sch. 12 para. 7 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Written statements

8 (1) The **[**[F146]CMA**]** may by notice require a person to produce a written statement with respect to a matter specified in the notice to **[**[F147]the CMA**]**.

(2) The power to require the production of a written statement includes power to specify the time and place at which it is to be produced.

(3) The written statement must be verified in accordance with a statement of truth.

(4) In this paragraph and paragraph 9, "statement of truth" means a statement that the person producing the document which includes the statement believes the matters stated as facts in the document to be true.

Textual Amendments

F146 Word in Sch. 12 para. 8(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(9)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F147 Words in Sch. 12 para. 8(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(9)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1022 Sch. 12 para. 8 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1023 Sch. 12 para. 8 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Defaults in relation to evidence

9 (1) This paragraph applies if a person ("the defaulter")—

(a) fails to comply with a notice or other requirement under paragraph 6, 7 or 8,

(b) in complying with a notice under paragraph 8, makes a statement that is false in a material particular, or

(c) in providing information otherwise verified in accordance with a statement of truth required by rules under paragraph 11, provides information that is false in a material particular.

(2) A member of the **[**F148group constituted for the purpose of carrying out functions of the CMA with respect to the reference to which the notice or requirement relates**]** may certify the failure, or the fact that a false statement has been made, to the High Court.

(3) The High Court may inquire into a matter so certified.

(4) If the High Court, having heard any witness on behalf of or against the defaulter and any statement in the defaulter's defence, is satisfied that the defaulter did, without reasonable excuse, the act referred to in sub-paragraph (1), it may punish the defaulter as if the defaulter had been guilty of contempt of court.

Textual Amendments

F148 Words in Sch. 12 para. 9(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(10)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1024 Sch. 12 para. 9 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1025 Sch. 12 para. 9 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

General provisions relating to evidence

10 (1) No person may be compelled to give evidence under paragraph 6, 7 or 8 which the person could not be compelled to give in civil proceedings in the High Court.

(2) A notice under paragraph 6, 7 or 8 may be given on the **[**F149CMA's behalf by a member of the group constituted for the purpose of carrying out functions of the CMA with respect to the reference to which the notice relates**]**.

Textual Amendments

F149 Words in Sch. 12 para. 10(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(11)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1026 Sch. 12 para. 10 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1027 Sch. 12 para. 10 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Status: *This version of this Act contains provisions that are prospective.*
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Procedural rules

11 (1) The **[**F150CMA Board**]** may make rules of procedure for determinations on references under section 120.

(2) Those rules may include provision supplementing the provisions of this Schedule in relation to any notice, hearing or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—

(a) the taking of evidence at an oral hearing, or

(b) the making of representations at an oral hearing.

(3) The rules may apply, with or without modification, provision included in appeal rules under Schedule 22 to the Energy Act 2004.

(4) The **[**F151CMA Board**]** must publish rules made under this paragraph.

(5) Before making rules under this paragraph, the **[**F151CMA Board**]** must consult such persons as it considers appropriate.

(6) Rules under this paragraph may make different provision for different cases.

Textual Amendments

F150 Words in Sch. 12 para. 11(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(12)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F151 Words in Sch. 12 para. 11(4)(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(12)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1028 Sch. 12 para. 11 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1029 Sch. 12 para. 11 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Costs

12 **[**F152(1) Where the CMA makes a determination on a reference under section 120 it must make an order requiring the payment to it of the costs it incurred in connection with the reference.**]**

(2) Where it is determined that the method to which the reference relates is not appropriate, the order must require those costs to be paid by Monitor.

(3) Where it is determined that the method to which the reference relates is appropriate, the order must require those costs to be paid by such objectors as are specified in the order.

(4) Where the order specifies more than one objector, it may specify the proportions in which the objectors are to be liable for the costs.

(5) **[**F153The CMA**]** may also make an order requiring Monitor or an objector who made representations in accordance with paragraph 2 to make payments to the other in respect of costs incurred by the other in connection with **[**F154a determination on a reference under section 120**]**.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) A person required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.

(7) Sums required to be paid by an order under this paragraph but not paid within that period are to carry interest at such rate as may be determined in accordance with provision in the order.

Textual Amendments

F152 Sch. 12 para. 12(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(13)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F153 Words in Sch. 12 para. 12(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(13)(b)(i)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F154 Words in Sch. 12 para. 12(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 139(13)(b)(ii)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I1030 Sch. 12 para. 12 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1031 Sch. 12 para. 12 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Power to modify time limits

13 The Secretary of State may by order vary any period specified in this Schedule as the period within which something must be done.

Commencement Information

I1032 Sch. 12 para. 13 partly in force; Sch. 12 para. 13 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I1033 Sch. 12 para. 13 in force at 1.9.2013 for specified purposes by S.I. 2013/671, **art. 2(5)**

I1034 Sch. 12 para. 13 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

SCHEDULE 13

Section 150

PART 3: MINOR AND CONSEQUENTIAL AMENDMENTS

General

1 (1) Any reference in an instrument or document to the Independent Regulator of NHS Foundation Trusts is to be read, in relation to any time after the commencement of section 61, as a reference to Monitor.

(2) Any reference in this Act or in any other enactment, instrument or document to Monitor is to be read, in relation to any time before that commencement, as a reference to the Independent Regulator of NHS Foundation Trusts.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I1035 Sch. 13 para. 1 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(a)**

Public Bodies (Admission to Meetings) Act 1960 (c. 67)

2 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960, after paragraph (bj) insert—

"(bk) Monitor;".

Commencement Information
I1036 Sch. 13 para. 2 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(a)**

Parliamentary Commissioner Act 1967 (c. 13)

3 (1) In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation)—

(a) at the appropriate place insert— " Monitor. ", and

(b) omit the entry for the Independent Regulator of NHS Foundation Trusts.

(2) In consequence of the repeal made by sub-paragraph (1)(b), omit paragraph 17 of Schedule 2 to the Health and Social Care (Community Health and Standards) Act 2003 (which inserted the entry in question).

Commencement Information
I1037 Sch. 13 para. 3 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(a)**

Superannuation Act 1972 (c. 11)

4 (1) In Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of that Act can apply), omit the entry for the Independent Regulator of NHS Foundation Trusts.

(2) In consequence of that repeal, omit paragraph 5(3) of Schedule 2 to the Health and Social Care (Community Health and Standards) 2003 (which inserted the entry in question).

Commencement Information
I1038 Sch. 13 para. 4 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(a)**

House of Commons Disqualification Act 1975 (c. 24)

5 (1) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices)—

(a) at the appropriate place insert— " Chair or other member of Monitor. ", and

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(b) omit the entry for the Chairman and other members of the Independent Regulator of NHS Foundation Trusts.

(2) In consequence of the repeal made by sub-paragraph (1)(b), omit paragraph 18 of Schedule 2 to the Health and Social Care (Community Health and Standards) Act 2003 (which inserted the entry in question).

Commencement Information
I1039 Sch. 13 para. 5 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(a)**

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

6 (1) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices)—

(a) at the appropriate place insert— " Chair or other member of Monitor. ", and

(b) omit the entry for the Chairman and other members of the Independent Regulator of NHS Foundation Trusts.

(2) In consequence of the repeal made by sub-paragraph (1)(b), omit paragraph 19 of Schedule 2 to the Health and Social Care (Community Health and Standards) Act 2003 (which inserted the entry in question).

Commencement Information
I1040 Sch. 13 para. 6 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(a)**

Freedom of Information Act 2000 (c. 36)

7 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general)—

(a) at the appropriate place insert— " Monitor. ", and

(b) omit the entry for the Independent Regulator of NHS Foundation Trusts.

Commencement Information
I1041 Sch. 13 para. 7 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(a)**

National Health Service Act 2006 (c. 41)

8 The National Health Service Act 2006 is amended as follows.

Commencement Information
I1042 Sch. 13 para. 8 in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)(d)**
I1043 Sch. 13 para. 8 in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**
I1044 Sch. 13 para. 8 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

9 (1) Omit section 31 and Schedule 8 (continuation and constitution of the Independent Regulator of NHS Foundation Trusts).

(2) In consequence of that repeal, omit paragraph 12 of Schedule 3 to the Health Act 2009 (which amended Schedule 8).

Commencement Information
I1045 Sch. 13 para. 9 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**
I1046 Sch. 13 para. 9(1) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)(b)**

10 (1) Omit section 32 (general duty of regulator).

(2) Despite that repeal, that section is to continue, pending the commencement of section 179 (abolition of NHS trusts in England) to have effect so far as necessary for the purposes of sections 33 to 36 of that Act.

Commencement Information
I1047 Sch. 13 para. 10 in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)** (with art. 12)

11 In section 275(1) (general interpretation), at the appropriate place, insert—

""the regulator" means Monitor,".

Commencement Information
I1048 Sch. 13 para. 11 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(c)**

12 In section 276 (index of defined expressions), in the entry for "the regulator", for "section 31(1)" substitute "section 275(1)".

Commencement Information
I1049 Sch. 13 para. 12 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(c)**

National Health Service (Wales) Act 2006 (c. 42)

13 In section 184(2)(b) of the National Health Service (Wales) Act 2006 (matters to be contained in reports by overview and scrutiny committee of local authority), for "the Independent Regulator of NHS Foundation Trusts" substitute "Monitor".

Commencement Information
I1050 Sch. 13 para. 13 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(c)**

Health and Social Care Act 2008 (c. 14)

14 The Health and Social Care Act 2008 is amended as follows.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I1051 Sch. 13 para. 14 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

15 In section 30(3) (urgent applications for cancellation of registration of service provider: notice requirements), for paragraph (c) substitute—

"(c) where the person registered as a service provider is a person who holds a licence under Chapter 3 of Part 3 of the Health and Social Care Act 2012, to Monitor,".

Commencement Information
I1052 Sch. 13 para. 15 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

16 In section 39(1) (notice requirements in relation to certain matters), for paragraph (c) substitute—

"(c) where the person registered as a service provider in respect of the activity is a person who holds a licence under Chapter 3 of Part 3 of the Health and Social Care Act 2012, to Monitor,".

Commencement Information
I1053 Sch. 13 para. 16 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

17 In section 59 (power for Secretary of State to confer additional functions on Care Quality Commission), for subsection (2) substitute—

"(2) The Secretary of State must consult Monitor before making provision under subsection (1) in relation to persons who hold licences under Chapter 3 of Part 3 of the Health and Social Care Act 2012."

Commencement Information
I1054 Sch. 13 para. 17 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health Act 2009 (c. 21)

18 In section 2(2) of the Health Act 2009 (bodies required to have regard to NHS Constitution), for paragraph (f) substitute—

"(f) Monitor;".

Commencement Information
I1055 Sch. 13 para. 18 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(e)**

Equality Act 2010 (c.15)

19 In Part 1 of Schedule 19 to the Equality Act 2010 (bodies subject to public sector equality duty), for the entry for the Independent Regulator of NHS Foundation Trusts substitute "Monitor".

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I1056 Sch. 13 para. 19 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)(e)**

PROSPECTIVE

SCHEDULE 14

Section 179

ABOLITION OF NHS TRUSTS IN ENGLAND: CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF THE NATIONAL HEALTH SERVICE ACT 2006

1 The National Health Service Act 2006 is amended as follows.

2 In section 4(2) (definition of "high security psychiatric services"), omit "and paragraph 15 of Schedule 4 (NHS trusts)".

3 In section 8(2) (bodies to whom Secretary of State may give directions), omit paragraph (c).

4 In section 9 (NHS contracts), omit subsection (3).

[[F155]4A In section 13Q(4) (public involvement and consultation by Board), omit "makes a decision under section 65K(1),".

Textual Amendments
F155 Sch. 14 paras. 4A, 4B inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

4B In section 14Z2 (public involvement and consultation by clinical commissioning groups), omit "makes a decision under section 65K(1),".**]**

Textual Amendments
F155 Sch. 14 paras. 4A, 4B inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

5 In section 40 (power of Secretary of State to give financial assistance to NHS foundation trusts), for subsection (4) substitute—

"(4) For the purposes of subsection (3), an agreement is an externally financed development agreement if it is certified as such by the Secretary of State.

(4A) The Secretary of State may give a certificate under subsection (4) if—

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(a) in the opinion of the Secretary of State, the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the NHS foundation trust of any of its functions, and

(b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.

(4B) In subsection (4A)(b), "another party" means any party to the agreement other than the NHS foundation trust."

6 In section 42 (public dividend capital), after subsection (1) insert—

"(1A) The reference in subsection (1) to an NHS trust is a reference to an NHS trust which was established under section 25 of this Act before its repeal by section 179 of the Health and Social Care Act 2012."

7 In section 51 (trust funds and trustees), omit subsection (4).

8 In section 56 (mergers of NHS foundation trusts)—

(a) in subsection (1)(b) (as amended by section 168(1)(a)), omit "or an NHS trust established under section 25", and

(b) in subsection (1A) (as inserted by section 168(2)), omit "(that is an NHS foundation trust)".

9 In section 56A (acquisitions of NHS foundation trusts) (as inserted by section 169)—

(a) in subsection (1)(b), omit "or an NHS trust established under section 25",

(b) in subsection (2), omit "(that is an NHS foundation trust)", and

(c) in subsection (3), omit paragraph (a) (and the following "and").

10 In section 57 (mergers, acquisitions and separation of NHS foundation trusts) (as amended by sections 172 and 173(2)(a))—

(a) in subsection (3)(a), omit ", an NHS trust established under section 25",

(b) in subsection (4), omit "or an NHS trust established under section 25", and

(c) omit subsection (5).

11 In section 65(1) (interpretation for provisions about NHS foundation trusts), in the definition of "health service body", omit "an NHS trust,".

12 In section 65A(1) (application of trust special administration regime), omit paragraph (a).

13 (1) Omit section 65B (appointment of trust special administrator in relation to NHS trust).

(2) In consequence of that repeal, omit section 174(2) of this Act.

14 Omit section 65C (suspension of directors of NHS trust).

15 (1) Section 65F (special administrator's draft report) is amended as follows.

(2) In subsection (1), for "the Secretary of State", in each place it appears, substitute "the regulator".

(3) In subsection (2)(b)—

(a) omit "goods or", and

(b) for "the Secretary of State" substitute "the regulator".

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) After subsection (2) insert—

"(2A) The administrator may not provide the draft report to the regulator under subsection (1)—

(a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report[F156]—

(i) would achieve the objective set out in section 65DA(1)(a), and

(ii) would do so without harming essential services provided for the purposes of the NHS by any other NHS foundation trust that provides services under this Act to the commissioner,], or

(b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.

[F157(2AA) Nor may the administrator provide the draft report to the regulator under subsection (1) without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report would achieve that part of the objective set out in section 65DA(1)(aa).]

(2B) Where the Board [F158or the Care Quality Commission] decides not to provide to the administrator a statement [F159to the effect mentioned in subsection (2A) or (2AA)], the Board [F160or (as the case may be) the Commission] must—

(a) give a notice of the reasons for its decision to the administrator and to the regulator;

(b) publish the notice;

(c) lay a copy of it before Parliament.

(2C) In subsection (2A), "commissioner" means a person to which the trust provides services under this Act.

[F161(2D) Where the administrator recommends taking action in relation to another NHS foundation trust, the references in subsection (2A) to a commissioner also include a reference to a person to which the other NHS foundation trust provides services under this Act that would be affected by the action.

(2E) A service provided by an NHS foundation trust is an essential service for the purposes of subsection (2A) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.

(2F) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met."]

(5) In subsection (3), for "the Secretary of State" substitute "the regulator".

(6) Omit subsections (4) to (7).

(7) In consequence of those repeals, omit section 176(2) of this Act.

[F162(8) Omit subsections (8) to (10).]

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Textual Amendments

F156 Words in Sch. 14 para. 15(4) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F157 Words in Sch. 14 para. 15(4) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(15)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F158 Words in Sch. 14 para. 15(4) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(15)(c)(i)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F159 Words in Sch. 14 para. 15(4) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(15)(c)(ii)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F160 Words in Sch. 14 para. 15(4) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(15)(c)(iii)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

F161 Words in Sch. 14 para. 15(4) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(c)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F162 Sch. 14 para. 15(8) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(d)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

16 **[**F163(1)**]** In section 65G (consultation plan), in subsection (4), omit "In the case of an NHS foundation trust,".

[F164(2) In subsection (4)(a)(ii) of that section, omit "or NHS trust".

