

# HEALTH AND SOCIAL CARE ACT 2012

---

## EXPLANATORY NOTES

### OVERVIEW OF THE STRUCTURE

#### **Part 1 – The health service in England**

7. **Part 1** sets out a framework in which functions in relation to the health service are conferred directly on the organisations responsible for exercising them. The Secretary of State will continue to be under a duty to promote a comprehensive health service, and he will continue to have ministerial accountability to Parliament for the health service. The Secretary of State will be held accountable for the system through a new duty to keep under review the effective exercise of functions by the national-level bodies (such as the NHS Commissioning Board, Monitor and the Care Quality Commission) and to report annually on the performance of the health service.
8. The Secretary of State will also have direct responsibility (with local authorities) to protect and improve public health.
9. **Part 1** also establishes a new non-departmental public body to be known as the National Health Service Commissioning Board (NHS Commissioning Board), accountable to the Secretary of State. The NHS Commissioning Board will have broad overarching duties, in conjunction with the Secretary of State, to promote the comprehensive health service (other than in relation to public health) and to exercise its functions so as to secure that services are provided for the purposes of the comprehensive health service.
10. **Part 1** also makes provision for the establishment of clinical commissioning groups (CCGs), which will be statutory corporate bodies, established on the grant of an application by the NHS Commissioning Board. These bodies will be responsible for commissioning the majority of health services.
11. **Part 1** also contains related miscellaneous measures including provision in respect of the abolition of Strategic Health Authorities (SHAs) and Primary Care Trusts (PCTs), amendments to the Mental Health Act 1983 and provision in respect of emergency preparedness and pharmaceutical services expenditure.

#### **Part 2 – Further provision about public health**

12. **Part 2** deals with a number of provisions relating to the public health service including the abolition of the Health Protection Agency, functions in relation to biological substances and radiation protection, the repeal of the AIDS (Control) Act 1987 and co-operation with bodies exercising functions in relation to public health.

#### **Part 3 – Regulation of health and adult social care services**

13. **Part 3** sets out provisions for regulation of health and adult care services in England and defines the role of the sector regulator, which shall be known as Monitor.
14. **Chapter 1** makes provision for the Independent Regulator of NHS foundation trusts to continue in existence and to be known instead as “Monitor”. It outlines Monitor’s general duties and introduces Schedule 8, which addresses Monitor’s constitution

and public accountabilities. Monitor's general duties apply to the exercise of all its functions, including the functions it will continue to exercise under the NHS Act. Monitor's overriding duty will be to protect and promote the interests of patients by promoting economy, efficiency and effectiveness in the provision of healthcare, whilst maintaining or improving quality.

15. **Chapter 2** establishes concurrent powers for Monitor, alongside the Office of Fair Trading (OFT), under specific sections of the Competition Act 1998 and Enterprise Act 2002, as they will apply in the health care sector in England. It also provides delegated powers for the Secretary of State to make regulations imposing requirements on commissioners of NHS services, regarding good practice in procurement, protecting patients' rights to patient choice, imposing prohibitions on anti-competitive conduct and managing potential conflicts of interest, which Monitor will enforce. It is intended that these regulations will enshrine a full range of options for commissioners, including the ability to secure services without competition, where this would be in patients' interests.
16. **Chapter 3** provides Monitor with the necessary powers to run a system of licensing of providers of NHS services as a vehicle for discharging its regulatory functions. These include powers to set and enforce requirements to secure continued provision of NHS services.
17. **Chapter 4** makes provision for Monitor, in conjunction with the NHS Commissioning Board, to regulate prices for NHS services through a national tariff. It also makes provision for references to the Competition Commission to adjudicate over disputed changes to methodologies for determining prices under the national tariff.
18. **Chapter 5** enables Monitor to secure continuity of NHS services provided by companies, through a process of health special administration. It makes provision for the Secretary of State to make regulations to establish a health special administration regime, including powers to apply the Insolvency Act 1986 with modifications.
19. **Chapter 6** provides for a duty on Monitor to establish funding mechanisms to enable trust special administrators appointed to foundation trusts and health special administrators appointed to companies to secure continued access to NHS services.
20. **Chapter 7** deals with miscellaneous matters concerning Part 3 including the service of documents, electronic communications, interpretation and consequential amendments.

