

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5 – Public involvement and local government**

##### *Chapter 1 – Public involvement*

##### **Healthwatch England**

##### *Section 181 - Healthwatch England*

1112. This section amends Schedule 1 to and Part 1 of the Health and Social Care Act 2008 (the 2008 Act) and makes consequential amendments to other enactments in relation to the establishment of Healthwatch England as a statutory committee of the Care Quality Commission (CQC).
1113. *Subsection (2)* inserts new sub-paragraphs into paragraph 6 of Schedule 1 to the 2008 Act. New sub-paragraph (1A) provides for the establishment of the Healthwatch England committee of the CQC in accordance with regulations. New sub-paragraph (1B) sets out Healthwatch England’s purpose. Healthwatch England will be a national body representing the views of users of health and social care services, other members of the public and Local Healthwatch organisations (as to which see section 182).
1114. New sub-paragraph (5A), inserted by *subsection (3)*, requires the regulations under sub-paragraph (1A) to require the person with power to appoint members to secure that a majority of the members are not members of the CQC. New sub-paragraph (5B) enables those regulations to specify other results to be secured. New sub-paragraph (5C) enables the regulations, in particular, to make provision about eligibility for appointment as a member, and about procedures for selecting or proposing persons to be appointed as members. New sub-paragraph (5D) enables the regulations, in particular, to make provision as to the removal or suspension of members and the payment of remuneration or allowances.
1115. *Subsection (4)* inserts new sections 45A to 45C into Chapter 3 of Part 1 of the 2008 Act. *Subsections (1) to (6)* of section 45A make provision as to the functions to be performed by Healthwatch England. *Subsection (1)* provides that those functions are functions of the CQC which the CQC must arrange for Healthwatch England to exercise on its behalf.
1116. The function in *subsection (2)* is a duty to provide Local Healthwatch organisations with advice and assistance of a general nature in relation to the making of arrangements with local authorities under section 221(1) of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act) (local arrangements relating to patient and public involvement in health and social care), the making of arrangements, pursuant to those arrangements, with “Local Healthwatch contractors” and the carrying-on of activities mentioned in section 221(2) of the 2007 Act. Those activities relate to patient and public involvement in health and social care. “Local Healthwatch contractors” are persons

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(individuals or bodies) who assist a Local Healthwatch organisation to carry on those activities or who carry on some of those activities on its behalf.

1117. The function in *subsection (3)* is a power to make recommendations to English local authorities about the making of arrangements with Local Healthwatch organisations under section 221(1) of the 2007 Act. The function in *subsection (4)* is a power to give written notice to an English local authority in circumstances where Healthwatch England is of the view that the activities mentioned in section 221(2) are not being properly carried on in its area.
1118. The function in *subsection (5)* read with *subsection (6)* is a duty to advise and provide information to the Secretary of State, the NHS Commissioning Board, Monitor and English local authorities on various matters. Those matters are the views of users of health or social care services and others on their needs for such services and their experiences of such services and the views of Local Healthwatch organisations and other persons on the standard of provision of such services and whether or how this could or should be improved.
1119. The function in *subsection (5)* could include informing the NHS Commissioning Board of concerns Healthwatch England has identified from feedback from Local Healthwatch organisations about problems with, for example, the commissioning of maternity services across England. *Subsection (7)* requires the Secretary of State, the NHS Commissioning Board, Monitor and English local authorities to inform Healthwatch England in writing of their response or proposed response, to advice given by Healthwatch England.
1120. *Subsection (8)* enables Healthwatch England to provide the CQC with advice and information on various matters. Those matters are the views of users of health or social care services and others on their needs for such services and their experiences of such services and the views of Local Healthwatch organisations and other persons on the standard of provision of such services and whether or how this could or should be improved. *Subsection (8)* also requires the CQC to inform Healthwatch England in writing of its response, or proposed response, to advice given by Healthwatch England.
1121. The CQC is required by *subsection (9)* of new section 45A to publish details of what arrangements it has made for Healthwatch England to perform its functions and these details must be published in a separate report to that published under section 83 (annual reports of the CQC). Healthwatch England is required by *subsection (10)*, when performing functions, to have regard to particular aspects of government policy where the Secretary of State so directs.
1122. New section 45B requires the CQC and Healthwatch England to have regard to any guidance from the Secretary of State on managing conflicts of interest between themselves. It requires the CQC, in making arrangements for Healthwatch England to exercise functions on its behalf under section 45A, and Healthwatch England, in exercising functions on behalf of the CQC, to have regard to any guidance issued by the Secretary of State on managing conflicts between the exercise of functions by the CQC and the exercise of functions on behalf of the CQC by Healthwatch England.
1123. New section 45C requires Healthwatch England to report annually to the CQC on the views of users of health or social care services and others on their needs for such services and their experiences of such services and the views of Local Healthwatch organisations and other persons on the standard of service provision and whether or how this could or should be improved. It also requires Healthwatch England to publish a report each year on how it has discharged functions during the year. *Subsection (2)* requires Healthwatch England to lay before Parliament its report on how it has discharged its functions and to send a copy of this report to the Secretary of State and to each Local Healthwatch organisation. *Subsection (3)* allows Healthwatch England to publish other reports at other times about matters relating to health and social care. *Subsection (4)* places a duty on Healthwatch England to have regard to recommendations from Local