(3) In subsection (7) of that section, omit "or an NHS trust" and "or the NHS trust".

(4) In subsection (8) of that section, omit "or an NHS trust".**]**

Textual Amendments

F163 Sch. 14 para. 16 renumbered as Sch. 14 para. 16(1) (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(e)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F164 Sch. 14 para. 16(2)-(4) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(e)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

17 (1) Section 65H (consultation on draft report) is amended as follows.

(2) In subsection (7)—

(a) in **[**F165paragraphs (b), (bzb), (bzc) and (bzd)**]**, omit "goods or", and

(b) in paragraphs (c) and (d), for "the Secretary of State" substitute "the regulator".

(3) In subsection (10), for "The Secretary of State" substitute "The regulator".

(4) After that subsection insert —

"(10A) The Secretary of State may direct the regulator as to persons from whom it should direct the administrator under subsection (10) to request or seek a response."

[F166(4A) In subsection (11A)—

(a) omit paragraph (a), and

(b) in paragraph (b), omit "where the trust in question is an NHS foundation trust," and ", or an NHS trust,".**]**

(5) Omit subsections (12) and (13).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) In consequence of those repeals, omit section 176(7) of this Act.

Textual Amendments

F165 Words in Sch. 14 para. 17(2)(a) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(f)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F166 Sch. 14 para. 17(4A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(g)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

18 (1) Section 65I (administrator's final report) is amended as follows.

(2) In subsection (1), for "the Secretary of State", in each place it appears, substitute "the regulator".

(3) In subsection (3), for "the Secretary of State" substitute "the regulator".

(4) Omit subsection (4).

(5) In consequence of that repeal, omit section 176(8) of this Act.

19 (1) Section 65J (power to extend time limits) is amended as follows.

(2) In subsection (2), for "the Secretary of State", in each place it appears, substitute "the regulator".

(3) Omit subsection (5).

(4) In consequence of that repeal, omit section 176(9) of this Act.

20 (1) Omit section 65K (decision on action to take in relation to the trust) and the preceding cross-heading.

(2) In consequence of those repeals, omit section 177(1) of this Act.

21 (1) Section 65KA (regulator's decision in case of NHS foundation trust) is amended as follows.

(2) In subsection (1), omit "relating to an NHS foundation trust".

(3) In subsection (5), for "the trust" substitute "the NHS foundation trust in question".

(4) For the title to that section substitute "The regulator's decision".

(5) Before that section, insert as a cross-heading "Action by the regulator and the Secretary of State".

22 (1) Section 65L (trusts coming out of administration) is amended as follows.

(2) In subsection (1)—

(a) for "65K" substitute "65KB(2) or 65KD(2) or (9)", and

(b) for "the trust" substitute "the NHS foundation trust in question".

(3) In subsection (2)—

(a) for "The Secretary of State" substitute "The regulator", and

(b) for "and directors" substitute ", directors and governors".

(4) Omit subsections (2A), (2B) and (6).

Status: *This version of this Act contains provisions that are prospective.*
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(5) In consequence of the repeal of subsections (2A) and (2B) of that section, omit section 177(3) of this Act.

23 (1) Section 65M (replacement of special administrator) is amended as follows.

(2) In subsection (1), for "the Secretary of State", in each place it appears, substitute "the regulator".

(3) In subsection (2), for "the Secretary of State" substitute "the regulator".

(4) Omit subsection (3).

(5) In consequence of that repeal, omit section 178(1) of this Act.

24 (1) Section 65N (guidance) is amended as follows.

(2) In subsection (1), for "The Secretary of State" substitute "The regulator".

[[F167](2A) In subsection (3A), for "the Secretary of State" substitute " the regulator ".**]**

[[F168](2A) Omit subsection (1A).**]**

(3) Omit subsection (4).

(4) In consequence of that repeal, omit section 178(3) of this Act.

Textual Amendments

F167 Sch. 14 para. 24(2A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(8)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

F168 Sch. 14 para. 24(2A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(h)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

[[F169]24A In section 65O (interpretation)—

(a) omit subsection (2), and

(b) in subsection (3), omit "or an NHS trust".**]**

Textual Amendments

F169 Sch. 14 para. 24A inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(i)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

25 In section 66 (intervention orders) (as amended by paragraph 8(1) of Schedule 21), in subsection (1), omit paragraph (a) and the "and" following it.

26 In section 68 (default powers) (as amended by paragraph 10(1) of Schedule 21), in subsection (1), omit paragraph (a).

27 (1) In section 70(1) (transfer of residual liabilities of certain NHS bodies), omit "an NHS trust or".

(2) For the title to section 70 substitute "Transfer of residual liabilities of Special Health Authorities".

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28 In section 71 (schemes for meeting losses etc. of certain health bodies) (as amended by paragraph 18 of Schedule 4)—

(a) in subsection (2), omit paragraph (c),

(b) in subsections (3) and (6), omit "NHS trust,", and

(c) in subsection (5), omit "(c),".

29 In section 77 (Care Trusts) (as amended by section 200)—

(a) in subsection (1)(a) omit "an NHS Trust or", and

(b) in subsections (10) and (12) omit "NHS trust or".

30 Omit sections 78 and 79 (directed partnership arrangements).

31 In section 185(2) (charges for more expensive supplies), omit "an NHS trust".

32 In section 186(2) (charges for repairs and replacements in certain cases), omit "an NHS trust".

33 In section 196(3) (bodies to which provisions about protection from fraud etc. relate), omit paragraph (d).

34 In section 217(1) (supplementary provisions about trusts), omit paragraph (h).

35 In section 242 (public involvement and consultation)—

(a) in subsection (1)(b), for "relevant Welsh bodies" substitute "NHS trusts",

(b) in subsection (1A), in the definition of "relevant English body", omit paragraph (c),

(c) in that subsection, omit the definition of "relevant Welsh body", [F170]...

(d) in subsection (2), for "relevant Welsh body" substitute "NHS trust"[F171], and

(e) in subsection (6), omit "makes a decision under section 65K(1),".]

Textual Amendments

F170 Word in Sch. 14 para. 35(c) omitted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(j)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

F171 Sch. 14 para. 35(e) and preceding word inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(18)(j)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

36 In section 272 (orders, regulations, rules and directions)—

(a) in subsection (3), omit paragraph (e), and

(b) omit subsection (5).

37 In section 275 (interpretation), in subsection (1), in the definition of "NHS trust", for "includes" substitute "means".

38 In section 276 (index of defined expressions), omit the entry for "NHS trust order".

39 (1) Schedule 15 (accounts and audit) is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (1) omit paragraphs (d) and (e), and

(b) omit sub-paragraph (3).

(3) In paragraph 4(1), omit paragraph (b) and the "or" which precedes it.

(4) In paragraph 5—

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) in sub-paragraph (1) for "neither a Special Health Authority nor NHS Direct" substitute "not a Special Health Authority", and

(b) in sub-paragraph (3) for "NHS body that is a Special Health Authority or NHS Direct" substitute "Special Health Authority".

(5) In paragraph 6—

(a) in sub-paragraph (1) for "an NHS body that is a Special Health Authority or NHS Direct" substitute "a Special Health Authority", and

(b) in sub-paragraph (3) for "body" substitute "Special Health Authority".

40 In consequence of the repeal of section 56(6) by section 168(6) of this Act, omit paragraph 84 of Schedule 5 to the Health and Social Care Act 2008.

PART 2

AMENDMENTS OF OTHER ACTS

Voluntary Hospitals (Paying Patients) Act 1936 (c. 17)

41 In section 1 of the Voluntary Hospitals (Paying Patients) Act 1936 (definitions), in the definition of "NHS trust" omit "the National Health Service Act 2006 or".

Public Bodies (Admission to Meetings) Act 1960 (c. 67)

42 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies to which the Act applies), in paragraph 1(l) omit "section 25 of the National Health Service Act 2006 or".

Abortion Act 1967 (c. 87)

43 In section 1(3) of the Abortion Act 1967 (location of treatment for termination of pregnancy) after "National Health Service trust" insert "established under section 18 of the National Health Service (Wales) Act 2006 or the National Health Service (Scotland) Act 1978".

Employers' Liability (Compulsory Insurance) Act 1969 (c. 57)

44 In section 3(2)(a) of the Employers' Liability (Compulsory Insurance) Act 1969 (NHS bodies exempted from insurance requirement), omit "section 25 of the National Health Service Act 2006,".

Local Government Act 1972 (c. 70)

45 In section 113(4) of the Local Government Act 1972 (placing of staff of local authorities at disposal of NHS trusts), omit "section 25 of the National Health Service Act 2006 or".

House of Commons Disqualification Act 1975 (c. 24)

46 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership of the House), in the entry for National Health Service trusts omit "the National Health Service Act 2006 or".

Status: *This version of this Act contains provisions that are prospective.*
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Acquisition of Land Act 1981 (c. 67)

47 The Acquisition of Land Act 1981 is amended as follows.

48 In section 16(3)(b) (NHS trusts' land excluded from compulsory purchase), omit "section 25 of the National Health Service Act 2006 or".

49 In section 17(4) (special parliamentary procedure applying to compulsory purchase orders concerning NHS trusts' land), in paragraph (aa) of the definition of "statutory undertakers" omit "section 25 of the National Health Service Act 2006 or".

Mental Health Act 1983 (c. 20)

50 In section 139(4) of the Mental Health Act 1983 (exemption from protection for acts done in pursuance of the Act), omit "the National Health Service Act 2006 or".

Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)

51 In section 2(5) of the Disabled Persons (Services, Consultation and Representation) Act 1986 (rights of authorised representatives of disabled persons), in paragraph (a) omit "that Act or".

Copyright, Designs and Patents Act 1988 (c. 48)

52 In section 48 of the Copyright, Designs and Patents Act 1988 (material communicated to the Crown in the course of public business), in subsection (6) omit "section 25 of the National Health Service Act 2006,".

Health and Medicines Act 1988 (c. 49)

53 In section 7(3) of the Health and Medicines Act 1988 (powers to give directions in relation to financing of the NHS), in paragraph (i) omit "an NHS trust or".

Road Traffic Act 1988 (c. 52)

54 In section 144(2)(db) of the Road Traffic Act 1988 (exception for ambulances to requirement for third party insurance), omit "section 25 of the National Health Service Act 2006,".

Access to Health Records Act 1990 (c. 23)

55 In section 11 of the Access to Health Records Act 1990 (interpretation), in the definition of "health service body", in paragraph (d), omit "section 25 of the National Health Service Act 2006 or".

Water Industry Act 1991 (c. 56)

56 In Schedule 4A to the Water Industry Act 1991 (premises not to be disconnected for non-payment), in paragraph 16 omit "the National Health Service Act 2006 or".

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

London Local Authorities Act 1991 (c. xiii)

57 In section 4 of the London Local Authorities Act 1991 (interpretation), in the definition of "establishment for special treatment", in paragraph (d) omit "section 25 of that Act or".

Social Security Contributions and Benefits Act 1992 (c. 4)

58 The Social Security Contributions and Benefits Act 1992 is amended as follows.

59 In section 163(6) (interpretation of Part 11), omit "the National Health Service Act 2006,".

60 In section 171(3) (interpretation of Part 12), omit "the National Health Service Act 2006,".

61 In section 171ZJ(9)(a) (Part 12ZA: supplementary), omit "the National Health Service Act 2006,".

62 In section 171ZS(9)(a) (Part 12ZB: supplementary), omit "the National Health Service Act 2006,".

Health Service Commissioners Act 1993 (c. 46)

63 In section 2(1) of the Health Service Commissioners Act 1993 (bodies subject to investigation by the Commissioner), omit paragraph (d).

Vehicle Excise and Registration Act 1994 (c. 22)

64 In Schedule 2 to the Vehicle Excise and Registration Act 1994 (vehicle exempt from vehicle excise duty), in paragraph 7(b) omit "the National Health Service Act 2006,".

Value Added Tax Act 1994 (c. 23)

65 The Value Added Tax Act 1994 is amended as follows.

66 In section 41(7) (definition of "government department"), for "Part I of that Act" substitute "section 18 of the National Health Service (Wales) Act 2006".

67 In Part 2 of Schedule 8 (zero-rated supply of goods and services)—

(a) in the Notes for group 12 (drugs, medicines, aids for the handicapped), in paragraph (e) of Note (5H) omit "the National Health Service Act 2006 or", and

(b) in the Notes for group 15 (charities, etc.), in paragraph (i) of Note 4 for "Part I of the National Health Service and Community Care Act 1990" substitute "section 18 of the National Health Service (Wales) Act 2006".

Employment Rights Act 1996 (c. 18)

68 The Employment Rights Act 1996 is amended as follows.

69 In section 50(8)(a) (right of employees of NHS trusts to time off for public duties), omit "section 25 of the National Health Service Act 2006,".

70 In section 218(10)(c) (change of employer) omit "the National Health Service Act 2006 or".

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Audit Commission Act 1998 (c. 18)

71 The Audit Commission Act 1998 is amended as follows.

72 Omit section 33(8)(c) (bodies not subject to certain Commission studies).

73 In section 53(1) (interpretation), in the definition of "health service body" omit "or NHS Direct National Health Service Trust".

Data Protection Act 1998 (c. 29)

74 In section 69(3) of the Data Protection Act 1998 (meaning of "health professional"), in paragraph (f) omit "section 25 of the National Health Service Act 2006,".

Health Act 1999 (c. 8)

75 In section 16 of the Health Act 1999 (conversion of initial loans to NHS trusts to public dividend capital), in subsection (5) after the definition of "initial loan" insert—

> "" "NHS trust" includes an NHS trust which was established (by virtue of the National Health Service (Consequential Provisions) Act 2006) under section 25 of the National Health Service Act 2006, prior to the repeal of that section by section 179 of the Health and Social Care Act 2012.""

Greater London Authority Act 1999 (c. 29)

76 Omit section 309E(5)(h) of the Greater London Authority Act 1999 (NHS trusts to be included among relevant bodies for purposes of Mayor of London's health inequalities strategy).

Care Standards Act 2000 (c. 14)

77 The Care Standards Act 2000 is amended as follows.

78 In section 42(7) (power to extend application of Part 2), in paragraph (b) of the definition of "Welsh NHS bodies" omit the words from "all or most" to the end.

79 In Schedule 2A (persons subject to review by the Children's Commissioner for Wales), in paragraph 3 omit the words from "all or most" to the end.

80 In Schedule 2B (persons whose arrangements are subject to review by the Children's Commissioner for Wales), in paragraph 4 omit the words from "all or most" to the end.

Freedom of Information Act 2000 (c. 36)

81 In Part 3 of Schedule 1 to the Freedom of Information Act 2000 (NHS in England and Wales), in paragraph 40, omit "section 25 of the National Health Service Act 2006 or".

International Development Act 2002 (c. 1)

82 In Schedule 1 to the International Development Act 2002 (statutory bodies who may exercise certain powers for the purpose of assisting countries outside the UK),

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in the entry for National Health Service trusts, omit "the National Health Service Act 2006,".

Nationality, Immigration and Asylum Act 2002 (c. 41)

83 In section 133(4) of the Nationality, Immigration and Asylum Act 2002 (power of medical inspector to disclose information to NHS trusts), in paragraphs (a)(ii) and (b)(ii) omit "section 25 of the National Health Service Act 2006 or".

Community Care (Delayed Discharges etc.) Act 2003 (c. 5)

84 In section 1(1) of the Community Care (Delayed Discharges etc.) Act 2003 (meaning of "NHS body"), in the definition of "NHS body", after "a National Health Service trust" insert "(in Wales)".

Finance Act 2003 (c. 14)

85 The Finance Act 2003 is amended as follows.

86 In section 61(3) (bodies that are public authorities for purpose of requirement to comply with planning obligations), under the heading "Health: England and Wales", in the entry for National Health Service trusts, omit "section 25 of the National Health Service Act 2006 or".

87 In section 66(4) (bodies that are public bodies for purpose of exemption for transfers of land), under the heading "Health: England and Wales", in the entry for National Health Service trusts, omit "section 25 of the National Health Service Act 2006 or".

Licensing Act 2003 (c. 17)

88 In section 16(3) of the Licensing Act 2003 (bodies that may apply for premises licence), in the definition of "health service body", in paragraph (a), omit "section 25 of the National Health Service Act 2006 or".

