

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 29 - Other health service functions of local authorities under the 2006 Act

384. This section enables the transfer to local authorities of PCTs’ existing functions around dental public health, and extends to local authorities a duty to help deliver and sustain good health among the prison population.
385. *Subsection (2)* of this section amends section 111 of the NHS Act to provide for the transfer to local authorities of PCTs’ existing functions in relation to dental public health (as set out in regulations made by the Secretary of State). This allows the Secretary of State to specify in secondary legislation the activity that local authorities should undertake to promote good dental public health – this might include oral health education campaigns, for example.
386. *Subsection (3)* amends section 249 of the Act to extend to local authorities a duty to co-operate with the prison service with a view to improving the exercise of functions in relation to securing and maintaining the health of prisoners. The amendment would also enable the Secretary of State to make regulations enabling a local authority and the prison service to enter arrangements for the prison service to exercise local authority public health functions or for a local authority to exercise public health-related functions of the prison service.
387. In each case, the functions apply to those local authorities which have a duty to improve public health under new section 2B of the NHS Act. The Department’s view is that the functions are consistent with the new duties for health improvement.

Section 30 - Appointment of directors of public health

388. This section requires local authorities and the Secretary of State to appoint directors of public health and makes related provision. PCTs are currently required to appoint directors of public health to provide local leadership and co-ordination of public health activity, but the section would in effect transfer that requirement to local authorities. The intention is that the director of public health role will become integral to the new public health responsibilities that this Act confers on local authorities. The provision applies to local authorities which have a duty to improve public health under new section 2B of the NHS Act.
389. The section inserts a new section 73A into the NHS Act. Subsection (1) provides that each local authority must, acting jointly with the Secretary of State, appoint a director of public health. It then defines the responsibilities of directors of public health as including:

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

- a) the new health improvement duties that this Act would place on local authorities;
 - b) the exercise of any public health functions of the Secretary of State which the Secretary of State requires the local authority to exercise by regulations under section 6C of the NHS Act;
 - c) any public health activity undertaken by the local authority under arrangements with the Secretary of State;
 - d) local authority functions in relation to planning for, and responding to, emergencies that present a risk to public health;
 - e) the local authority role in co-operating with police, probation and prison services in relation to assessing risks of violent or sexual offenders; and
 - f) other public health functions that the Secretary of State may specify in regulations (e.g. functions in relation to making representations about the grant of a license to use premises for the supply of alcohol).
390. Directors of public health will be local authority employees. Local authorities will be able to dismiss their directors of public health, but only after consulting the Secretary of State (although the Secretary of State will not have a veto) (subsections (5) and (6)).
391. Where the Secretary of State considers a director of public health has failed or might have failed to carry out certain aspects of the director's responsibilities then the Secretary of State may require the local authority to take certain action. The responsibilities in question are the director's responsibilities for the exercise of the Secretary of State's public health functions which have been conferred on the local authority by regulations or agreement. The Secretary of State would not be able to take action in relation to the public health functions conferred directly on the local authority by the NHS Act (e.g. section 2B). The action which the Secretary of State may require consists of reviewing and investigating the director of public health's performance, considering any steps that may be necessary (including any that the Secretary of State may require the local authority to consider) and then reporting back to the Secretary of State on the action it has taken. See subsections (3) and (4).

Section 31 - Exercise of public health functions of local authorities

392. This section inserts a new section 73B into the NHS Act and applies to local authorities which have a duty to improve public health under new section 2B of the NHS Act. *Subsections (1) and (2)* require such local authorities to have regard to documents that the Secretary of State publishes for the purposes of the section, when exercising their public health functions; for example this power may be used to require local authorities to have regard to the Department's public health outcomes framework. The public health outcomes framework sets out the Government's goals for improving and protecting the nation's health and for narrowing health inequalities through improving the health of the poorest, fastest. Subsection (3) also provides that the Secretary of State may publish guidance to local authorities relating to their public health functions.
393. *Subsection (4)* provides that any document or guidance issued by the Secretary of State under this may include guidance to local authorities about the staff they employ to discharge their public health functions.
394. *Subsections (5) and (6)* require directors of public health to publish annual reports on the health of their local population and local authorities to publish that report. The reports are intended to help directors of public health to account for their activity and to chart progress over time.

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 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).