Healthwatch organisations to publish reports on particular matters under *subsection (3)*. *Subsection (5)* requires that before publishing reports under section 45C(1)(b) or (3) Healthwatch England must exclude, as far as is practicable, information relating to an individual's private affairs which, if published, would seriously and prejudicially affect that individual's interests or might do so.

1124. *Subsections (5) to (10)* of section 181 amend section 82 of the 2008 Act which concerns a power for the Secretary of State to issue a direction to the CQC if the Secretary of State considers that the CQC is failing to carry out its functions, or to carry them out properly and enables the Secretary of State to carry out the CQC's functions if the CQC fails to comply with the direction. The amendments to section 82 ensure that the Secretary of State may similarly direct Healthwatch England if the Secretary of State considers that it is significantly failing or has significantly failed to carry out, or properly carry out, the functions set out in new section 45A or any other functions it is required to discharge. If Healthwatch England fails to comply with the direction, the amendments to section 82 enable the Secretary of State to carry out the function in question or to arrange for someone else to carry out the function.
1125. *Subsections (11) and (12)* of this section insert new *subsections (1A) and (2A)* into section 83 of the 2008 Act. New *subsection (1A)* has the effect that the duty on the CQC to report annually on its exercise of functions does not apply in relation to its functions under section 45A. The CQC is required by section 45A(1) to arrange for Healthwatch England to carry out those functions and the preparation of annual reports on those functions is the duty of Healthwatch England itself under section 45C(1) of the 2008 Act. New *subsection (2A)* inserted by *subsection (12)* has the effect that the CQC's annual report on the provision of NHS care and adult social services must separately set out and identify the contents of Healthwatch England's report made to it on the matters mentioned in section 45A(5). Those matters are the views of users of health or social care services and others on their needs for such services and their experiences of such services and the views of Local Healthwatch organisations and other persons on the standard of service provision and whether or how this could or should be improved.
1126. *Subsection (13)* makes consequential amendments to the Public Records Act 1958, the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 to provide that the records of Healthwatch England are public records for the purposes of the Public Records Act 1958 and that its members are disqualified from being members of the House of Commons and of the Northern Ireland Assembly.
1127. *Subsection (14)* has the effect that meetings of the Healthwatch England committee will, in general, have to be open to the public as per the Public Bodies (Admission to Meetings) Act 1960.

## **Local Healthwatch organisations**

### ***Section 182 – Activities relating to local care services***

1128. This section amends section 221 of the 2007 Act as part of a set of amendments to Part 14 of that Act, which concerns local arrangements for patient and public involvement in health and social care. Section 221 of the 2007 Act imposes a duty on local authorities to make contractual arrangements for the involvement of people in the commissioning, provision and scrutiny of health and social services. In this context *subsection (2)* of section 182 replaces references in section 221(2)(a), (b) and (c) of the 2007 Act to "people" with references to "local people"; and *subsection (8)* introduces a definition of "local people" in section 221(6).
1129. *Subsections (3) to (5)* further add to the list of Local Healthwatch activities mentioned in section 221(2) of the 2007 Act in relation to which local authorities must make contractual arrangements. *Subsection (3)* adds an activity of making people's views known and making reports and recommendations for improvements to health and social