Health and Social Care (Community Health and Standards) Act 2003 (c. 43)

89 The Health and Social Care (Community Health and Standards) Act 2003 is amended as follows.

90 In section 148 (interpretation of Part 2)—

(a) in the definition of "English NHS body" omit paragraph (c), and

(b) in paragraph (b) of the definition of "Welsh NHS body", omit the words from "all or most" to the end.

91 In section 160 (provision of information in personal injury cases), in subsection (4), in the definition of "ambulance trust", in paragraph (a)(i), omit "section 25 of the 2006 Act,".

92 In section 162 (payment of NHS charges to hospitals or ambulance trusts), in subsection (6), in the definition of "relevant ambulance trust"—

(a) before paragraph (a) insert—

"(za) in relation to England, means the NHS foundation trust which is designated by the Secretary of State for the purposes of this section in relation to the health service

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hospital to which the injured person was taken for treatment,",

(b) in paragraph (a) omit "England or",

(c) in sub-paragraph (i) of that paragraph omit "section 25 of the 2006 Act or", and

(d) omit sub-paragraph (ii) of that paragraph (and the preceding "or").

93 In section 165 (power to apply provisions about recovery of charges to non NHS hospitals), in subsection (3)(b)(ii) omit "section 25 of the 2006 Act,".

Finance Act 2004 (c. 12)

94 In section 59 of the Finance Act 2004 (contractors), in subsection (5), in the definition of "NHS trust", in paragraph (a) omit "section 25 of the National Health Service Act 2006 or".

Domestic Violence, Crime and Victims Act 2004 (c. 28)

95 In section 9(4)(a) of the Domestic Violence, Crime and Victims Act 2004 (duty to have regard to guidance on conduct of domestic homicide reviews), in the entry for NHS trusts omit "section 25 of the National Health Service Act 2006 or".

Children Act 2004 (c. 31)

96 The Children Act 2004 is amended as follows.

97 In section 11(1) (NHS trusts' duty to promote the safety and welfare of children), omit paragraph (f).

98 In section 13(3) (Local Safeguarding Children Boards), in paragraph (f) omit "an NHS trust and".

99 In section 28(1) (arrangements to safeguard and promote welfare: Wales), in paragraph (c) omit the words from "all or most" to the end.

Civil Contingencies Act 2004 (c. 36)

100 In Part 1 of Schedule 1 to the Civil Contingencies Act 2004 (category 1 responders to emergencies), in paragraph 5 omit "section 25 of the 2006 Act, or".

National Health Service (Wales) Act 2006 (c. 42)

101 In section 206(1) of the National Health Service Act (Wales) 2006 (interpretation), omit the definition of "NHS trust".

Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19)

102 In section 6(7) of the Corporate Manslaughter and Corporate Homicide Act 2007 (duty of care in emergencies), in the definition of "relevant NHS body", in paragraph (a) omit "NHS trust,".

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Local Government and Public Involvement in Health Act 2007 (c. 28)

103 The Local Government and Public Involvement in Health Act 2007 is amended as follows.

104 In section 222 (arrangements regarding local involvement networks)—

(a) omit subsection (3)(b), and

(b) omit subsection (4)(d).

105 In section 224(2) (duties of service-providers to local involvement networks), omit paragraph (a).

106 In section 225(7) (duty to allow entry to local involvement networks), omit paragraph (a).

Criminal Justice and Immigration Act 2008 (c. 4)

107 In section 119(4) of the Criminal Justice and Immigration Act 2008 (offence of causing nuisance or disturbance on NHS premises), in the definition of "relevant English NHS body"—

(a) omit paragraph (a), and

(b) in paragraph (c), for "that Act" substitute "the National Health Service Act 2006" (and omit the "or" preceding that paragraph).

Health and Social Care Act 2008 (c. 14)

108 The Health and Social Care Act 2008 is amended as follows.

109 In section 97(1) (general interpretation of Part 1)—

(a) in the definition of "English NHS body" omit paragraph (c), and

(b) in the definition of "English NHS provider" omit paragraph (b).

110 In section 153(1) (directing NHS bodies to exercise certain functions in relation to financial assistance), omit paragraph (c).

Autism Act 2009 (c. 15)

111 In section 4(1) of the Autism Act 2009 (interpretation), in the definition of "NHS body", omit paragraph (c).

Health Act 2009 (c. 21)

112 The Health Act 2009 is amended as follows.

113 In section 2(2) (bodies with duty to have regard to NHS Constitution) omit paragraph (c).

114 In section 8(2) (bodies with duty to publish information on quality of services) omit paragraph (b).

Corporation Tax Act 2010 (c. 4)

115 In section 986 of the Corporation Tax Act 2010 (meaning of "health service body"), in the table, in the entry for a National Health Service trust, omit "section 25 of the National Health Service Act 2006 or".

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Equality Act 2010 (c. 15)

116 In Part 1 of Schedule 19 to the Equality Act 2010 (bodies subject to public sector equality duty), in the group of entries that includes entries for bodies whose functions relate to the health service, omit the entry for an NHS trust.

Charities Act 2011 (c. 25)

117 The Charities Act 2011 is amended as follows.

118 In section 149 (audit or examination of English NHS charity accounts), in subsection (7), omit paragraphs (c), (d) and (e).

119 In section 150 (audit or examination of Welsh NHS charity accounts), in subsection (4)—

(a) in paragraph (b), omit the words from "all or most" to the end,

(b) in paragraph (c), omit "falling within paragraph (b)", and

(c) in paragraph (d), omit "such".

SCHEDULE 15

Sections 230 and 231

PART 7: CONSEQUENTIAL AMENDMENTS AND SAVINGS

PART 1

ABOLITION OF THE GENERAL SOCIAL CARE COUNCIL

Amendments to the Care Standards Act 2000 (c. 14)

1 The Care Standards Act 2000 is amended as follows.

Commencement Information
I1057 Sch. 15 para. 1 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

2 In section 55(3)(g) (power to treat persons on certain social work courses as social care workers)—

(a) for "a Council" substitute "the Welsh Council", and

(b) after "section 63" insert ", or by the Health and Care Professions Council under article 15 of the Health and Social Work Professions Order 2001,".

Commencement Information
I1058 Sch. 15 para. 2 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

3 In section 56 (register of social care workers etc.)—

(a) in subsection (1), for "Each Council" substitute "The Welsh Council", and

(b) in subsection (4), for "the Council" substitute "the Welsh Council".

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Commencement Information
I1059 Sch. 15 para. 3 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

4 In section 57 (applications for registration), in subsection (1), for "a Council" substitute "the Welsh Council".

Commencement Information
I1060 Sch. 15 para. 4 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

5 In section 58 (grant or refusal of registration), in subsection (1) for "the Council" substitute "the Welsh Council".

Commencement Information
I1061 Sch. 15 para. 5 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

6 In section 58A (visiting social workers from relevant European States)—

(a) in subsections (3) and (7), for "a Council" substitute "the Welsh Council", and

(b) in subsection (6), for "a Council, that" substitute "the Welsh Council, the".

Commencement Information
I1062 Sch. 15 para. 6 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

7 In section 59 (removal etc. from register), in subsection (1), for "Each Council" substitute "The Welsh Council".

Commencement Information
I1063 Sch. 15 para. 7 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

8 In section 60 (rules about registration), for "A Council" substitute "The Welsh Council".

Commencement Information
I1064 Sch. 15 para. 8 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

9 In section 61 (offence relating to use of title "social worker" etc.)—

(a) in subsection (1), after "a person" insert "in Wales",

(b) in subsection (2)(a), for "a Council" substitute "the Welsh Council", and

(c) in subsection (2)(b), after "the law of" insert "England and Wales so far as applying in relation to England,".

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Commencement Information
I1065 Sch. 15 para. 9 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

10 In section 62 (codes of practice)—
(a) in subsection (1), for "Each Council" substitute "The Welsh Council",
(b) in subsections (3), (4) and (6), for "a Council" substitute "the Council", and
(c) in subsection (5), after "Local authorities" insert "in Wales".

Commencement Information
I1066 Sch. 15 para. 10 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

11 In section 63 (approval of courses etc.)—
(a) in subsection (1), for "Each Council" substitute "The Welsh Council", and
(b) in subsection (4), for "A Council" substitute "The Council".

Commencement Information
I1067 Sch. 15 para. 11 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

12 In section 64 (qualifications gained outside Council's area)—
(a) in subsection (A1), for "a Council" substitute "the Welsh Council",
(b) omit subsection (1), and
(c) for the title substitute "Qualifications gained outside the Welsh Council's area".

Commencement Information
I1068 Sch. 15 para. 12 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

13 In section 65(1) (power to make rules requiring registered persons to undertake further training), for "A Council" substitute "The Welsh Council".

Commencement Information
I1069 Sch. 15 para. 13 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

14 In section 66 (visitors for certain social work courses)—
(a) in subsection (1), for "A Council" substitute "The Welsh Council", and
(b) in subsection (3), for "a Council" substitute "the Council".

Commencement Information
I1070 Sch. 15 para. 14 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

15 In section 67 (functions of the appropriate Minister)—
(a) in subsection (2), for "a Council" substitute "the Welsh Council", and

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(b) in subsection (5), omit paragraph (a) (and the "or" following it).

Commencement Information
I1071 Sch. 15 para. 15 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

16 In section 68 (appeals to the Tribunal), in subsections (1) and (1A), for "a Council" substitute "the Welsh Council".

Commencement Information
I1072 Sch. 15 para. 16 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

17 In section 69 (publication etc. of register), in subsection (1), for "A Council" substitute "The Welsh Council".

Commencement Information
I1073 Sch. 15 para. 17 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

18 Omit section 70 (abolition of the Central Council for Education and Training in Social Work).

Commencement Information
I1074 Sch. 15 para. 18 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

19 In section 71 (rules), in subsections (1), (2), (3A) and (4), for "a Council" substitute "the Welsh Council".

Commencement Information
I1075 Sch. 15 para. 19 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

20 In section 113 (default Ministerial powers), omit subsection (1).

Commencement Information
I1076 Sch. 15 para. 20 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

21 In section 114 (schemes for the transfer of staff), in subsection (1), omit ", 70".

Commencement Information
I1077 Sch. 15 para. 21 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

22 In section 118 (orders and regulations), in subsection (4), omit the words from "; and" to the end.

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Commencement Information
I1078 Sch. 15 para. 22 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

23 In section 121 (13) (index of defined expressions)—

(a) omit the entry for "CCETSW",

(b) omit the entry for references to the Council, the English Council and the Welsh Council, and

(c) at the end insert—

"the Welsh Council	Section 54".

Commencement Information
I1079 Sch. 15 para. 23 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

24 In section 122 (commencement), omit "section 70(2) to (5) and".

Commencement Information
I1080 Sch. 15 para. 24 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

25 In section 123 (extent), omit subsection (3).

Commencement Information
I1081 Sch. 15 para. 25 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

26 Schedule 1 (the Care Councils) is amended as follows.

Commencement Information
I1082 Sch. 15 para. 26 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

27 Omit paragraph 1 (introductory).

Commencement Information
I1083 Sch. 15 para. 27 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

28 In paragraph 2 (status)—

(a) for "An authority" substitute "The Welsh Council", and

(b) for "an authority's" substitute "the Council's".

Commencement Information
I1084 Sch. 15 para. 28 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

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29 In paragraph 3(1) (general powers), for "the Secretary of State, an authority" substitute "the Welsh Ministers, the Welsh Council".

Commencement Information
I1085 Sch. 15 para. 29 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

30 In paragraph 4 (general duty), for "an authority" substitute "the Welsh Council".

Commencement Information
I1086 Sch. 15 para. 30 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

31 For paragraph 5 (membership)—

(a) for "Each authority" substitute "The Welsh Council", and

(b) for "the Secretary of State" substitute "the Welsh Ministers".

Commencement Information
I1087 Sch. 15 para. 31 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

32 In paragraph 6 (appointment, procedure etc.)—

(a) for "The Secretary of State" substitute "The Welsh Ministers",

(b) in paragraph (a), for "an authority" substitute "the Welsh Council",

(c) in paragraphs (b), (c) and (d), (in the case of paragraph (d), in each place it appears) for "an authority" substitute "the Council", and

(d) in paragraph (c), for "the authority" substitute "the Council".

Commencement Information
I1088 Sch. 15 para. 32 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

33 (1) Paragraph 7 (remuneration and allowances) is amended as follows.

(2) In sub-paragraph (1)—

(a) for "An authority" substitute "The Welsh Council",

(b) for "the authority", in each place it appears, substitute "the Council", and

(c) for "the Secretary of State" substitute "the Welsh Ministers".

(3) In sub-paragraph (2)—

(a) for "the Secretary of State so determines" substitute "the Welsh Ministers so determine",

(b) for "an authority", in each place it appears, substitute "the Council", and

(c) for "the Secretary of State" substitute "the Welsh Ministers".

(4) In sub-paragraph (3)—

(a) for "the Secretary of State determines" substitute "the Welsh Ministers determine",

(b) for "an authority" substitute "the Council",

(c) for "the authority" substitute "the Council", and

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(d) for "the Secretary of State" substitute "the Welsh Ministers".

Commencement Information
I1089 Sch. 15 para. 33 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

34 (1) Paragraph 8 (chief officer) is amended as follows.

(2) In sub-paragraph (1)—
(a) for "each authority" substitute "the Welsh Council", and
(b) for "the authority", in each place it appears, substitute "the Council".

(3) In sub-paragraph (2), for "the Secretary of State", in each place it appears, substitute "the Welsh Ministers".

(4) In sub-paragraph (3), for "the authority" substitute "the Council".

(5) In sub-paragraph (4), for "the Secretary of State" substitute "the Welsh Ministers".

Commencement Information
I1090 Sch. 15 para. 34 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

35 (1) Paragraph 12 (staff) is amended as follows.

(2) In sub-paragraph (1), for "An authority" substitute "The Welsh Council".

(3) In sub-paragraph (2)—
(a) for "an authority" substitute "the Council", and
(b) for "the authority" substitute "the Council".

(4) In sub-paragraph (3), for "an authority" substitute "the Council".

(5) In sub-paragraph (4)—
(a) for "Secretary of State" substitute "Welsh Ministers",
(b) in paragraph (a), for "an authority" substitute "the Council", and
(c) in paragraph (c), for "the authority" substitute "the Council".

Commencement Information
I1091 Sch. 15 para. 35 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

36 (1) Paragraph 13 (delegation of functions) is amended as follows.

(2) In sub-paragraph (1)—
(a) for "An authority" substitute "The Welsh Council", and
(b) for "the authority" substitute "the Council".

(3) In sub-paragraph (2)—
(a) for "An authority" substitute "The Council", and
(b) for "the authority" substitute "the Council".

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Commencement Information
I1092 Sch. 15 para. 36 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

37 In paragraph 14 (arrangements for the use of staff)—

(a) for "The Secretary of State" substitute "The Welsh Ministers",

(b) in paragraph (a), for "an authority" substitute "the Welsh Council", and

(c) in paragraph (b), for "an authority" substitute "the Council", and for "the authority" substitute "the Council".

Commencement Information
I1093 Sch. 15 para. 37 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

38 In paragraph 16 (payments to authorities)—

(a) for "The Secretary of State" substitute "The Welsh Ministers",

(b) for "an authority" substitute "the Welsh Council", and

(c) for "he considers" substitute "they consider".

Commencement Information
I1094 Sch. 15 para. 38 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

39 (1) Paragraph 18 (accounts) is amended as follows.

(2) In sub-paragraph (1)—

(a) for "An authority" substitute "The Welsh Council", and

(b) for "the Secretary of State" substitute "the Welsh Ministers".

(3) In sub-paragraph (2)—

(a) for "An authority" substitute "The Council", and

(b) for "the Secretary of State" substitute "the Welsh Ministers".

(4) In sub-paragraph (3)—

(a) for "An authority" substitute "The Council",

(b) for "the Secretary of State", in each place it appears, substitute "the Welsh Ministers", and

(c) for "the Comptroller and Auditor General" substitute "the Auditor General for Wales".

(5) In sub-paragraph (4)—

(a) for "The Comptroller and Auditor General" substitute "The Auditor General for Wales", and

(b) for "Parliament" substitute "the Assembly".

(6) In sub-paragraph (5)—

(a) for "an authority" substitute "the Council", and

(b) in paragraph (a), for "the authority" substitute "the Council".

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Commencement Information
I1095 Sch. 15 para. 39 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

40 (1) Paragraph 19 (reports etc.) is amended as follows.