#### **Part 4 – NHS foundation trusts and NHS trusts**

21. This Part amends Chapter 5 of Part 2 of the NHS Act, which makes provision for NHS foundation trusts.
22. It removes various restrictions on foundation trusts and makes changes to the authorisation of foundation trusts, in light of the provisions in Part 3 for Monitor to become a provider regulator and to license all providers of NHS services. It repeals NHS trust legislation, and Monitor's power to authorise new foundation trusts, as the Government intends all NHS trusts to become foundation trusts. It amends the duties on governors and directors and introduces new powers for governors, including oversight and control of plans by directors to earn non-NHS income. It makes amendments to the financing and accounting arrangements of foundation trusts.
23. In addition, it makes amendments to the process of foundation trust mergers and enables acquisitions, separations and dissolution of foundation trusts. It repeals provision about de-authorisation, preventing foundation trusts being returned to NHS trust status, and allows Monitor to operate the failure arrangements for foundation trusts, ahead of their replacement by the new failure arrangements set out in Part 3 of this Act. In the longer-term, when most of Monitor's specific functions in relation to foundation trusts will be repealed, there will still be a specific role for Monitor in maintaining an adapted register of foundation trusts. Monitor will also have power to establish a panel to advise foundation trust governors.

## **Part 5 – Public involvement and local government**

24. **Chapter 1** makes provision for the creation of a new national body, Healthwatch England, to be established as a statutory committee within the Care Quality Commission. It also makes provision about Local Healthwatch organisations in each local authority area.
25. **Chapter 2** deals with the health scrutiny functions of local authorities and makes provision for the establishment of Health and Wellbeing Boards in each upper tier local authority area. It sets out their role in preparing the joint strategic needs assessment, the joint health and wellbeing strategy and in promoting integrated working between NHS, public health and social care commissioners. This Chapter also contains provisions to make it possible for foundation trusts and CCGs to be designated as Care Trusts.
26. **Chapter 3** removes the current restrictions on those to whom the Health Service Commissioner (more commonly known as the Health Service Ombudsman) can send investigation reports and statements of reasons.

## **Part 6 – Primary care services**

27. **Part 6** makes changes to the NHS Act that are mainly required to revise, but not substantially change, the existing provisions with relation to medical, dental, ophthalmic and pharmaceutical services, as a consequence of the creation of the NHS Commissioning Board, CCGs and the public health service and the abolition of PCTs and SHAs.

## **Part 7 – Regulation of health and social care workers**

28. **Part 7** makes various changes to the regulation of health and social care workers. It provides for the abolition of the General Social Care Council and the transfer of some of its functions to the Health Professions Council, which will be renamed the Health and Care Professionals Council to reflect its wider remit across health and social care.
29. It also makes changes to the funding and functions of the Council for Healthcare Regulatory Excellence (CHRE), which is to be renamed the Professional Standards Authority for Health and Social Care.
30. Provision is also made in this Part for the abolition of the Office of the Health Professions Adjudicator.

## **Part 8 – The National Institute for Health and Care Excellence**

31. **Part 8** re-establishes the National Institute for Health and Clinical Excellence Special Health Authority as a non-departmental public body. It will also be re-named as the National Institute for Health and Care Excellence.
32. This Part also sets out how NICE will develop quality standards, give advice, guidance or provide information, and make recommendations on areas including medicines and treatment.

## **Part 9 – Health and Adult Social Care Services: Information**

33. **Chapter 1** sets out how the Secretary of State or the NHS Commissioning Board may prepare and publish information standards.
34. **Chapter 2** re-establishes the Health and Social Care Information Centre Special Health Authority as a non-departmental public body. Its functions relate to the collection, analysis and publication or other dissemination of information relevant to the health service or adult social care at a national level.
35. **Chapter 2** also sets out powers for the Information Centre to require or request information to be provided to it by anyone providing publicly funded health services or

*These notes refer to the Health and Social Care Act 2012  
(c.7) which received Royal Assent on 27 March 2012*

adult social care. This Chapter includes provision for the Information Centre to seek to minimise the burden of central information collections.

### **Part 10 – Abolition of certain public bodies**

36. **Part 10** contains provisions that abolish the Alcohol Education and Research Council, the Appointments Commission, the National Information Governance Board for Health and Social Care, the National Patient Safety Agency and the NHS Institute for Innovation and Improvement. Section 250 of the NHS Act (which allows for the establishment of standing advisory committees) is repealed, with a saving provision for the continuation of the Joint Committee on Vaccination and Immunisation as a statutory body.

### **Part 11 – Miscellaneous**

37. **Part 11** contains a number of miscellaneous provisions, including provisions addressing duties for bodies to co-operate, arrangements with devolved authorities, supervised community treatment and transfer schemes.

### **Part 12 – Final provisions**

38. **Part 12** deals with various technical matters such as power to make consequential amendments, orders and regulations, financial provision, commencement, extent and the short title of the Act.