care services to Healthwatch England. *Subsection (4)* read with *subsection (5)* adds activities of reaching views on service standards and improvements, making those views known to the Healthwatch England committee, giving advice and information about access to local health and social care services and about choices in relation to these services, making recommendations to Healthwatch England to advise the CQC to conduct special reviews or investigations or directly making such recommendations to the CQC, making recommendations to Healthwatch England to publish reports about particular matters relating to health or social care and assisting Healthwatch England. In accordance with amendments made by section 183 to section 222 of the 2007 Act the contractual arrangements would have to be made with Local Healthwatch organisations.

1130. *Subsection (6)* inserts new *subsection (3A)* into section 221 to place a duty on persons to whom the views of people are made known or reports or recommendations for service improvements are made under section 221(2)(d) to have regard to those views, reports or recommendations when exercising functions relating to health or social care services. Under section 221(2)(d) such views, reports or recommendations could be given or made to persons responsible for commissioning, providing, managing or scrutinising health or social care services.
1131. *Subsection (7)* requires the local authority to ensure that only one contract under section 221(1) (with a Local Healthwatch organisation) is in force in relation to its area at any one time.
1132. *Subsection (11)* inserts new section 45D into the 2008 Act which provides a power for the CQC to grant a licence for use of a registered trademark, of which the CQC is the proprietor, to Local Healthwatch organisations in relation to the carrying-on of Local Healthwatch activities. It would enable the licence to provide for the grant of a sub-licence authorising use of the trademark by a Local Healthwatch contractor, in relation to the carrying-on of those activities under arrangements made by Local Healthwatch organisations.

### **Section 183 – Local authority arrangements**

1133. This section makes provision as to the contractual arrangements that a local authority is required to make under section 221(1) of the 2007 Act.
1134. *Subsection (2)* amends section 222 of the 2007 Act to specify who a local authority must contract with under section 221(1) for the carrying-on of Local Healthwatch activities. It requires the contractual arrangements under section 221(1) to be made with a body corporate which is a social enterprise, and which satisfies any criteria prescribed by regulations. It inserts new *subsection (2A)* into section 222 which provides that the body contracted under section 221(1) is to have the function of carrying on the Local Healthwatch activities in the area concerned and is to be known as the Local Healthwatch organisation for that area. *Subsection (2)* of section 183 also inserts new *subsection (2B)* into section 222 of the 2007 Act which enables local authorities to authorise Local Healthwatch organisations to make arrangements (Local Healthwatch arrangements) for other persons (Local Healthwatch contractors) (which could be individuals or bodies) to assist them to carry on the activities or to carry on some of the activities on their behalf.
1135. *Subsections (3) to (5)* make consequential amendments to section 222 of the 2007 Act.
1136. *Subsection (6)* inserts new *subsections (7A)* and *(7B)* into section 222 of the 2007 Act. New *subsection (7A)* places a duty on local authorities to seek to ensure that the arrangements they make with Local Healthwatch organisations are operating effectively and are providing value for money. *Subsection (7B)* requires the local authority to publish a report of its conclusions in seeking to meet these two objectives.
1137. *Subsection (7)* substitutes *subsection (8)* of section 222 of the 2007 Act and inserts new *subsections (9)* and *(10)* into that section. *Subsection (8)* as substituted sets out when a

body is a social enterprise for the purposes of the duty under section 222(2). For these purposes a body is a social enterprise if it could reasonably be considered to act for the benefit of the community in England (the community benefit test) and it satisfies any criteria prescribed in regulations. *New subsection (9)* provides a regulation-making power to allow provision to be made about the sort of activities that are to be treated as meeting the community benefit test and the activities that are to be treated as not meeting it. *New subsection (10)* clarifies that “community”, for these purposes, includes a section of the community and provides a regulation-making power to allow provision to be made as to what constitutes a section of the community, what does not constitute a section of the community and what may constitute a section of the community.