(2) In sub-paragraph (1)—
(a) for "an authority" substitute "the Welsh Council", and
(b) for "the Secretary of State" substitute "the Welsh Ministers".

(3) In sub-paragraph (2)—
(a) for "An Authority" substitute "The Council",
(b) for "the Secretary of State" substitute "the Welsh Ministers", and
(c) for "he" substitute "they".

(4) In sub-paragraph (3), for "the authority" substitute "the Council".

Commencement Information
I1096 Sch. 15 para. 40 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

41 In paragraph 20 (application of seal)—
(a) for "an authority" substitute "the Welsh Council", and
(b) in paragraphs (a) and (b), for "the authority" substitute "the Council".

Commencement Information
I1097 Sch. 15 para. 41 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

42 In paragraph 21 (evidence), for "an authority" substitute "the Welsh Council".

Commencement Information
I1098 Sch. 15 para. 42 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

43 For the title to Schedule 1 substitute "The Welsh Council".

Commencement Information
I1099 Sch. 15 para. 43 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

Amendments to the Health and Social Care Act 2008 (c. 14)

44 The Health and Social Care Act 2008 is amended as follows.

Commencement Information
I1100 Sch. 15 para. 44 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

45 (1) In section 124 (regulation of social care workers)—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) in subsection (1), for "appropriate Minister", in each place it appears, substitute "Welsh Ministers",

(b) in that subsection, for "their regulation" substitute "the regulation of social care workers", and

(c) in subsection (3), omit the definition of "the appropriate Minister".

(2) For the title to that section substitute "Regulation of social care workers: Wales".

Commencement Information
I1101 Sch. 15 para. 45 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

46 Section 125 (standard of proof in proceedings relating to registration of social care worker)—

(a) in subsection (2), for "a committee of a Council, a Council itself or any officer of a Council" substitute "the Care Council for Wales, a committee of the Council or any officer of the Council", and

(b) in subsection (3), omit paragraph (a).

Commencement Information
I1102 Sch. 15 para. 46 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

47 (1) Section 126 (education and training of approved mental health professionals) is amended as follows.

(2) In subsection (1)—

(a) for "appropriate Minister" substitute "Welsh Ministers", and

(b) omit "the General Social Care Council or".

(3) In subsection (4), omit the definition of "the appropriate Minister".

(4) For the title to section 126 substitute "Education and training of approved mental health professionals: Wales".

Commencement Information
I1103 Sch. 15 para. 47 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

48 In section 171(4) (provisions which Welsh Ministers have power to commence), before paragraph (a) insert—

"(za) sections 124 and 125 and Schedule 9 (regulation of social care workers: Wales) and section 126 (education and training of approved mental health professionals: Wales),".

Commencement Information
I1104 Sch. 15 para. 48 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

49 (1) Schedule 9 (regulation of social care workers) is amended as follows.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) In paragraph 1 (interpretation), for the definition of "the appropriate Council" substitute—

""the Council" means the Care Council for Wales."

(3) In paragraph 2 (matters generally within the scope of regulations), in paragraphs (a) and (h), for "the appropriate Council" substitute "the Council".

(4) In paragraph 5 (payments), in paragraph (b), for "the appropriate Council" substitute "the Council".

(5) In paragraph 6 (sub-delegation), in paragraph (a), omit the words from "Ministers of the Crown" to "Welsh Ministers, on".

(6) In paragraph 8 (matters outside the scope of regulations)—

(a) in sub-paragraph (1), omit "the General Social Care Council or",

(b) in sub-paragraph (2), for "either of those Councils" substitute "the Council", and

(c) in that sub-paragraph, for "that Council" substitute "the Council".

(7) Omit paragraph 9 (preliminary procedure for making regulations: England).

(8) For the title to that Schedule substitute "Regulation of social care workers: Wales".

Commencement Information
I1105 Sch. 15 para. 49 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

Amendments to other Acts

50 In the following provisions, omit the entry for the General Social Care Council—

(a) the Schedule to the Public Bodies (Admission to Meetings) Act 1960,

(b) Schedule 2 to the Parliamentary Commissioner Act 1967,

(c) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975,

(d) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, and

(e) Part 6 of Schedule 1 to the Freedom of Information Act 2000.

Commencement Information
I1106 Sch. 15 para. 50 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

51 In section 343 of the Income Tax (Earning and Pensions) Act 2003 (deductions for professional membership fees), in paragraph 1 of the Table in subsection (2), omit sub-paragraph (o).

Commencement Information
I1107 Sch. 15 para. 51 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

52 In section 41 of the Safeguarding Vulnerable Groups Act 2006 (registers: duty to refer), in entry number 8 in the table in subsection (7)—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) in the first column, after "social care workers" insert "in Wales", and

(b) in the second column, for the words from "General" to the end substitute "Care Council for Wales".

Commencement Information
I1108 Sch. 15 para. 52 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

PART 2

THE HEALTH AND CARE PROFESSIONS COUNCIL

53 (1) A reference in any instrument or document to the Health Professions Council is to be read, in relation to any time after the commencement of section 214(1), as a reference to the Health and Care Professions Council.

(2) A reference in this Act or any other enactment, or in any other instrument or document, to the Health and Care Professions Council is to be read, in relation to any time before the commencement of section 214(1), as a reference to the Health Professions Council.

(3) In sub-paragraph (2), "enactment" means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) an Act or Measure of the National Assembly for Wales, or

(d) Northern Ireland legislation.

Commencement Information
I1109 Sch. 15 para. 53 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

54 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, at the appropriate place insert— " The Health and Care Professions Council ".

Commencement Information
I1110 Sch. 15 para. 54 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

55 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, at the appropriate place insert— " The Health and Care Professions Council ".

Commencement Information
I1111 Sch. 15 para. 55 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

56 In the following provisions, for "the Health Professions Council" substitute "the Health and Care Professions Council"—

(a) Part 6 of Schedule 1 to the Freedom of Information Act 2000,

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) section 25(3)(gb) of the National Health Service Reform and Health Care Professions Act 2002,

(c) section 4(4)(a) of the Health (Wales) Act 2003,

(d) paragraph 1(f) of the Table in section 343(2) of the Income Tax (Earning and Pensions) Act 2003,

(e) paragraph 16 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006, and

(f) sections 17(5)(c)(viii) and 30A(5) of the Protection of Vulnerable Groups (Scotland) Act 2007.

Commencement Information
I1112 Sch. 15 para. 56 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

57 In section 257(3) of the Armed Forces Act 2006 (definition of "registered social worker"), for paragraph (a) substitute—

"(a) the Health and Care Professions Council;".

Commencement Information
I1113 Sch. 15 para. 57 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

58 After section 30A(5) of the Protection of Vulnerable Groups (Scotland) Act 2007, insert—

"(6) The reference in subsection (5) to the Health and Care Professions Council does not include a reference to that body in so far as it has functions relating to the social work profession in England or social care workers in England (each of those expressions having the same meaning as in section 60 of the Health Act 1999)."

Commencement Information
I1114 Sch. 15 para. 58 in force at 1.8.2012 by S.I. 2012/1319, **art. 2(4)**

PART 3

THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

General

59 (1) A reference in any instrument or document to the Council for Healthcare Regulatory Excellence is to be read, in relation to any time after the commencement of section 222(1), as a reference to the Professional Standards Authority for Health and Social Care.

(2) A reference in this Act or any other enactment, or in any other instrument or document, to the Professional Standards Authority for Health and Social Care is to be read, in relation to any time before the commencement of section 222(1), as a reference to the Council for Healthcare Regulatory Excellence.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) In sub-paragraph (2), "enactment" means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) an Act or Measure of the National Assembly for Wales, or

(d) Northern Ireland legislation.

Commencement Information

I1115 Sch. 15 para. 59 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

Health Act 1999 (c. 8)

60 In section 60(1) of the Health Act 1999—

(a) in paragraph (c), for "the Council for Healthcare Regulatory Excellence" substitute "the Professional Standards Authority for Health and Social Care", and

(b) in each of paragraphs (d) and (e), for "Council" substitute "Authority".

Commencement Information

I1116 Sch. 15 para. 60 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

61 In paragraph 7(4) of Schedule 3 to that Act, for "the Council for Healthcare Regulatory Excellence" substitute "the Professional Standards Authority for Health and Social Care".

Commencement Information

I1117 Sch. 15 para. 61 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

National Health Service Reform and Health Care Professions Act 2002 (c. 17)

62 In each of the following provisions of the National Health Service Reform and Health Care Professions Act 2002, for "Council" substitute "Authority"—

(a) section 25(2), (2A) and (4),

(b) section 26(1), (2), (3) and (4),

(c) section 26A(1) (in each place it appears) and (2),

(d) section 26B(1) and (4) (in each case, in each place it appears),

(e) section 27(1), (2), (4), (10) and (14),

(f) section 28(1), (2)(b), (e), (f), (g), (h) and (j), (3)(a), (b) and (d) and (4),

(g) section 29(4) and (7) (in each case, in each place it appears),

(h) in Schedule 7, paragraphs 2, 6(a), (b) and (c) (in each place it appears), 7, 8, 9(1) and (2), 10(1) and (2) (in each case, in each place it appears), 11(1) (in each place it appears), (2), (3) and (4), 12(1) (in each place it appears) and (2), 13, 14(1), (2), (3), (4), (7), (8) and (9), 15(1), (2), (3), (4) and (7)(a), 16(1), (1A)(a) and (b), (2), (3) and (4), 17 (in each place it appears), 18 and 19(1) and (2)(a) and (b),

Status: *This version of this Act contains provisions that are prospective.*
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(i) the title of each of sections 26, 27 and 29, and

(j) the cross-heading preceding each of paragraphs 14 and 19 of Schedule 7.

Commencement Information
I1118 Sch. 15 para. 62 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

63 In sections 26(6), 27(3) and 29(6) of, and paragraphs 1 and 4 of Schedule 7 to, that Act for "The Council" substitute "The Authority".

Commencement Information
I1119 Sch. 15 para. 63 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

64 Omit section 26(12) of that Act.

Commencement Information
I1120 Sch. 15 para. 64 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

65 In section 26A(2) of, and paragraph 1 of Schedule 7 to, that Act for "Council's" substitute "Authority's".

Commencement Information
I1121 Sch. 15 para. 65 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

66 For the title to Schedule 7 substitute "The Professional Standards Authority for Health and Social Care".

Commencement Information
I1122 Sch. 15 para. 66 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

Other Acts, etc.

67 In section 36A(1)(b) of the Dentists Act 1984 (professions complementary to dentistry), for "regulated by the Council for Healthcare Regulatory Excellence under section 25" substitute "listed in section 25(3)".

Commencement Information
I1123 Sch. 15 para. 67 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

68 In each of the following provisions, for "the Council for Healthcare Regulatory Excellence" substitute "the Professional Standards Authority for Health and Social Care"—

(a) paragraphs 1(bca) and 2(ca) of the Schedule to the Public Bodies (Admission to Meetings) Act 1960,

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(b) paragraph (b) of the definition of "relevant disciplinary proceedings" in section 201(4) of the National Health Service Act 2006, and

(c) paragraph (b) of the definition of "relevant disciplinary proceedings" in section 149(4) of the National Health Service (Wales) Act 2006.

Commencement Information
I1124 Sch. 15 para. 68 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

69 (1) In each of the following provisions, omit the entry for "The Council for Healthcare Regulatory Excellence"—

(a) Schedule 1 to the Public Records Act 1958,

(b) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975,

(c) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, and

(d) Part 6 of Schedule 1 to the Freedom of Information Act 2000.

(2) In each of the provisions listed in sub-paragraph (1), at the appropriate place insert — " The Professional Standards Authority for Health and Social Care ".

(3) Omit paragraph 26(a) of Schedule 10 to the Health and Social Care Act 2008 (which provides for the inclusion of a reference to the Council for Healthcare Regulatory Excellence in the National Assembly for Wales (Disqualification) Order 2006, which has itself been revoked).

Commencement Information
I1125 Sch. 15 para. 69 in force at 1.12.2012 by S.I. 2012/2657, **art. 2(3)**

PART 4

THE OFFICE OF THE HEALTH PROFESSIONS ADJUDICATOR

Miscellaneous amendments

70 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960, omit paragraphs 1(bcb) and 2(cb).

Commencement Information
I1126 Sch. 15 para. 70 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

71 (1) Omit the entry for the Office of the Health Professions Adjudicator in each of the following—

(a) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975,

(b) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975,

(c) Part 6 of Schedule 1 to the Freedom of Information Act 2000, and

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(d) the table in Article 2 of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007 (S.I. 2007/2951).

(2) In consequence of those repeals, omit paragraphs 4(b), 5(b) and 13(b) of Schedule 10 to the Health and Social Care Act 2008 and the preceding "and" in each case.

(3) Omit paragraph 26(b) of Schedule 10 to the Health and Social Care Act 2008 (which inserts a reference to the OHPA in the National Assembly for Wales (Disqualification) Order 2006, which has itself been revoked).

(4) Omit paragraph 27 of that Schedule (which inserts a reference to the OHPA in the Pharmacists and Pharmacy Technicians Order 2007, which has itself been revoked).

Commencement Information
I1127 Sch. 15 para. 71 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

Amendments to the Health Act 1999 (c. 8)

72 (1) The Health Act 1999 is amended as follows.

(2) Omit section 60(1)(f) (power to modify constitution or functions of OHPA).

(3) In consequence of that repeal, omit paragraph 1(2) of Schedule 8 to the Health and Social Care Act 2008.

(4) In paragraph 8(2A) of Schedule 3 (provision under section 60 as to functions relating to unfitness to practise must provide for functions to be exercised by relevant regulatory body or OHPA), omit "or the Office of the Health Professions Adjudicator".

(5) In section 60A(2) (standard of proof in fitness to practise proceedings before OHPA or regulatory bodies), omit paragraph (a) and the "or" following it.

Commencement Information
I1128 Sch. 15 para. 72 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

Amendments to the National Health Service Reform and Health Care Professions Act 2002 (c. 17)

73 (1) In section 29 of the National Health Service Reform and Health Care Professions Act 2002 (reference of disciplinary cases by the Council for Healthcare Regulatory Excellence to the court), in subsection (1)—

(a) in paragraph (c), omit "otherwise than by reason of his physical or mental health", and

(b) in paragraph (f), omit the words from ", other than a direction" to the end.

(2) In consequence of those repeals, omit section 118(2)(b) and (d), (5) and (6) of the Health and Social Care Act 2008.

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I1129 Sch. 15 para. 73 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

Amendments to the Health Act 2006 (c. 28)

74 (1) Omit section 60(3)(b) of the Health Act 2006 (Appointments Commission to exercise functions of Privy Council relating to appointment of members of OHPA) and the "or" immediately preceding it.

(2) Omit section 63(6A) and (6B) of that Act (Appointments Commission to assist OHPA with exercise of appointment functions).

(3) In consequence of those repeals, omit paragraph 22 of Schedule 10 to the Health and Social Care Act 2008.

Commencement Information
I1130 Sch. 15 para. 74 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

Amendments to the Health and Social Care Act 2008 (c. 14)

75 (1) The Health and Social Care Act 2008 is amended as follows.

(2) In section 128 (interpretation), omit the definition of "the OHPA".

(3) In section 162 (orders and regulations), omit subsections (1)(b) and (c) and (4).

(4) In Schedule 10 (amendments relating to Part 2 of that Act), omit paragraphs 7, 9, 14, 15 and 18.

Commencement Information
I1131 Sch. 15 para. 75 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

Savings

76 (1) If abolition is to occur at a time other than immediately after the end of a financial year within the meaning of paragraphs 19 and 20 of Schedule 6 to the Health and Social Care Act 2008 (annual reports), the period that begins with the 1 April before abolition and ends with abolition is to be treated as a financial year for the purposes of those paragraphs.

(2) Despite section 231(2), paragraphs 19 and 20 of that Schedule are to continue to have effect for the purpose of imposing the duties under paragraphs 19(2), (3)(b) and (4) to (6) and 20(1), (2)(b) and (3) and for the purpose of conferring the power under paragraph 20(4); and for those purposes—

(a) the duties under paragraphs 19(2) and 20(1), in so far as they have not been discharged by the OHPA, must be discharged by the Secretary of State,

(b) the duties under paragraphs 19(3)(b) and (4) and 20(2)(b) must be discharged by the Secretary of State, and

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(c) the power conferred by paragraph 20(4) may be exercised by giving directions of the description in question to the Secretary of State.

