

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

The health service: overview

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

83. This section inserts new section 1D into the NHS Act. It seeks to establish an overarching principle that the Secretary of State should act with a view to promoting autonomy in the health service. Subsection (1) of new section 1D identifies two constituent elements of autonomy: freedom for bodies/persons in the health service (such as CCGs or Monitor) to exercise their functions in a manner that they consider most appropriate (new section 1D(1)(a)), and not imposing unnecessary burdens upon those bodies/persons (new section 1D(1)(b)). The section provides that when exercising his functions in relation to the health service, the Secretary of State must have regard to the desirability of securing these aspects of autonomy so far as consistent with the interests of the health service. Subsection (2) of new section 1D makes clear that in the event of a conflict between those aspects of autonomy, on the one hand, and the discharge by the Secretary of State of his duties to promote the comprehensive health service and as to securing the provision of services on the other, it is the latter which take precedence.
84. This duty would therefore require the Secretary of State, when considering whether to place requirements on the NHS and local authorities, to make a judgement as to whether these were in the interests of the health service. If challenged, the Secretary of State would have to be able to justify why these requirements were necessary.
85. The duty covers the arm's-length body sector and commissioners and providers of NHS services. Although the Secretary of State will not in future have the same direct relationship with providers of NHS services as he has under existing legislation with NHS trusts, he will still have certain functions which impact on providers. For example, he will be able to require certain terms to be included in contracts entered into by the NHS Commissioning Board and CCGs for the provision of NHS services, by virtue of regulations made under new section 6E of the NHS Act.
86. [Section 23](#) of the Act inserts new section 13F into the NHS Act, placing a parallel duty on the NHS Commissioning Board to promote autonomy.
87. These duties are intended to address the policy outlined in *Liberating the NHS: Legislative Framework and Next Steps*¹ to:
- “enshrine the principle of autonomy at the heart of the NHS” by “maximising the autonomy of individual commissioners and providers and minimising the obligations

¹ Copies are available in the Library, and is also available from the Department of Health website at: <http://www.dh.gov.uk/en/Healthcare/LiberatingtheNHS/index.htm>

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

placed upon them, in a way that is consistent with the effective operation of a comprehensive health service