1138. *Subsection (9)* inserts new section 222A into the 2007 Act to impose a duty on the local authority to have regard to any guidance from the Secretary of State on managing conflicts of interest between the making of arrangements under section 221(1) of the 2007 Act with Local Healthwatch organisations and the carrying-on of Local Healthwatch activities. It also requires the local authority to require the Local Healthwatch organisation to have regard to such guidance.

### ***Section 184 – Local arrangements: power to make further provision***

1139. This section amends section 223 of the 2007 Act, which concerns a duty to make regulations concerning the contents of local authorities’ contractual arrangements with Local Healthwatch organisations under section 221(1) of the 2007 Act.
1140. *Subsection (2)* makes a consequential amendment to section 223(1) of the 2007 Act.
1141. *Subsection (3)* inserts new *subsection (1A)* into section 223 which provides a power for the Secretary of State to make regulations requiring local authorities, in their contractual arrangements under section 221(1), to require Local Healthwatch organisations to include particular provision in their arrangements with Local Healthwatch contractors.
1142. *Subsection (4)* makes amendments to section 223(2). These include a power for regulations under section 223(1) or (1A) to require local authorities to include prescribed provision in their contractual arrangements with Local Healthwatch organisations and, similarly, to require local authorities to require Local Healthwatch organisations in their arrangements with Local Healthwatch contractors to include prescribed provision. The provision which may be prescribed includes provision relating to the activities which a Local Healthwatch contractor may not carry out on behalf of a Local Healthwatch organisation, the obtaining (by a Local Healthwatch organisation) of a licence from the CQC for use of a trade mark, the grant of a sublicense to a Local Healthwatch contractor, the use or infringement of the trade mark, and the imposition of a requirement for a Local Healthwatch organisation to act with a view to securing that its Local Health contractors are representative of local residents and service users or potential service users.

### ***Section 185 - Independent advocacy services***

1143. This section requires local authorities to make arrangements for the provision of independent advocacy services in relation to their area for complaints relating to the provision of health services and, as set out in *subsection (2)*, removes this duty from the Secretary of State.
1144. *Subsection (1)* of this section inserts new section 223A into the 2007 Act to require local authorities to make arrangements for the provision of independent advocacy services in relation to their area.
1145. *Subsection (2)* of new section 223A defines “independent advocacy services”. These are services providing assistance (whether by way of representation or otherwise) to persons making various types of complaints in relation to the provision of health services, or to persons intending to make such complaints. *Subsection (3)* enables a local

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authority to make other arrangements for the provision of services to assist individuals in connection with complaints relating to services provided as part of the health service.

1146. *Subsection (4)* of new section 223A provides that where a local authority makes arrangements for a person to arrange for the provision of independent advocacy services, that person may not commission the services from a Local Healthwatch organisation. This does not prevent local authorities from making arrangements for the provision of independent advocacy services by Local Healthwatch organisations directly, or by other providers.
1147. *Subsection (5)* of new section 223A provides that local authorities must have regard to the principle that, as far as practicable, the provision of independent advocacy services or other services under section 223A should be independent of the person being complained about, or involved in investigating the complaint or adjudicating on it.
1148. *Subsection (6)* of new section 223A enables the local authority to make payments to providers of independent advocacy services or other services under section 223A and to persons arranging for the provision of such services.
1149. *Subsection (7)* of new section 223A enables the Secretary of State to make regulations to require a provider of independent advocacy services to have in place insurance cover against any claims that could be made against the provider for negligence whilst providing those services.
1150. *Subsections (8) and (9)* of new section 223A enable the Secretary of State to direct local authorities about the exercise of functions under section 223A, and to vary or revoke such directions. This would allow the Secretary of State to direct local authorities to, for example, make arrangements for the provision of independent advocacy services to a particular level or in a particular way.
1151. *Subsections (3) and (4)* of section 185 make consequential amendments to section 134 of the Mental Health Act 1983 and section 59 of the Safeguarding Vulnerable Groups Act 2006 respectively.