(3) Subject to that, anything which the OHPA is required to do under an enactment before abolition may, in so far as it has not been done by the OHPA, be done by the Secretary of State after abolition.

Commencement Information
I1132 Sch. 15 para. 76 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

77 A reference in any document to the OHPA is, so far as necessary or appropriate in consequence of section 231(1), to be read after abolition as a reference to the Secretary of State.

Commencement Information
I1133 Sch. 15 para. 77 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

78 In paragraphs 76 and 77—

"abolition" means the commencement of section 231(1);

"enactment" includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);

"the OHPA" means the Office of the Health Professions Adjudicator.

Commencement Information
I1134 Sch. 15 para. 78 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

SCHEDULE 16

Section 232

THE NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELLENCE

Membership, appointment, etc.

1 (1) NICE consists of—

(a) at least six members appointed by the Secretary of State (referred to in this Schedule as the "non-executive members"), and

(b) at least three but not more than five other members appointed by the non-executive members (referred to in this Schedule as the "executive members").

(2) One of the non-executive members must be appointed as the chair.

(3) One of the executive members must be appointed as the chief executive; but the appointment may not be made without the approval of the Secretary of State.

(4) The executive members are employees of NICE.

(5) Regulations may—

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) prescribe the number of executive members (subject to sub-paragraph (1)(b)), and

(b) provide that all or any of the executive members (other than the chief executive) must hold posts of descriptions specified in the regulations.

Commencement Information

I1135 Sch. 16 para. 1 partly in force; Sch. 16 para. 1 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I1136 Sch. 16 para. 1 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Tenure of non-executive office

2 (1) The chair and other non-executive members—

(a) hold and vacate office in accordance with the terms of their appointments, but

(b) may resign office by giving notice to the Secretary of State.

(2) The Secretary of State may remove a person from office as the chair or other non-executive member on any of the following grounds—

(a) incapacity,

(b) misbehaviour, or

(c) failure to carry out his or her duties as a non-executive member.

(3) The Secretary of State may suspend a person from office as the chair or other non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (2).

(4) A non-executive member may not be appointed for a period of more than four years.

(5) A person who ceases to be the chair or another non-executive member is eligible for re-appointment.

Commencement Information

I1137 Sch. 16 para. 2 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Suspension from non-executive office

3 (1) This paragraph applies where a person is suspended under paragraph 2(3).

(2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice.

(3) The notice may be—

(a) delivered in person (in which case, the person is taken to receive it when it is delivered), or

(b) sent by first class post to the person's last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) The initial period of suspension must not exceed six months.

(5) The Secretary of State may at any time review the suspension.

(6) The Secretary of State—

(a) must review the suspension if requested in writing by the person to do so, but

(b) need not review the suspension less than three months after the beginning of the initial period of suspension.

(7) Following a review during a period of suspension, the Secretary of State may—

(a) revoke the suspension, or

(b) suspend the person for another period of not more than six months from the expiry of the current period.

(8) The Secretary of State must revoke the suspension if the Secretary of State—

(a) decides that there are no grounds to remove the person from office under paragraph 2(2), or

(b) decides that there are grounds to do so but does not remove the person from office under that provision.

Commencement Information
I1138 Sch. 16 para. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

4 (1) This paragraph applies where a person is suspended from office as the chair under paragraph 2(3).

(2) The Secretary of State may appoint a non-executive member as the interim chair to exercise the chair's functions.

(3) The interim chair—

(a) holds and vacates office in accordance with the terms of the appointment, but

(b) may resign office by giving notice in writing to the Secretary of State.

(4) Appointment as interim chair is for a term not exceeding the shorter of—

(a) the period ending with either—

(i) the appointment of a new chair, or

(ii) the revocation or expiry of the existing chair's suspension, and

(b) the remainder of the interim chair's term as a non-executive member.

(5) A person who ceases to be the interim chair is eligible for re-appointment.

Commencement Information
I1139 Sch. 16 para. 4 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Remuneration etc. of non-executive members

5 (1) NICE must pay to the non-executive members such remuneration and allowances as the Secretary of State may determine.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) NICE must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member.

(3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, NICE must pay compensation to the person of such amount as the Secretary of State may determine.

Commencement Information
I1140 Sch. 16 para. 5 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Staff

6 (1) NICE may appoint such persons to be employees of NICE as it considers appropriate.

(2) Employees of NICE are to be paid such remuneration and allowances as NICE may determine.

(3) Employees of NICE are to be appointed on such other terms and conditions as NICE may determine.

(4) NICE may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of NICE.

(5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), NICE must obtain the approval of the Secretary of State to its policy on that matter.

Commencement Information
I1141 Sch. 16 para. 6 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Committees

7 (1) NICE may appoint such committees and sub-committees as it considers appropriate.

(2) A committee or sub-committee may consist of or include persons who are not members or employees of NICE.

(3) NICE may pay such remuneration and allowances as it may determine to any person who—

(a) is a member of a committee or sub-committee, but

(b) is not an employee of NICE,

whether or not that person is a non-executive member of NICE.

Commencement Information
I1142 Sch. 16 para. 7 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Procedure

8 (1) NICE may regulate its own procedure.

(2) But regulations may make provision about procedures to be adopted by NICE for dealing with conflicts of interest of members of NICE or members of a committee or sub-committee.

(3) The validity of any act of NICE is not affected by any vacancy among the members or by any defect in the appointment of a member.

Commencement Information
I1143 Sch. 16 para. 8 partly in force; Sch. 16 para. 8 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I1144 Sch. 16 para. 8 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Exercise of functions

9 NICE may arrange for the exercise of its functions on its behalf by—
(a) a non-executive member;
(b) an employee (including an executive member);
(c) a committee or sub-committee.

Commencement Information
I1145 Sch. 16 para. 9 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

General powers

10 (1) NICE may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions.

(2) But, except as provided by paragraph 11(3), NICE has no power to borrow money.

(3) NICE may do any of the following only with the approval of the Secretary of State—
(a) form, or participate in the forming of, companies,
(b) invest in companies (whether by acquiring assets, securities or rights or otherwise), and
(c) provide loans and guarantees and make other kinds of financial provision to or in respect of companies.

(4) The approval of the Secretary of State may be given for the purposes of sub-paragraph (3) subject to such conditions as the Secretary of State thinks appropriate.

(5) In this paragraph "company" has the same meaning as in the Companies Acts (see section 1(1) of the Companies Act 2006).

Commencement Information
I1146 Sch. 16 para. 10 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Finance

11 (1) The Secretary of State may make payments to NICE out of money provided by Parliament of such amounts as the Secretary of State thinks appropriate.

(2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State thinks appropriate.

(3) The Secretary of State may lend money to NICE on such terms (including as to repayment and interest) as the Secretary of State may determine.

Commencement Information
I1147 Sch. 16 para. 11 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Reports

12 (1) As soon as practicable after the end of each financial year, NICE must prepare an annual report on how it has exercised its functions during the year.

(2) NICE must—

(a) lay a copy of the report before Parliament, and

(b) once it has done so, send a copy of it to the Secretary of State.

(3) NICE must provide the Secretary of State with such other reports and information relating to the exercise of NICE's functions as the Secretary of State may require.

(4) In this paragraph and paragraph 14 "financial year" means—

(a) the period beginning on the day on which section 232 comes into force and ending on the following 31 March;

(b) each successive period of 12 months.

Commencement Information
I1148 Sch. 16 para. 12 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Accounts

13 (1) NICE must keep proper accounts and proper records in relation to the accounts.

(2) The Secretary of State may, with the approval of the Treasury, give directions to NICE as to—

(a) the content and form of its accounts, and

(b) the methods and principles to be applied in the preparation of its accounts.

(3) In sub-paragraph (2) a reference to accounts includes NICE's annual accounts prepared under paragraph 14 and any interim accounts prepared by virtue of paragraph 15.

Commencement Information
I1149 Sch. 16 para. 13 partly in force; Sch. 16 para. 13 in force for specified purposes at Royal Assent, see s. 306(1)(d)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

I1150 Sch. 16 para. 13 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

14 (1) NICE must prepare annual accounts in respect of each financial year.

(2) NICE must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on the annual accounts, and

(b) lay copies of them and the report before Parliament.

Commencement Information

I1151 Sch. 16 para. 14 partly in force; Sch. 16 para. 14 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I1152 Sch. 16 para. 14 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

15 (1) The Secretary of State may, with the approval of the Treasury, direct NICE to prepare accounts in respect of such period or periods as may be specified in the direction ("interim accounts").

(2) NICE must send copies of any interim accounts to the Secretary of State and the Comptroller and Auditor General within such period as the Secretary of State may direct.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on any interim accounts sent by virtue of sub-paragraph (2), and

(b) if the Secretary of State so directs—

(i) send a copy of the report on the accounts to the Secretary of State, and

(ii) lay copies of them and the report before Parliament.

Commencement Information

I1153 Sch. 16 para. 15 partly in force; Sch. 16 para. 15 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I1154 Sch. 16 para. 15 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Seal and evidence

16 (1) The application of NICE's seal must be authenticated by the signature of the chair or of any employee who has been authorised (generally or specifically) for that purpose.

(2) A document purporting to be duly executed under NICE's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I1155 Sch. 16 para. 16 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status

17 (1) NICE must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) NICE's property must not be regarded as property of, or property held on behalf of, the Crown.

Commencement Information
I1156 Sch. 16 para. 17 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

SCHEDULE 17

Section 249

PART 8: CONSEQUENTIAL AMENDMENTS

Public Bodies (Admission to Meetings) Act 1960 (c. 67)

1 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies to which that Act applies) in paragraph 1, after paragraph (m) insert—

"(n) the National Institute for Health and Care Excellence;".

Commencement Information
I1157 Sch. 17 para. 1 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Parliamentary Commissioner Act 1967 (c. 13)

2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation) at the appropriate place insert— " National Institute for Health and Care Excellence. "

Commencement Information
I1158 Sch. 17 para. 2 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Local Government Act 1972 (c. 70)

3 In section 113 of the Local Government Act 1972 (placing of staff of local authorities at disposal of other local authorities and health bodies) in subsection (1A)—

(a) after "agreement with" insert "the National Institute for Health and Care Excellence,",

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) in paragraph (a), after "disposal of" insert "the National Institute for Health and Care Excellence,", and

(c) in paragraph (b), after "employed by" insert "the National Institute for Health and Care Excellence,".

Commencement Information
I1159 Sch. 17 para. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

House of Commons Disqualification Act 1975 (c. 24)

4 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert— " The National Institute for Health and Care Excellence. "

Commencement Information
I1160 Sch. 17 para. 4 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

5 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert— " The National Institute for Health and Care Excellence. "

Commencement Information
I1161 Sch. 17 para. 5 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Employment Rights Act 1996 (c. 18)

6 (1) The Employment Rights Act 1996 is amended as follows.

(2) In section 50 (right to time off for public duties) in subsection (8), after paragraph (ab) insert—

"(ac) the National Institute for Health and Care Excellence,".

(3) In section 218 (change of employer) in subsection (10), after paragraph (cb) insert—

"(cc) the National Institute for Health and Care Excellence,".

Commencement Information
I1162 Sch. 17 para. 6 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Data Protection Act 1998 (c. 29)

7 In section 69 of the Data Protection Act 1998 (meaning of "health professional") in subsection (3), after paragraph (fa) insert—

"(fb) the National Institute for Health and Care Excellence,".

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I1163 Sch. 17 para. 7 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Freedom of Information Act 2000 (c. 36)

8 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general) at the appropriate place insert— " The National Institute for Health and Care Excellence. "

Commencement Information
I1164 Sch. 17 para. 8 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

International Development Act 2002 (c. 1)

9 In Schedule 1 to the International Development Act 2002 (bodies which may enter agreements to provide international development assistance etc.) after the entry for an NHS foundation trust insert— " The National Institute for Health and Care Excellence. "

Commencement Information
I1165 Sch. 17 para. 9 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service Act 2006 (c. 41)

10 (1) The National Health Service Act 2006 is amended as follows.

(2) In section 9 (NHS contracts) in subsection (4), after paragraph (k) insert—

"(ka) NICE,".

(3) In section 71 (schemes for losses and liabilities of certain health service bodies) in subsection (2), after paragraph (d) insert—

"(da) NICE,".

(4) In section 72 (co-operation between NHS bodies)—

(a) the existing text becomes subsection (1), and

(b) after that subsection insert—

"(2) For the purposes of this section, NICE is an NHS body."

(5) In section 275 (interpretation) in subsection (1), after the definition of "NHS trust" insert—

""NICE" means the National Institute for Health and Care Excellence;".

Commencement Information
I1166 Sch. 17 para. 10 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

National Health Service (Wales) Act 2006 (c. 42)

11 In section 7 of the National Health Service (Wales) Act 2006 (NHS contracts) in subsection (4), after paragraph (k) insert—

"(ka) the National Institute for Health and Care Excellence,".

Commencement Information
I1167 Sch. 17 para. 11 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Social Care Act 2008 (c. 14)

12 (1) The Health and Social Care Act 2008 is amended as follows.

(2) Omit section 45 (standards set by the Secretary of State) and the preceding cross-heading.

(3) In section 53 (information and advice given by Care Quality Commission to Secretary of State) in subsection (3)—

(a) at the end of paragraph (a) insert "or", and

(b) omit paragraph (c) and the word "or" immediately preceding it.

Commencement Information
I1168 Sch. 17 para. 12 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health Act 2009 (c. 21)

13 In section 2 of the Health Act 2009 (duty to have regard to the NHS Constitution) in subsection (2), after paragraph (d) insert—

"(da) the National Institute for Health and Care Excellence;".

Commencement Information
I1169 Sch. 17 para. 13 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Equality Act 2010 (c. 15)

14 In Part 1 of Schedule 19 to the Equality Act 2010 (bodies subject to public sector equality duty) at the end of the group of entries for bodies whose functions relate to the health service add— " The National Institute for Health and Care Excellence. "

Commencement Information
I1170 Sch. 17 para. 14 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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SCHEDULE 18

Section 252

THE HEALTH AND SOCIAL CARE INFORMATION CENTRE

Membership, appointment, etc.

1 (1) The Information Centre consists of—

(a) at least six members appointed by the Secretary of State (referred to in this Schedule as the "non-executive members"), and

(b) not more than five other members appointed by the non-executive members (referred to in this Schedule as the "executive members").

(2) One of the non-executive members must be appointed as the chair.

(3) One of the executive members must be appointed as the chief executive; but the appointment may not be made without the approval of the Secretary of State.

(4) The first chief executive is to be appointed by the Secretary of State.

(5) The executive members are employees of the Information Centre.

Commencement Information
I1171 Sch. 18 para. 1 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Tenure of non-executive office

2 (1) The chair and other non-executive members—

(a) hold and vacate office in accordance with the terms of their appointments, but

(b) may resign office by giving notice to the Secretary of State.

(2) The Secretary of State may remove a person from office as the chair or other non-executive member on any of the following grounds—

(a) incapacity,

(b) misbehaviour, or

(c) failure to carry out his or her duties as a non-executive member.

(3) The Secretary of State may suspend a person from office as the chair or other non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (2).

(4) A non-executive member may not be appointed for a period of more than four years.

(5) A person who ceases to be the chair or another non-executive member is eligible for re-appointment.

Commencement Information
I1172 Sch. 18 para. 2 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
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Suspension from non-executive office

3 (1) This paragraph applies where a person is suspended under paragraph 2(3).

(2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice.

(3) The notice may be—

(a) delivered in person (in which case, the person is taken to receive it when it is delivered), or

(b) sent by first class post to the person's last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).

(4) The initial period of suspension must not exceed six months.

(5) The Secretary of State may at any time review the suspension.

(6) The Secretary of State—

(a) must review the suspension if requested in writing by the person to do so, but

(b) need not review the suspension less than three months after the beginning of the initial period of suspension.

(7) Following a review during a period of suspension, the Secretary of State may—

(a) revoke the suspension, or

(b) suspend the person for another period of not more than six months from the expiry of the current period.

(8) The Secretary of State must revoke the suspension if the Secretary of State—

(a) decides that there are no grounds to remove the person from office under paragraph 2(2), or

(b) decides that there are grounds to do so but does not remove the person from office under that provision.

Commencement Information
I1173 Sch. 18 para. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

4 (1) This paragraph applies where a person is suspended from office as the chair under paragraph 2(3).

