

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – The Health Service in England**

#### **Arrangements for provision of health services**

#### *Section 15 - Power to require Board to commission certain health services*

141. This section inserts new section 3B into the NHS Act which confers a regulation-making power on the Secretary of State to require the NHS Commissioning Board to commission certain services as part of the health service, to such extent as it considers necessary to meet all reasonable requirements. The types of services that the NHS Commissioning Board may be required to commission are specified in this section, and it allows other services to be specified in the regulations.
142. Prior to the amendments made by this Act, most NHS services were commissioned by PCTs. In future it is intended that CCGs will commission most health services and the NHS Commissioning Board will have duties to commission certain other health services. Where the NHS Commissioning Board has this function, CCGs would not be able to commission those services.
143. The NHS Commissioning Board would be responsible for the commissioning of primary medical, dental, ophthalmic and community pharmaceutical services, and this is set out in Part 6 of the Act.
144. The section provides that regulations may require the NHS Commissioning Board to commission certain other services as part of the health service.
145. Firstly, regulations under new section 3B may require the NHS Commissioning Board to make arrangements for the provision of such dental services as are prescribed. The regulations may for example provide that the NHS Commissioning Board commission dental services other than those it is required to commission under Part 5 of the NHS Act (as amended by Schedule 4). Part 5 of the NHS Act refers to “primary dental services” and under this section the NHS Commissioning Board could, for example, be required to arrange for the provision of “secondary dental services” such as community dental care and hospital dental services which PCTs prior to their abolition commissioned.
146. Secondly, regulations under new section 3B may require the NHS Commissioning Board to commission health services for members of the Armed Forces and their families. The Ministry of Defence, through the Defence Medical Services, provides primary care services to all members of the Armed Forces and a small number of families resident in England. The NHS currently provides community services, and non-elective and elective secondary services, to the Armed Forces. Regulations under new section 3B would describe the types of services to be provided by the NHS Commissioning Board to members of the Armed Forces or their families.

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

147. Thirdly, this section provides that regulations under new section 3B may require the NHS Commissioning Board to make arrangements for the provision of healthcare services to people detained in prisons in England or other accommodation of a prescribed description. The provision of primary care services to prisoners in England will be covered separately by the NHS Commissioning Board's functions in relation to primary care.
148. Lastly, regulations under new section 3B may require the NHS Commissioning Board to make arrangements for the provision of such other services or facilities as may be prescribed. It is intended that the services covered by this regulation making power will, for example, include services commonly described as "specialised services" for rare conditions, which under existing legislation are commissioned nationally by SHAs and regionally by groups of PCTs for each SHA region because of their low volume and high cost.
149. Subsection (2) of the new section provides that a service or facility may be prescribed under section 3B(1)(d) only if the Secretary of State considers it appropriate for the NHS Commissioning Board (rather than CCGs) to commission the service, taking into account the factors specified in subsection (3).
150. The Secretary of State could take into account the fact that one or more of the factors specified could suggest one course of action, while others could suggest something different- for example, suggesting the NHS Commissioning Board should be the commissioner for some specialised services which may not be expensive but may be low volume. The Secretary of State will take a view on the weight of the factors in order to decide whether the NHS Commissioning Board is the appropriate commissioner. The Secretary of State will be obliged to seek advice appropriate for enabling him to determine which services should be commissioned by the NHS Commissioning Board under this section, including from people or bodies with appropriate expertise and from the NHS Commissioning Board itself.