***Section 186 - Requests, rights of entry and referrals***

1152. *Subsections (1) to (5)* amend section 224 of the 2007 Act, the effect of which is to enable the Secretary of State to make regulations to impose a duty on certain persons such as certain providers or commissioners of health or social care services to respond to requests for information, or reports or recommendations made by Local Healthwatch organisations or Local Healthwatch contractors when those organisations or contractors are carrying on Local Healthwatch activities or when Local Healthwatch organisations are discharging the duty under regulations under section 223(2)(i) to act with a view to securing that Local Healthwatch contractors are representative of the local area.
1153. *Subsections (6) to (11)* amend section 225 of the 2007 Act, the effect of which is to require the Secretary of State to make regulations to impose a duty on certain persons such as certain providers of health or social care services to allow representatives of Local Healthwatch organisations to enter and view premises and carry out observations for the purposes of carrying-on of Local Healthwatch activities, under arrangements under section 221(1) or Local Healthwatch arrangements.
1154. *Subsections (12) to (16)* make consequential amendments to section 226 of the 2007 Act, which imposes duties on local authority overview and scrutiny committees in relation to referrals of social care matters, including a duty to acknowledge receipt of referrals and to keep the referrer informed of the committee's actions. The amendments provide that those duties apply in relation to referrals by Local Healthwatch organisations or Local Healthwatch contractors instead.

### **Section 187 – Annual reports**

1155. This section amends section 227 of the 2007 Act. The effect is that Local Healthwatch organisations are to be required to produce an annual report for each financial year. This includes a requirement for the report to be prepared by 30 June following the end of each financial year and copies of it to be made publicly available. Arrangements made by local authorities under section 221 must also have a requirement for the person preparing the report, in deciding the manner in which it is appropriate for the report to be made publicly available, to have regard to any guidance issued by the Secretary of State. The report must be required to set out the amounts spent by the Local Healthwatch organisation and its Local Healthwatch contractors and what those amounts were spent on.
1156. *Subsection (5)* amends section 227(4) of the 2007 Act to ensure that arrangements made by local authorities under section 221 must require copies of the annual reports to be sent to the NHS Commissioning Board, relevant CCGs and Healthwatch England in addition to the categories of persons to whom such reports were previously required to be sent. Under the amendments made by *subsection (5)*, those categories no longer include the Secretary of State.

### **Section 188 – Transitional arrangements**

1157. This section is intended to assist local authorities to transfer arrangements under section 221(1) of the 2007 Act to Local Healthwatch organisations, upon commencement of the provisions amending the 2007 Act. The Secretary of State under *subsection (2)* may make a scheme to transfer property, rights and liabilities from the current persons with whom arrangements under section 221 have been made to the new Local Healthwatch organisations. *Subsections (3) to (9)* set out further details in respect of property and staff transfer schemes which may be made. A scheme may make provision for transfer of staff and may make provision which is the same or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) (*subsection (3)*). The scheme may transfer property, rights and liabilities, including those that could not otherwise be transferred (*subsection (4)*). New rights can be created, or liabilities imposed, in relation to the property or rights transferred (*subsection (5)*). Provision may be made in the scheme about the continuing effect of things a person ("the transferor"- the person from whom the things are being transferred) has done in respect of the things transferred. Provision may also be made about the continuation of things done in relation to the transferor in respect of the things transferred (*subsection (6)*). A scheme can provide for the continuation of legal proceedings (*subsection (7)*).
1158. *Subsection (8)* enables the Secretary of State's scheme to require a local authority to pay compensation to the transferor and to require the local authority to determine the amount of the compensation or to give powers to the Secretary of State to do so. A scheme may also make supplementary, incidental and consequential provision (*subsection (9)*).

### **Section 189 – Consequential provision**

1159. This section makes amendments to various provisions of legislation consequent on the provisions relating to Local Healthwatch organisations.

## **Chapter 2 – Local Government**

### **Scrutiny functions of local authorities**

#### **Section 190 - Scrutiny functions of local authorities**

1160. This section amends section 244 of the NHS Act which concerns a power to make regulations on review and scrutiny of matters relating to the health service (health scrutiny) by local authority overview and scrutiny committees. Amongst other things,

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the amendments have the effect that the regulations may make provision relating to health scrutiny by local authorities themselves. The amendments enable those regulations to authorise the local authority to arrange for an overview and scrutiny committee to discharge the health scrutiny functions.