(2) The Secretary of State may appoint a non-executive member as the interim chair to exercise the chair's functions.

(3) The interim chair—

(a) holds and vacates office in accordance with the terms of the appointment, but

(b) may resign office by giving notice in writing to the Secretary of State.

(4) Appointment as interim chair is for a term not exceeding the shorter of—

(a) the period ending with either—

(i) the appointment of a new chair, or

(ii) the revocation or expiry of the existing chair's suspension, and

(b) the remainder of the interim chair's term as a non-executive member.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) A person who ceases to be the interim chair is eligible for re-appointment.

Commencement Information
I1174 Sch. 18 para. 4 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Remuneration etc. of non-executive members

5 (1) The Information Centre must pay to the non-executive members such remuneration and allowances as the Secretary of State may determine.

(2) The Information Centre must pay or make provision for the payment of such pensions, allowances or gratuities as the Secretary of State may determine to or in respect of any person who is or has been a non-executive member.

(3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, the Information Centre must pay compensation to the person of such amount as the Secretary of State may determine.

Commencement Information
I1175 Sch. 18 para. 5 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Staff

6 (1) The Information Centre may appoint such persons to be employees of the Centre as it considers appropriate.

(2) Employees of the Information Centre are to be paid such remuneration and allowances as the Centre may determine.

(3) Employees of the Information Centre are to be appointed on such other terms and conditions as the Centre may determine.

(4) The Information Centre may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of the Centre.

(5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), the Centre must obtain the approval of the Secretary of State to its policy on that matter.

Commencement Information
I1176 Sch. 18 para. 6 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Committees

7 (1) The Information Centre may appoint such committees and sub-committees as it considers appropriate.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) A committee or sub-committee may consist of or include persons who are not members or employees of the Information Centre.

(3) The Information Centre may pay such remuneration and allowances as it may determine to any person who—

(a) is a member of a committee or sub-committee, but

(b) is not an employee of the Centre,

whether or not that person is a non-executive member of the Centre.

Commencement Information

I1177 Sch. 18 para. 7 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Procedure

8 (1) The Information Centre may regulate its own procedure.

(2) The validity of any act of the Information Centre is not affected by any vacancy among the members or by any defect in the appointment of a member.

Commencement Information

I1178 Sch. 18 para. 8 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Exercise of functions

9 The Information Centre may arrange for any function exercisable by it to be exercised on its behalf by—

(a) a non-executive member;

(b) an employee (including an executive member);

(c) a committee or sub-committee.

Commencement Information

I1179 Sch. 18 para. 9 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

General powers

10 (1) The Information Centre may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions.

(2) Except as provided by paragraph 11(3), the Information Centre has no power to borrow money.

(3) The Information Centre may do any of the following only with the approval of the Secretary of State—

(a) form, or participate in the forming of, companies,

(b) invest in companies (whether by acquiring assets, securities or rights or otherwise), and

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(c) provide loans and guarantees and make other kinds of financial provision to or in respect of companies.

(4) The approval of the Secretary of State may be given for the purposes of sub-paragraph (3) subject to such conditions as the Secretary of State thinks appropriate.

(5) In this paragraph "company" has the same meaning as in the Companies Acts (see section 1(1) of the Companies Act 2006).

Commencement Information
I1180 Sch. 18 para. 10 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Finance

11 (1) The Secretary of State may make payments to the Information Centre out of money provided by Parliament of such amounts as the Secretary of State thinks appropriate.

(2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State thinks appropriate.

(3) The Secretary of State may lend money to the Information Centre on such terms (including as to repayment and interest) as the Secretary of State may determine.

Commencement Information
I1181 Sch. 18 para. 11 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Reports

12 (1) As soon as practicable after the end of each financial year, the Information Centre must prepare an annual report on how it has exercised its functions during the year.

(2) The Information Centre must—
(a) lay a copy of the report before Parliament, and
(b) once it has done so, send a copy of it to the Secretary of State.

(3) The Information Centre must provide the Secretary of State with such other reports and information relating to the exercise of the Centre's functions as the Secretary of State may require.

(4) In this paragraph and paragraph 14 "financial year" means—
(a) the period beginning on the day on which section 252 comes into force and ending on the following 31 March, and
(b) each successive period of 12 months.

Commencement Information
I1182 Sch. 18 para. 12 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Accounts

13 (1) The Information Centre must keep proper accounts and proper records in relation to the accounts.

(2) The Secretary of State may, with the approval of the Treasury, give directions to the Information Centre as to—

(a) the content and form of its accounts, and

(b) the methods and principles to be applied in the preparation of its accounts.

(3) In sub-paragraph (2) a reference to accounts includes the Information Centre's annual accounts prepared under paragraph 14 and any interim accounts prepared by virtue of paragraph 15.

Commencement Information

I1183 Sch. 18 para. 13 partly in force; Sch. 18 para. 13 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I1184 Sch. 18 para. 13 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

14 (1) The Information Centre must prepare annual accounts in respect of each financial year.

(2) The Information Centre must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on the annual accounts, and

(b) lay copies of them and the report before Parliament.

Commencement Information

I1185 Sch. 18 para. 14 partly in force; Sch. 18 para. 14 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I1186 Sch. 18 para. 14 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

15 (1) The Secretary of State may, with the approval of the Treasury, direct the Information Centre to prepare accounts in respect of such period or periods as may be specified in the direction ("interim accounts").

(2) The Information Centre must send copies of any interim accounts to the Secretary of State and the Comptroller and Auditor General within such period as the Secretary of State may direct.

(3) The Comptroller and Auditor General must—

(a) examine, certify and report on any interim accounts sent by virtue of sub-paragraph (2), and

(b) if the Secretary of State so directs—

(i) send a copy of the report on the accounts to the Secretary of State, and

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(ii) lay copies of them and the report before Parliament.

Commencement Information

I1187 Sch. 18 para. 15 partly in force; Sch. 18 para. 15 in force for specified purposes at Royal Assent, see s. 306(1)(d)

I1188 Sch. 18 para. 15 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Seal and evidence

16 (1) The application of the Information Centre's seal must be authenticated by the signature of the chair or of any employee who has been authorised (generally or specifically) for that purpose.

(2) A document purporting to be duly executed under the Information Centre's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Commencement Information

I1189 Sch. 18 para. 16 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status

17 (1) The Information Centre must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

(2) The Information Centre's property must not be regarded as property of, or property held on behalf of, the Crown.

Commencement Information

I1190 Sch. 18 para. 17 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

SCHEDULE 19

Section 277

PART 9: CONSEQUENTIAL AMENDMENTS

Public Bodies (Admission to Meetings) Act 1960 (c. 67)

1 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies to which that Act applies) in paragraph 1, after paragraph (n) (inserted by Schedule 17) insert—

"(o) the Health and Social Care Information Centre."

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I1191 Sch. 19 para. 1 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Parliamentary Commissioner Act 1967 (c. 13)

2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc. subject to investigation) at the appropriate place insert— " Health and Social Care Information Centre. "

Commencement Information
I1192 Sch. 19 para. 2 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

House of Commons Disqualification Act 1975 (c. 24)

3 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert— " The Health and Social Care Information Centre. "

Commencement Information
I1193 Sch. 19 para. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

4 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert— " The Health and Social Care Information Centre. "

Commencement Information
I1194 Sch. 19 para. 4 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Access to Health Records Act 1990 (c. 23)

5 In section 11 of the Access to Health Records Act 1990 (interpretation) in the definition of "health service body", at the end insert—

"(f) the Health and Social Care Information Centre;".

Commencement Information
I1195 Sch. 19 para. 5 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Employment Rights Act 1996 (c. 18)

6 (1) The Employment Rights Act 1996 is amended as follows.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(2) In section 50 (right to time off for public duties) in subsection (8), after paragraph (ac) (inserted by Schedule 17) insert—

"(ad) the Health and Social Care Information Centre,".

(3) In section 218 (change of employer) in subsection (10), after paragraph (cc) (inserted by Schedule 17) insert—

"(cd) the Health and Social Care Information Centre,".

Commencement Information
I1196 Sch. 19 para. 6 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Data Protection Act 1998 (c. 29)

7 In section 69 of the Data Protection Act 1998 (meaning of "health professional") in subsection (3), after paragraph (fb) (inserted by Schedule 17) insert—

"(fc) the Health and Social Care Information Centre,".

Commencement Information
I1197 Sch. 19 para. 7 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Freedom of Information Act 2000 (c. 36)

8 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general) at the appropriate place insert— " The Health and Social Care Information Centre. "

Commencement Information
I1198 Sch. 19 para. 8 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service Act 2006 (c. 41)

9 (1) The National Health Service Act 2006 is amended as follows.

(2) In section 9 (NHS contracts) in subsection (4), after paragraph (ka) (inserted by Schedule 17) insert—

"(kb) the Health and Social Care Information Centre,".

(3) In section 71 (schemes for losses and liabilities of certain health service bodies) in subsection (2), after paragraph (da) (inserted by Schedule 17) insert—

"(db) the Health and Social Care Information Centre,".

(4) In section 72 (co-operation between NHS bodies), after subsection (2) (inserted by Schedule 17 to this Act) insert—

"(3) For the purposes of this section, the Health and Social Care Information Centre is an NHS body."

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Commencement Information
I1199 Sch. 19 para. 9 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service (Wales) Act 2006 (c. 42)

10 (1) The National Health Service (Wales) Act 2006 is amended as follows.

(2) In section 7 (NHS contracts) in subsection (4), after paragraph (ka) (inserted by Schedule 17) insert—

"(kb) the Health and Social Care Information Centre,".

Commencement Information
I1200 Sch. 19 para. 10 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Social Care Act 2008 (c. 14)

11 In section 64 of the Health and Social Care Act 2008 (power of the Care Quality Commission to require documents and information etc. from certain persons) in subsection (2)—

(a) omit the "or" after paragraph (d), and

(b) after paragraph (e) insert ", or

(f) the Health and Social Care Information Centre."

Commencement Information
I1201 Sch. 19 para. 11 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health Act 2009 (c. 21)

12 In section 2 of the Health Act 2009 (duty to have regard to the NHS Constitution), in subsection (2) after paragraph (da) (inserted by Schedule 17) insert—

"(db) the Health and Social Care Information Centre;".

Commencement Information
I1202 Sch. 19 para. 12 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Equality Act 2010 (c. 15)

13 In Part 1 of Schedule 19 to the Equality Act 2010 (bodies subject to public sector equality duty) at the end of the group of entries for bodies whose functions relate to the health service add— " The Health and Social Care Information Centre. "

Commencement Information
I1203 Sch. 19 para. 13 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULE 20

Sections 278, 279 and 280

PART 10: CONSEQUENTIAL AMENDMENTS AND SAVINGS

PART 1

THE ALCOHOL EDUCATION AND RESEARCH COUNCIL

Consequential amendments

1 Omit the entry for the Alcohol Education and Research Council in each of the following—

(a) Schedule 2 to the Parliamentary Commissioner Act 1967, and

(b) Part 6 of Schedule 1 to the Freedom of Information Act 2000.

Commencement Information
I1204 Sch. 20 para. 1 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

2 Omit the entry in Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 for the liquidator appointed under section 2 of the Licensing (Alcohol Education and Research) Act 1981.

Commencement Information
I1205 Sch. 20 para. 2 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

3 In consequence of the repeal made by section 278(2)—

(a) in Schedule 2 to the Trustee Act 2000, omit paragraph 40 (and the preceding cross-heading), and

(b) in Schedule 3 to the Health Act 2009, omit paragraph 2 (and the preceding cross-heading).

Commencement Information
I1206 Sch. 20 para. 3 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

Savings

4 (1) Anything which is in the process of being done by the Alcohol Education and Research Council under an enactment immediately before abolition may be continued by the Secretary of State.

(2) Anything which the Council is required to do under an enactment before abolition may, in so far as it has not been done by the Council, be done by the Secretary of State after abolition.

(3) The Secretary of State must prepare a report on the activities of the Council during the period that begins with the 1 April before abolition and ends with abolition.

(4) In this paragraph—

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"abolition" means the commencement of section 278(1);

"enactment" includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978).

Commencement Information
I1207 Sch. 20 para. 4 in force at 1.7.2012 by S.I. 2012/1319, **art. 2(3)**

PART 2

THE APPOINTMENTS COMMISSION

Consequential amendments

5 (1) Omit the entry for the Appointments Commission in each of the following—

(a) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975,

(b) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, and

(c) Part 6 of Schedule 1 to the Freedom of Information Act 2000.

(2) In consequence of those repeals, in Schedule 8 to the Health Act 2006, omit paragraphs 4, 5 and 45(3) (and the cross-heading preceding each of paragraphs 4 and 5).

Commencement Information
I1208 Sch. 20 para. 5 in force at 31.10.2012 by S.I. 2012/1831, **art. 2(3)**

6 Omit paragraph 1A(4) of Schedule 1 (membership of governing Council) to each of the following—

(a) the Medical Act 1983,

(b) the Dentists Act 1984,

(c) the Opticians Act 1989,

(d) the Osteopaths Act 1993, and

(e) the Chiropractors Act 1994.

Commencement Information
I1209 Sch. 20 para. 6 in force at 31.10.2012 by S.I. 2012/1831, **art. 2(3)**

7 In consequence of the repeal made by section 279(2)—

(a) in Schedule 1 to the National Health Service (Consequential Provisions) Act 2006, omit paragraphs 284 to 286,

(b) in Schedule 5 to the Health and Social Care Act 2008, omit paragraphs 79 and 80 (and the preceding cross-heading),

(c) in Schedule 10 to that Act, omit paragraphs 20 to 23 (and the preceding cross-heading), and

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(d) in Schedule 3 to the Health Act 2009, omit paragraph 8 (and the preceding cross-heading).

Commencement Information
I1210 Sch. 20 para. 7 in force at 31.10.2012 by S.I. 2012/1831, **art. 2(3)**

Savings

8 (1) Anything which is in the process of being done by the Appointments Commission under an enactment immediately before abolition may be continued by the Secretary of State.

(2) If abolition is to occur at a time other than immediately after the end of a financial year within the meaning of paragraph 22 of Schedule 4 to the Health Act 2006 (accounts), the period that begins with the 1 April before abolition and ends with abolition is to be treated as a financial year for the purposes of that paragraph.

(3) Despite section 279(2), paragraph 22 of that Schedule is to continue to have effect for the purpose of imposing the duties under sub-paragraphs (2), (3)(b) and (4) of that paragraph; and for that purpose—

(a) the duty under sub-paragraph (2) of that paragraph, in so far as it has not been discharged by the Commission, must be discharged by the Secretary of State, and

(b) the duty under sub-paragraph (3)(b) of that paragraph must be discharged by the Secretary of State.

(4) Subject to that, anything which the Commission is required to do under an enactment before abolition may, in so far as it has not been done by the Commission, be done by the Secretary of State after abolition.

(5) In this paragraph—

"abolition" means the commencement of section 279(1);

"enactment" includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978).

Commencement Information
I1211 Sch. 20 para. 8 in force at 31.10.2012 by S.I. 2012/1831, **art. 2(3)**

PART 3

THE NATIONAL INFORMATION GOVERNANCE BOARD FOR HEALTH AND SOCIAL CARE

Consequential amendments

9 (1) Omit the entry for the National Information Governance Board for Health and Social Care in each of the following—

(a) Schedule 2 to the Parliamentary Commissioner Act 1967,

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(b) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, and

(c) Part 6 of Schedule 1 to the Freedom of Information Act 2000.

(2) In consequence of those repeals, in Schedule 14 to the Health and Social Care Act 2008, omit paragraphs 2 to 4 (and the cross-heading preceding each of those paragraphs).

Commencement Information
I1212 Sch. 20 para. 9 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

10 (1) In section 271 of the National Health Service Act 2006 (territorial limit of exercise of functions), in subsection (3), omit paragraph (fa).

(2) In consequence of that repeal, in Schedule 14 to the Health and Social Care Act 2008, omit paragraph 5 (and the preceding cross-heading).

Commencement Information
I1213 Sch. 20 para. 10 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

11 In consequence of the repeal made by section 280(2), omit sections 157(1) and 158 of the Health and Social Care Act 2008.

Commencement Information
I1214 Sch. 20 para. 11 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Savings

12 (1) Anything which is in the process of being done by the National Information Governance Board for Health and Social Care under an enactment immediately before abolition may be continued by the Secretary of State.

