

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Emergency powers

Schedule 5 – Part 1: amendments of other enactments

605. This Schedule makes a number of consequential amendments to other Acts. Most of the consequential amendments in this Schedule address references to ‘PCTs’ and ‘SHAs’, removing references to those bodies and inserting references to CCGs, the NHS Commissioning Board and local authorities as necessary.
606. The following amendments make more substantive changes to other Acts:

<i>Act</i>	<i>Amendment</i>
<i>National Assistance Act 1948 (c.29)</i> , section 24.	This amends the definition of “NHS accommodation” in light of amendments to section 117 of the Mental Health Act 1983, removing references to PCTs.
<i>Local Government Act 1974 (c.7)</i> , section 26.	This extends the matters subject to investigation by the local government ombudsman to cover services provided, or to be provided, by local authorities pursuant to arrangements under section 7A of the NHS Act to exercise Secretary of State’s public health functions.
<i>Mental Health Act 1983 (c.20)</i> , sections 39 and 145.	The amendment to section 39 removes references to PCTs and inserts references to CCGs and the NHS Commissioning Board for the purposes of requiring them to provide information under section 39. The NHS Commissioning Board will only be required to provide information in relation to services or facilities the provision of which the Board arranges.
	The amendment to section 145 makes provision for circumstances in which Secretary of State may manage a hospital in exercise of public health functions.
<i>Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33)</i> , section 11.	The amendment to section 11 removes the duty on the Secretary of State to lay reports before Parliament on the development of health and social care services for persons with mental illness and for persons with learning disabilities.
<i>Local Government and Housing Act 1989 (c.42)</i> , section 2.	The amendment to section 2 of the Local Government and Housing Act 1989 (politically restricted posts) adds the director of public health to the list of statutory chief

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(c.7) which received Royal Assent on 27 March 2012*

<i>Act</i>	<i>Amendment</i>
	officers in section 2(6). As a statutory chief officer, a person appointed as a director of public health would hold a “politically restricted post”, prevented by the 1989 Act from being a member of a local authority and subject to other restrictions on political activity. This puts directors of public health in the same position as other statutory chief officers such as directors of adult social services.
<i>Freedom of Information Act 2000 (c.36,) Part 3 of schedule 1.</i>	The amendment inserts references to CCGs and the NHS Commissioning Board as ‘public authorities’ for the purposes of the Act.
<i>Health and Social Care (Community Health and Standards) Act 2003 (c.43,)section 45.</i>	The amendment removes the reference to regulations under section 12A(4) of the NHS Act, reflecting the changes to section 117 of the Mental Health Act 1983.
<i>Licensing Act 2003 (c.17), sections 5, 13, 16, 69 and 172B.</i>	The Police Reform and Social Responsibility Act 2011 amends the Licensing Act 2003 to add PCTs to the list of existing responsible authorities that are entitled to make representations to a licensing authority in relation to the application for the grant, variation or review of a licence to use premises for the supply of alcohol or to undertake certain entertainment activities. The 2011 Act also adds PCTs to the list of bodies which a licensing authority must consult before determining or revising its statement of licensing policy, and makes provision for representations by responsible authorities, including PCTs, in relation to the new “early morning alcohol restriction orders”.
	The amendments to sections 5(3), 13 (4), 69(4) and 172B(4) of the Licensing Act 2003 omit references to PCTs in the definitions of “relevant authority” and insert references to “the local authority in England whose public health functions are within the meaning of the NHS Act 2006 and are exercisable in respect of an area any part of which is in the licensing authority’s area”.
	The effect is that local authorities with responsibility for health improvement under section 2B of the NHS Act (as inserted by section 11 of this Act) would be responsible authorities able to make representations in relation to licence applications and early morning alcohol restriction orders affecting their area.
<i>Civil Contingencies Act 2004 (c.44), Schedule 1.</i>	The amendment removes references to SHAs and PCTs, and provides that the NHS Commissioning Board is a “category one responder” and CCGs are “category two responders” for the purposes of Part 1 of the Act. Category one responses have specific responsibilities to plan and respond to emergencies, while category two responders have responsibilities to co-operate with such arrangements.
<i>Mental Capacity Act 2005 (c.9), sections 35, 64 and Schedule A1.</i>	The amendment to section 35 makes local authorities, instead of the Secretary of State, responsible for making arrangements to enable independent mental capacity advocates to represent and support specified persons.
	The amendment to Schedule A1 removes references to PCTs and SHAs and inserts references to a local authority

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	as the supervisory body if the relevant person is ordinarily resident in England. There are also minor changes to the situation in Wales as regards the determination of who is a supervisory body. The reference to the Welsh Ministers, in contrast to the references in the Act to the National Assembly for Wales, is necessitated by devolution. The amendment also makes provision for circumstances in which Secretary of State may manage a hospital in exercise of public health functions.
<i>Safeguarding Vulnerable Groups Act 2006 (c.47)</i> , sections 6, 17, 21 and 59.	The amendment removes references to SHAs and PCTs and inserts references to CCGs and the NHS Commissioning Board in section 17.
	The amendment also removes references to section 12A(4) of the NHS Act, reflecting the changes to section 117 of the Mental Health Act 1983.
<i>Health and Social Care Act 2008 (c.14)</i> , sections 30, 39, 46, 48, 49, 54, 59, 64, 70, 72 and 81.	The amendment removes references to SHAs and PCTs and where appropriate, inserts references to CCGs and the NHS Commissioning Board.
	The amendment to sections 30 and 39 requires the Care Quality Commission to give notice to certain NHS bodies (when required by regulations) if it takes action against a registered provider.
	The amendment to section 46 removes the requirement on the Care Quality Commission to conduct periodic reviews of health care provided or commissioned by NHS bodies. The amendments to sections 48, 49, 70 and 72 also reflect this change.
	The amendment to section 54 inserts a reference to the NHS Commissioning Board and CCGs so that they are not included in the definition of 'English NHS Body' for the purpose of section 54(1) which relates to the Care Quality Commission's power to undertake studies designed to enable it to make recommendations for improving the management of an English NHS body.
	The amendment to section 59 means that the Secretary of State will not have the power to confer additional functions on the Care Quality Commission relating to improving the economy, efficiency and effectiveness and the financial or other management or operations of certain NHS bodies.
	The amendment to section 81 requires that the Care Quality Commission consults the NHS Commissioning Board on their proposals for the topics of their reviews, studies and investigations.