

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Further provision about local authorities' role in the health service

Section 32 - Complaints about exercise of public health functions by local authorities

395. This section inserts new section 73C into the NHS Act, which gives the Secretary of State powers to make regulations setting up procedures for dealing with complaints about the exercise of public health functions by local authorities in England.
396. Subsection (1) of the new section provides for regulations to be made providing for the handling and consideration of complaints. These would apply to the exercise by a local authority of any public health functions under the NHS Act (see in particular section 11); the exercise of the Secretary of State's public health functions by a local authority; the exercise by a local authority of other functions relating to public health which are the responsibility of its director of public health; or the provision of services by another person following arrangements made by a local authority in exercising these functions.
397. Under subsection (2), the regulations may provide for who may consider a complaint. This may be the relevant local authority, an independent panel or any other person or body. It is envisaged that regulations will provide that the complaint be made to the local authority that is the subject of the complaint, where an attempt will be made to investigate and resolve the matter.
398. Under subsection (3), the regulations may provide for a complaint, or any matter raised by a complaint, to be referred to a Local Commissioner (i.e. the local government ombudsman) for consideration as to whether to investigate the complaint under local Government legislation, or to any other person or body for consideration as to whether to take action otherwise than under the regulations.
399. Subsection (4) sets out that where regulations provide for a complaint to be referred to a Local Commissioner, they may provide for the complaint to be treated as complying with the requirements of the Local Government Act 1974 as to who can complain, and the procedure for making a complaint, to a Commissioner.
400. Subsection (5) provides that supplementary provisions in section 115 of the Health and Social Care (Community Health and Standards) Act 2003 apply in relation to regulations made under new section 73C. The regulations may therefore provide for matters such as who may make a complaint and to whom a complaint may be made, the complaints which may or may not be made, and the procedure for making, handling and considering a complaint. Provision may also be made in relation to charges in relation to the consideration of a complaint, making information available to the public about the procedures to be followed, and the disclosure of information or documents. The

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

Department envisages making provision similar to that in the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

401. Subsection (6) provides that 'local authority' has the same definition in new section 73C as in section 2B of the NHS Act; i.e. those local authorities which exercise public health functions under the Act (see section 9).