(2) Despite section 280(2), section 250D of the National Health Service Act 2006 (annual report) is to continue to have effect for the purpose of imposing the duty under subsection (1)(a); and for that purpose—

(a) if abolition is to occur at a time other than immediately after the end of a reporting year within the meaning of that section, the period that begins with the 1 April before abolition and ends with abolition is to be treated as a reporting year for the purposes of that section, and

(b) the duty under subsection (1)(a) of that section must be discharged by the Secretary of State.

(3) Anything which the Board is required to do under an enactment before abolition may, in so far as it has not been done by the Board, be done by the Secretary of State after abolition.

(4) In this paragraph—

"abolition" means the commencement of section 280(1);

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

"enactment" includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978).

Commencement Information
I1215 Sch. 20 para. 12 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

SCHEDULE 21

Section 297

AMENDMENTS RELATING TO RELATIONSHIPS BETWEEN THE HEALTH SERVICES

National Health Service (Scotland) Act 1978 (c. 29)

1 The National Health Service (Scotland) Act 1978 is amended as follows.

Commencement Information
I1216 Sch. 21 para. 1 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**
I1217 Sch. 21 para. 1 in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

2 (1) Section 17A (NHS contracts) is amended as follows.

(2) In subsection (1), in paragraph (b) for "(q)" substitute "(s)".

(3) In subsection (2)—

(a) after paragraph (c) insert —

"(ca) the Scottish Ministers;",

(b) for paragraph (f) substitute—

"(f) Local Health Boards established under section 11 of the National Health Service (Wales) Act 2006;",

(c) for paragraph (ff) substitute—

"(fa) Special Health Authorities established under section 28 of the National Health Service Act 2006;

(fb) Special Health Authorities established under section 22 of the National Health Service (Wales) Act 2006;",

(d) omit paragraph (h),

(e) before paragraph (k) insert—

"(ja) the National Health Service Commissioning Board;

(jb) clinical commissioning groups established under section 14D of the National Health Service Act 2006;",

(f) in paragraph (k), for "section 5 of the National Health Service and Community Care Act 1990" substitute "section 18 of the National Health Service (Wales) Act 2006",

(g) omit paragraph (ka),

(h) after paragraph (m) insert—

"(ma) the Welsh Ministers;",

(i) after paragraph (p) omit the "and,",

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(j) after paragraph (q) insert—

"(r) the National Institute for Health and Care Excellence; and

(s) the Health and Social Care Information Centre,".

(4) After subsection (10) insert—

"(11) Subsection (12) applies where a person mentioned in subsection (2)(fa), (ja), (jb), (m), (r) or (s) is a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within subsection (1); and

(b) also falls within the definition of NHS contract in section 9 of the National Health Service Act 2006.

(12) Subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State of references to the Scottish Ministers and the Secretary of State acting jointly.

(13) Subsection (14) applies where a person mentioned in subsection (2)(f), (fb), (k) or (ma) is a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within subsection (1); and

(b) also falls within the definition of NHS contract in section 7 of the National Health Service (Wales) Act 2006.

(14) Subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement with the substitution for references to the Secretary of State—

(a) in so far as the arrangement or proposed arrangement relates to reserved matters within the meaning of the Scotland Act 1998, of references to the Secretary of State and the Welsh Ministers acting jointly; and

(b) for all other purposes, of references to the Scottish Ministers and Welsh Ministers acting jointly.

(15) Subsection (16) applies (and subsections (12) and (14) do not apply) where a cross-border Special Health Authority is a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within subsection (1); and

(b) also falls within the definition of NHS contract in section 9 of the National Health Service Act 2006 and the definition of NHS contract in section 7 of the National Health Service (Wales) Act 2006.

(16) Subsections (4) to (9) shall apply in relation to that arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State—

(a) where the cross-border Special Health Authority is exercising functions in relation to England only, of references to the Secretary of State and the Scottish Ministers acting jointly;

(b) where the Authority is exercising functions in relation to Wales only, of references to the Welsh Ministers and the Scottish Ministers acting jointly; and

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(c) where the Authority is exercising functions in relation to England and Wales, of references to the Secretary of State and the Welsh Ministers acting concurrently with each other and jointly with the Scottish Ministers.

(17) In subsections (15) and (16), "cross-border Special Health Authority" means a Special Health Authority which is established under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 by virtue of—

(a) paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, or

(b) the power under section 28 of the National Health Service Act 2006 and the power under section 22 of the National Health Service (Wales) Act 2006 being exercised together."

Commencement Information

I1218 Sch. 21 para. 2(2)(3)(d)(g)(i)(j)(4) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I1219 Sch. 21 para. 2(3)(a)-(c)(e)(h) in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)**

3 (1) Section 17C (personal medical or dental services) is amended as follows.

(2) In subsection (5)—

(a) in paragraph (a), for the words from "the Board by" to the end substitute "the Board by a Local Health Board", and

(b) in paragraph (b), for the words from "exercisable by" to "the Authority" substitute "exercisable by a Local Health Board in relation to an agreement made under section 50 of the National Health Service (Wales) Act 2006 to be exercisable on behalf of the Local Health Board".

(3) In subsection (6), for the first definition substitute—

""Local Health Board" means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;".

(4) In consequence of the amendments made by sub-paragraphs (2) and (3), omit paragraph 12 of Schedule 3 to the National Health Service Reform and Health Care Professions Act 2002, and the cross-heading which precedes it.

Commencement Information

I1220 Sch. 21 para. 3 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PROSPECTIVE

4 In section 17D (persons with whom agreements under section 17C may be made), in subsection (2), in paragraph (b) of the definition of "NHS employee"—

(a) in sub-paragraph (ii) omit "a Primary Care Trust or",

(b) in sub-paragraph (iii)—

(i) after "NHS trust" insert "within the meaning of the National Health Service Act (Wales) 2006", and

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(c) omit the words from "and in this paragraph" to the end.

Commencement Information
I1221 Sch. 21 para. 4(a)(c) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 3, 7-9)

National Health Service Act 2006 (c. 41)

5 The National Health Service Act 2006 is amended as follows.

Commencement Information
I1222 Sch. 21 para. 5 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**
I1223 Sch. 21 para. 5 in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

6 In section 9 (NHS contracts), in subsection (4)—

(a) after paragraph (f) insert—

"(fa) a Special Health Board constituted under that section,", and

(b) after paragraph (n) insert—

"(na) the Scottish Ministers,

(nb) Healthcare Improvement Scotland,".

Commencement Information
I1224 Sch. 21 para. 6 in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)**

7 After section 10 (provision about NHS contracts entered into by a body in Northern Ireland) insert—

"**10A Provision for bodies in Scotland**

"**10A "10A Provision for bodies in Scotland**

(1) Subsection (2) applies where the Scottish Ministers are, or a body mentioned in paragraph (f), (fa), (h), (l) or (nb) of section 9(4) is, a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within the definition of NHS contract in section 9(1), and

(b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978.

(2) Subsections (5) to (13) of section 9 apply in relation to the arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State of references to the Secretary of State and the Scottish Ministers acting jointly.

(3) Subsection (4) applies (and subsection (2) does not apply) where a cross-border Special Health authority is a party or prospective party to an arrangement or proposed arrangement which—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(a) falls within the definition of NHS contract in section 9(1), and

(b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978 and the definition of NHS contract in section 7(1) of the National Health Service (Wales) Act 2006.

(4) Subsections (5) to (13) of section 9 apply in relation to that arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Secretary of State—

(a) where the cross-border Special Health Authority is exercising functions in relation to England only, of references to the Secretary of State and the Scottish Ministers acting jointly; and

(b) where the Authority is exercising functions in relation to England and Wales, of references to the Secretary of State and the Welsh Ministers acting concurrently with each other and jointly with the Scottish Ministers.

(5) In subsections (3) and (4), "cross-border Special Health Authority" means a Special Health Authority which is established under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 by virtue of—

(a) paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, or

(b) the power under section 28 of the National Health Service Act 2006 and the power under section 22 of the National Health Service (Wales) Act 2006 being exercised together."

Commencement Information

I1225 Sch. 21 para. 7 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PROSPECTIVE

8 (1) In section 66 (intervention orders), for subsection (1) substitute—

"(1) This section applies to—

(a) NHS trusts, and

(b) Special Health Authorities."

(2) Until the commencement of section 33 of this Act, subsection (1) of section 66 of the National Health Service Act 2006 has effect as if it included a reference to Strategic Health Authorities.

(3) Until the commencement of section 34 of this Act, subsection (1) of section 66 of the National Health Service Act 2006 has effect as if it included a reference to Primary Care Trusts.

PROSPECTIVE

9 (1) Section 67 (effect of intervention orders) is amended as follows.

Status: *This version of this Act contains provisions that are prospective.*
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(2) In subsection (1)—

(a) in paragraph (a) omit "or Local Health Board, or a member of the board of directors of an NHS trust", and

(b) in paragraph (b)—

(i) omit "or Local Health Board," and

(ii) in that paragraph omit ", or an executive director of an NHS trust".

(3) In subsection (7)(a) omit "(or in the case of an NHS trust to the membership of its board of directors)".

PROSPECTIVE

10 (1) In section 68 (default powers), for subsection (1) substitute—

"(1) This section applies to—

(a) NHS trusts established under section 25, and

(b) Special Health Authorities."

(2) Until the commencement of section 33 of this Act, subsection (1) of section 68 of the National Health Service Act 2006 has effect as if it included a reference to Strategic Health Authorities.

(3) Until the commencement of section 34 of this Act, subsection (1) of section 68 of the National Health Service Act 2006 has effect as if it included a reference to Primary Care Trusts.

11 In section 78 (directed partnership arrangements), in subsection (3)—

(a) in paragraph (c) after "NHS trusts" insert "established under section 25", and

(b) omit paragraph (d).

Commencement Information

I1226 Sch. 21 para. 11 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

National Health Service (Wales) Act 2006 (c. 42)

12 The National Health Service (Wales) Act 2006 is amended as follows.

Commencement Information

I1227 Sch. 21 para. 12 in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I1228 Sch. 21 para. 12 in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

PROSPECTIVE

13 In section 7 (NHS contracts), in subsection (4)—

(a) omit paragraph (a),

(b) omit paragraph (b),

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(c) before paragraph (c) insert—

"(ba) the National Health Service Commissioning Board,

(bb) a clinical commissioning group,",

(d) after paragraph (f) insert—

"(fa) a Special Health Board constituted under that section,",

(e) omit paragraph (j), and

(f) after paragraph (n) insert—

"(na) the Scottish Ministers,

(nb) Healthcare Improvement Scotland,".

Commencement Information

I1229 Sch. 21 para. 13(a)(b) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I1230 Sch. 21 para. 13(c)-(f) in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)**

14 After section 8 insert—

"**8A Provision for bodies in Scotland**

"**8A "8A Provision for bodies in Scotland**

(1) Subsection (2) applies where the Scottish Ministers are, or a body mentioned in paragraph (f), (fa), (h), (l) or (nb) of section 7(4) is, a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within the definition of NHS contract in section 7(1), and

(b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978.

(2) Subsections (5) to (13) of section 7 apply in relation to the arrangement or proposed arrangement with the substitution for references to the Welsh Ministers—

(a) in so far as the arrangement or proposed arrangement relates to reserved matters within the meaning of the Scotland Act 1998, of references to the Welsh Ministers and the Secretary of State acting jointly, and

(b) for all other purposes, of references to the Welsh Ministers and the Scottish Ministers acting jointly.

(3) Subsection (4) applies (and subsection (2) does not apply) where a cross-border Special Health Authority is a party or prospective party to an arrangement or proposed arrangement which—

(a) falls within the definition of NHS contract in section 7(1), and

(b) also falls within the definition of NHS contract in section 17A of the National Health Service (Scotland) Act 1978 and the definition of NHS contract in section 9(1) of the National Health Service Act 2006.

(4) Subsections (5) to (13) of section 7 apply in relation to the arrangement or proposed arrangement (except in so far as it relates to reserved matters within the meaning of the Scotland Act 1998) with the substitution for references to the Welsh Ministers—

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(a) where the cross-border Special Health Authority is exercising functions in relation to Wales only, of references to the Welsh Ministers and the Scottish Ministers acting jointly, and

(b) where the Authority is exercising functions in relation to England and Wales, of references to the Welsh Ministers and the Secretary of State acting concurrently with each other and jointly with the Scottish Ministers.

(5) In subsections (3) and (4), "cross-border Special Health Authority" means a Special Health Authority which is established under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 by virtue of—

(a) paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, or

(b) the power under section 28 of the National Health Service Act 2006 and the power under section 22 of the National Health Service (Wales) Act 2006 being exercised together."

Commencement Information
I1231 Sch. 21 para. 14 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

15 In section 10 (Welsh Ministers' arrangements with other bodies), in subsection (4) omit paragraph (b).

Commencement Information
I1232 Sch. 21 para. 15 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

16 In section 13 (exercise of Local Health Board functions), in subsection (3)—

(a) omit paragraph (a), and

(b) before paragraph (b) insert—

"(aa) the National Health Service Commissioning Board,

(ab) clinical commissioning groups,".

Commencement Information
I1233 Sch. 21 para. 16 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

17 In section 17 (plans for improving health etc), in subsection (6)—

(a) in paragraph (g)—

(i) after "between" insert "the National Health Service Commissioning Board, clinical commissioning groups,",

(ii) omit "Strategic Health Authorities,",

(iii) omit "Primary Care Trusts,", and

(iv) for "section 24 of the National Health Service Act 2006 (c. 41)" substitute "the preparation of joint health and wellbeing strategies under section 116A of the Local Government and Public Involvement in Health Act 2007", and

(b) in paragraph (h)—

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(i) after "provision by" insert "the National Health Service Commissioning Board, clinical commissioning groups,",

(ii) omit "Strategic Health Authorities,",

(iii) omit "Primary Care Trusts", and

(iv) for "section 24 of the National Health Service Act 2006 (c. 41)" substitute "joint health and wellbeing strategies under section 116A of the Local Government and Public Involvement in Health Act 2007".

Commencement Information
I1234 Sch. 21 para. 17 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

18 In section 22 (special health authorities), omit subsection (6).

Commencement Information
I1235 Sch. 21 para. 18 in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)**

19 In section 26 (intervention orders), in subsection (1) after "other than" insert "the National Health Service Commissioning Board, clinical commissioning groups and".

Commencement Information
I1236 Sch. 21 para. 19 in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)**

20 In section 27 (effect of intervention orders), in subsection (1)—

(a) omit "Strategic Health Authority," in each place it occurs, and

(b) omit "Primary Care Trust," in each place it occurs.

Commencement Information
I1237 Sch. 21 para. 20 in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)**

21 In section 28 (default powers), in subsection (1) after "other than" insert "the National Health Service Commissioning Board, clinical commissioning groups and".

Commencement Information
I1238 Sch. 21 para. 21 in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)**

22 In section 34 (power of local authorities to make payments), in subsection (1)—

(a) after "payments to" insert "the National Health Service Commissioning Board, a clinical commissioning group",

(b) omit "a Strategic Health Authority,", and

(c) omit "a Primary Care Trust".

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Commencement Information
I1239 Sch. 21 para. 22 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

23 In section 36 (directed partnership arrangements), in subsection (3)—
(a) omit paragraph (a), and
(b) omit paragraph (b).

Commencement Information
I1240 Sch. 21 para. 23 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

24 (1) Section 38 (supply of goods and services by the Welsh Ministers) is amended as follows.

(2) In subsection (3)—
(a) in paragraph (a) omit "or by a Primary Care Trust", and
(b) in paragraph (b) omit ", a Primary Care Trust".

(3) In subsection (6) omit ", a Primary Care Trust" in each place it occurs.

(4) In subsection (7), in paragraph (d) omit ", Primary Care Trusts".

Commencement Information
I1241 Sch. 21 para. 24 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

25 In section 39 (conditions of supply under section 38), in subsection (3), omit "Primary Care Trusts,".

Commencement Information
I1242 Sch. 21 para. 25 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

26 In section 41 (duty to provide primary medical services), omit subsection (4).

Commencement Information
I1243 Sch. 21 para. 26 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

27 (1) Section 51 (persons with whom agreements for provision of primary medical services may be made) is amended as follows.

(2) In subsection (1)(g), omit "Primary Care Trust or".

(3) In subsection (3), in paragraph (b) of the definition of "NHS employee", omit "Primary Care Trust or".

Commencement Information
I1244 Sch. 21 para. 27 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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28 In section 56 (primary dental services), omit subsection (4).

Commencement Information
I1245 Sch. 21 para. 28 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

29 (1) Section 65 (persons with whom agreements for provision of primary dental services may be made) is amended as follows.

(2) In subsection (1)(g), omit "Primary Care Trust or".

(3) In subsection (3), in paragraph (b) of the definition of "NHS employee", omit "Primary Care Trust or".

Commencement Information
I1246 Sch. 21 para. 29 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

30 In section 106 (provision about regulations under section 105), in subsection (2)—

(a) omit paragraph (e), and

(b) after paragraph (e) insert—

"(f) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by the National Health Service Commissioning Board under or by virtue of the National Health Service Act 2006,"

Commencement Information
I1247 Sch. 21 para. 30 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

31 (1) Section 115 (national disqualification) is amended as follows.

(2) In subsection (1)—

(a) omit paragraph (e),

(b) after that paragraph insert—

"(f) the lists corresponding to the lists mentioned in paragraphs (a) to (d) prepared by the National Health Service Commissioning Board under or by virtue of the National Health Service Act 2006,"

(c) after "such lists prepared by each Local Health Board" insert "and the National Health Service Commissioning Board", and

(d) omit "and each Primary Care Trust".

(3) In subsection (6)—

(a) in paragraph (a)—

(i) omit "or Primary Care Trust", and

(ii) before "may include" insert "or the National Health Service Commissioning Board", and

(b) in paragraph (b)—

(i) omit "and each Primary Care Trust", and

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(ii) after "included" insert ", and the National Health Service Commissioning Board,".

Commencement Information
I1248 Sch. 21 para. 31 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

32 In section 131 (payment of travelling expenses), in paragraph (c) omit ", and, in such cases as may be prescribed, to a Primary Care Trust,".

Commencement Information
I1249 Sch. 21 para. 32 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

33 In section 144 (persons and bodies about which provision is made), in subsection (2) for "section 22(6)" substitute "section 206(1)".

Commencement Information
I1250 Sch. 21 para. 33 in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)**

34 In section 161 (transfers of trust property), in subsection (2)(c)—

(a) after "for" insert "the National Health Service Commissioning Board or a clinical commissioning group,", and

(b) omit "a Primary Care Trust,"

Commencement Information
I1251 Sch. 21 para. 34 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

35 (1) Section 162 (transfer of functions and property to or from special trustees) is amended as follows.

(2) In subsection (1)—

(a) after the first "by" insert "the National Health Service Commissioning Board, a clinical commissioning group,", and

(b) omit "a Primary Care Trust,".

(3) In subsection (3)(a)—

(a) after "for" insert "the National Health Service Commissioning Board or a clinical commissioning group", and

(b) omit "a Primary Care Trust,".

Commencement Information
I1252 Sch. 21 para. 35 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

36 In section 181 (payment for medical examination before application for admission to hospital under the Mental Health Act), in subsection (2)(b)—

(a) omit "a Primary Care Trust,", and

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(b) before "NHS trust" insert "an".

Commencement Information
I1253 Sch. 21 para. 36 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

37 In section 197 (university clinical teaching and research), in subsection (2)(a)—
(a) after "exercisable by" insert "the National Health Service Commissioning Board,",
(b) after "a" insert "clinical commissioning group,",
(c) omit "a Strategic Health Authority,", and
(d) omit "Primary Care Trust,".

Commencement Information
I1254 Sch. 21 para. 37 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

38 (1) In section 206 (interpretation), in subsection (1)—
(a) before the definition of "dental practitioner" insert—

""clinical commissioning group" means a body established under section 14D of the National Health Service Act 2006,",

(b) after the definition of "modifications" insert—

""NHS body" means—
(a) a Special Health Authority,
(b) an NHS trust,
(c) an NHS foundation trust,
(d) a Local Health Board,
(e) the National Health Service Commissioning Board, and
(f) a clinical commissioning group."

(c) omit the definition of "Primary Care Trust", and
(d) omit the definition of "Strategic Health Authority".

(2) Until the commencement of section 34 of this Act, the definition of "NHS body" in section 206(1) of the National Health Service (Wales) Act 2006 has effect as if it included a reference to a Primary Care Trust.

Commencement Information
I1255 Sch. 21 para. 38(1)(a)(b)(2) in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)** (with art. 13)
I1256 Sch. 21 para. 38(1)(c)(d) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

39 In Schedule 2 (Local Health Boards), in paragraph 9—
(a) omit "Strategic Health Authorities and",
(b) omit "under paragraph 7(8) of Schedule 2 to the National Health Service Act 2006 (c. 41) and", and
(c) for "that Act" substitute "the National Health Service Act 2006".

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Commencement Information
I1257 Sch. 21 para. 39 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

40 (1) Schedule 3 (NHS trusts) is amended as follows.

(2) In paragraph 5(1)(f) omit "Primary Care Trust,".

(3) In paragraph 6—
(a) omit "Strategic Health Authority," in each place it occurs, and
(b) omit ", Primary Care Trust" in each place it occurs.

(4) In paragraph 7, in sub-paragraph (3) omit "Strategic Health Authority".

(5) In paragraph 8 omit ", Primary Care Trust" in each place it occurs.

(6) In paragraph 9—
(a) in sub-paragraph (1)—
(i) omit "a Strategic Health Authority,", and
(ii) omit "a Primary Care Trust,",
(b) in sub-paragraph (3)—
(i) omit "Strategic Health Authority,", and
(ii) omit "Primary Care Trust,",
(c) in sub-paragraph (6)—
(i) omit "a Strategic Health Authority,", and
(ii) omit "a Primary Care Trust,", and
(d) in sub-paragraph (7)—
(i) omit "Strategic Health Authority," in each place it occurs,
(ii) omit "or belong to a Primary Care Trust", and
(iii) omit "Primary Care Trust,".

(7) In paragraph 18—
(a) omit "Strategic Health Authority,", and
(b) omit "Primary Care Trust,".

(8) In paragraph 30—
(a) omit "Strategic Health Authority,", and
(b) omit "Primary Care Trust,".

Commencement Information
I1258 Sch. 21 para. 40 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

41 (1) Schedule 5 (Special Health Authorities) is amended as follows.

(2) In paragraph 3—
(a) in sub-paragraph (8)—
(i) omit "or to a Strategic Health Authority", and
(ii) omit ", a Strategic Health Authority", and
(b) in sub-paragraph (12)—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(i) in paragraph (a) omit "or of a Strategic Health Authority", and
(ii) in paragraph (b) omit "or by a Strategic Health Authority".

(3) In paragraph 13, for "a Strategic Health Authority" substitute "the National Health Service Commissioning Board".

Commencement Information
I1259 Sch. 21 para. 41 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

42 (1) Schedule 10 (further provision about Community Health Councils) is amended as follows.

(2) In paragraph 2—
(a) omit ", Strategic Health Authorities" in each place it occurs, and
(b) omit ", Primary Care Trusts" in each place it occurs.

(3) In paragraph 3—
(a) omit paragraph (b), and
(b) omit paragraph (c).

Commencement Information
I1260 Sch. 21 para. 42 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Health and Personal Social Services (Northern Ireland) Order 1991 (No. 194 (N.I. 1))

43 (1) Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991 (health and social services contracts) is amended as follows.

(2) In paragraph (2)—
(a) in sub-paragraph (g)—
(i) omit paragraph (i),
(ii) omit paragraph (ii), and
(iii) omit paragraph (iii),
(b) after that sub-paragraph insert—
"(ga) the National Health Service Commissioning Board;
(gb) clinical commissioning groups established under section 14D of the National Health Service Act 2006;
(gc) Special Health Authorities established under section 28 of that Act;
(gd) Special Health Authorities established under section 22 of the National Health Service (Wales) Act 2006;
(ge) Local Health Boards established under section 11 of that Act;
(gf) NHS trusts established under section 18 of that Act;",
(c) in sub-paragraph (h) after paragraph (i) insert—
"(ia) Special Health Boards;",
(d) after sub-paragraph (h) insert—

Status: *This version of this Act contains provisions that are prospective.*
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"(ha) Healthcare Improvement Scotland,",

(e) omit sub-paragraph (i), and

(f) before sub-paragraph (j) insert—

"(ia) the National Institute for Health and Care Excellence;

(ib) the Health and Social Care Information Centre;".

(3) In paragraph (10) for "paragraph 2(g), (h), (i) or (j)" substitute "any of sub-paragraphs (g) to (gf), (h), (ha), (ia), (ib) and (j) of paragraph (2)".

Commencement Information

I1261 Sch. 21 para. 43(1) in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I1262 Sch. 21 para. 43(1) in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I1263 Sch. 21 para. 43(2)(a)(i)(ii)(f) in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

I1264 Sch. 21 para. 43(2)(b) in force at 1.2.2013 for specified purposes by S.I. 2012/2657, **art. 2(4)**

I1265 Sch. 21 para. 43(2)(c)-(e)(3) in force at 1.2.2013 by S.I. 2012/2657, **art. 2(4)** (with art. 14)

SCHEDULE 22

Section 300(2)

PROPERTY TRANSFER SCHEMES

Commencement Information

I1266 Sch. 22 in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**

I1267 Sch. 22 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

Transferor	***Permitted transferees***
A Primary Care Trust	The Secretary of State
	The National Health Service Commissioning Board
	A clinical commissioning group
	A local authority
	The Care Quality Commission
	Monitor
	A Special Health Authority
	Any public authority which provides services as part of the health service in England
	Any other person who provides services as part of the health service in England and consents to the transfer
	A qualifying company
	Any person with whom the Secretary of State has made, or has decided to make,

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Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

	an agreement under section 12ZA(1) of the Mental Health Act 1983
A Strategic Health Authority	The Secretary of State
	The National Health Service Commissioning Board
	A clinical commissioning group
	A local authority
	The Care Quality Commission
	Monitor
	A Special Health Authority
	Any public authority which provides services as part of the health service in England
	Any other person who provides services as part of the health service in England and consents to the transfer
	A qualifying company
	Any person with whom the Secretary of State has made, or has decided to make, an agreement under section 12ZA(1) of the Mental Health Act 1983
The Special Health Authority known as the National Institute for Health and Clinical Excellence	The National Institute for Health and Care Excellence (established under section 232)
The Special Health Authority known as the Health and Social Care Information Centre	The Health and Social Care Information Centre (established under section 252)
The Special Health Authority known as the NHS Institute for Innovation and Improvement	The National Health Service Commissioning Board
The Special Health Authority known as the National Patient Safety Agency	The National Health Service Commissioning Board
	The Health and Social Care Information Centre
The Special Health Authority known as the NHS Business Services Authority	The Health and Social Care Information Centre
The Appointments Commission	A Minister of the Crown
	A Special Health Authority
The General Social Care Council	The Secretary of State
	The Health and Care Professions Council
	A person authorised by the Secretary of State under subsection (5)(b) of section 67 of the Care Standards Act 2000 to exercise functions of the Secretary of State under that section

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	Any other person who carries on activities in connection with social work or social care work
The Health Protection Agency	The Secretary of State
The Secretary of State	The National Health Service Commissioning Board
	The Health and Social Care Information Centre
	A Special Health Authority
	A qualifying company

SCHEDULE 23

Section 300(3)

STAFF TRANSFER SCHEMES

Commencement Information
I1268 Sch. 23 in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**
I1269 Sch. 23 in force at 1.10.2012 for specified purposes by S.I. 2012/1831, **art. 2(2)**

Transferor	***Permitted transferees***
Any Primary Care Trust	The Secretary of State
	The National Health Service Commissioning Board
	A clinical commissioning group
	A local authority
	The Care Quality Commission
	A Special Health Authority
	Any public authority which exercises functions in relation to health and is prescribed in regulations
	A qualifying company
	Any person with whom the Secretary of State has made, or has decided to make, an agreement under section 12ZA(1) of the Mental Health Act 1983
Any Strategic Health Authority	The Secretary of State
	The National Health Service Commissioning Board
	A clinical commissioning group

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	The Care Quality Commission
	Monitor
	A Special Health Authority
	Any public authority which exercises functions in relation to health and is prescribed in regulations
	A qualifying company
	Any person with whom the Secretary of State has made, or has decided to make, an agreement under section 12ZA(1) of the Mental Health Act 1983
The Special Health Authority known as National Institute for Health and Clinical Excellence	The National Institute for Health and Care Excellence (established under section 232)
The Special Health Authority known as the Health and Social Care Information Centre	The Health and Social Care Information Centre (established under section 252)
The Special Health Authority known as the NHS Institute for Innovation and Improvement	The National Health Service Commissioning Board
The Special Health Authority known as the National Patient Safety Agency	The National Health Service Commissioning Board
	The Health and Social Care Information Centre
The Special Health Authority known as the NHS Business Services Authority	The Health and Social Care Information Centre
The Appointments Commission	A Minister of the Crown
	A Special Health Authority
The General Social Care Council	The Secretary of State
	The Health and Care Professions Council
	A person authorised by the Secretary of State under subsection (5)(b) of section 67 of the Care Standards Act 2000 to exercise functions of the Secretary of State under that section
	Any other person who carries on activities in connection with social work or social care work
The Health Protection Agency	The Secretary of State
The Secretary of State	The National Health Service Commissioning Board
	The Care Quality Commission
	Monitor

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

The Health and Social Care Information Centre

Status:
This version of this Act contains provisions that are prospective.

Changes to legislation:
Health and Social Care Act 2012 is up to date with all changes known to be in force on or before 28 November 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

- s. 38(5)(d) modified by 2020 c. 9 s. 1
- s. 38(5)(d) repealed by 2020 c. 17 Sch. 28
- s. 72(2)(c) omitted by S.I. 2019/93 Sch. 1 para. 13
- s. 72(2)(c)(d) omitted by virtue of S.I. 2019/93, Sch. 1 para. 13(2) (as substituted) by S.I. 2019/1245 reg. 28 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 72(2)(d) omitted by S.I. 2019/93 Sch. 1 para. 13
- s. 88 omitted by 2012 c. 7 s. 180(3)
- s. 124(9) omitted by S.I. 2019/777 reg. 5(a)
- s. 125(9) omitted by S.I. 2019/777 reg. 5(b)
- s. 145(3)(b) and word omitted by S.I. 2018/1149 Sch. para. 43
- s. 174(2) omitted by 2012 c. 7 Sch. 14 para. 13(2)
- s. 176(2) omitted by 2012 c. 7 Sch. 14 para. 15(7)
- s. 176(8) omitted by 2012 c. 7 Sch. 14 para. 18(5)
- s. 176(9) omitted by 2012 c. 7 Sch. 14 para. 19(4)
- s. 177(1) omitted by 2012 c. 7 Sch. 14 para. 20(2)
- s. 177(3) omitted by 2012 c. 7 Sch. 14 para. 22(5)
- s. 178(1) omitted by 2012 c. 7 Sch. 14 para. 23(5)
- s. 178(3) omitted by 2012 c. 7 Sch. 14 para. 24(4)
- Sch. 4 para. 109(a) omitted by 2016 c. 10 Sch. 1 para. 16(a)
- Sch. 4 para. 110(3)(a) omitted by 2016 c. 10 Sch. 1 para. 16(a)
- Sch. 4 para. 111(3)(a) omitted by 2016 c. 10 Sch. 1 para. 16(a)
- Sch. 4 para. 113(a) omitted by 2016 c. 10 Sch. 1 para. 16(a)
- Sch. 5 para. 78 omitted by 2018 anaw 2 Sch. 1 para. 6(q)
- Sch. 5 para. 79 omitted by 2018 anaw 2 Sch. 1 para. 6(q)
- Sch. 10 para. 10(2A)(b) words substituted by S.I. 2019/93, Sch. 1 para. 13(4) (as substituted) by S.I. 2019/1245 reg. 28 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- Sch. 14 para. 15(4) words substituted by 2014 c. 23 s. 85(15)(a)
- Sch. 21 para. 34(a) omitted by 2016 c. 10 Sch. 1 para. 16(b)
- Sch. 21 para. 35(3)(a) omitted by 2016 c. 10 Sch. 1 para. 16(b)
- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by S.I. 2012/2657 art. 15

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by S.I. 2019/1245 reg. 28 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by 2013 c. 24 Sch. 14 para. 21
- s. 106(3A)(3B) inserted by 2013 c. 24 Sch. 14 para. 22