1161. *Subsection (2)* of this section amends *subsection (2)* of section 244 of the NHS Act so that the regulation-making power it confers applies in relation to health scrutiny by a local authority itself as opposed to an overview and scrutiny committee of a local authority. Local authorities will no longer be required to have overview and scrutiny committees to discharge health scrutiny functions, but will continue to have such functions (under regulations under section 244), which they will, in general, be able to discharge in various ways. For example, local authorities may choose to continue to operate their existing health overview and scrutiny committees, or may choose to put in place other arrangements such as appointing committees involving members of the public. As such, the amendments made by this section will not prevent a local authority having an overview and scrutiny committee to discharge its health scrutiny functions.
1162. The regulation-making powers previously enabled provision to be made on the matters on which an NHS body must consult the local authority overview and scrutiny committee and to require officers of NHS bodies to attend before the committee to answer questions and NHS bodies to provide information to it. The amendments to *subsection (2)* of section 244 will instead provide that requirements to consult the local authority, to attend before it and to provide information to it can be applied to or in relation to “relevant NHS bodies” or “relevant health service providers”. This will potentially include CCGs, the NHS Commissioning Board and providers of health services commissioned by the NHS Commissioning Board, CCGs and the local authority, including independent sector providers.
1163. *Subsection (3)* inserts *new subsections (2ZA), (2ZB), (2ZC), (2ZD) and (2ZE)* into section 244 of the NHS Act.
1164. New *subsection (2ZA)* sets out the additional provision which may be made where regulations by virtue of *subsection (2)(c)* of section 244 make provision as to matters on which relevant NHS bodies or relevant health service providers must consult the local authority. This includes provision as to circumstances in which those matters may be referred to the Secretary of State, Monitor, or the NHS Commissioning Board. It also includes provision conferring powers on the Secretary of State to give directions to the NHS Commissioning Board and on the NHS Commissioning Board to give directions to a CCG.
1165. New *subsection (2ZB)* sets out further details of the powers to give directions that may be conferred under new *subsection (2ZA)*. New *subsection (2ZC)* enables regulations under new *subsection (2ZA)* to either disapply any provision of section 101 of the Local Government Act 1972 in relation to the local authority’s discharge of the function of making referrals, or to provide for such provision to apply with prescribed modifications. For example, this would enable the regulations to prevent the local authority from arranging for a committee to discharge the function of making such referrals under section 101 of the Local Government Act 1972. New *subsection (2ZD)* provides that the local authority’s health scrutiny functions are not functions of an executive of the authority under executive arrangements. This means that, under such arrangements, the functions would be functions of the local authority as a whole.
1166. New *subsection (2ZE)* enables regulations under the amended section 244 to authorise a local authority to arrange for its functions, under the regulations, to be discharged by an overview and scrutiny committee.
1167. *Subsection (4)* inserts a definition of “relevant NHS body” and “relevant health service provider” into section 244. *Subsection (5)* inserts a definition of “member” in relation to various NHS bodies or certain “relevant health service providers”.



1168. *Subsection (9)* amends section 21 of the Local Government Act 2000 to remove the requirement on local authorities to have health overview and scrutiny committees and to make clear that the prohibition on overview and scrutiny committees discharging particular functions does not extend to functions conferred by virtue of regulations under new *subsection (2ZE)* of section 244 of the NHS Act. This would ensure that local authorities are not prevented from arranging for overview and scrutiny committees to discharge health scrutiny functions. *Subsection (10)* makes similar amendments to section 9F of the Local Government Act 2000 (which will replace section 21 by virtue of the Localism Act 2011).

### ***Section 191 – Amendments consequential on section 190***

1169. This section makes consequential amendments to existing provisions on scrutiny in the NHS Act. *Subsections (1) to (5)* of this section amend section 245 of the NHS Act which enables regulations to be made enabling local authorities to discharge their scrutiny functions with each other through a joint overview and scrutiny committee, and to make certain other arrangements. The amendments made by *subsections (1), (2) and (3)* ensure that section 245 reflects the amendments made to section 244 whereby the regulation-making powers apply in relation to local authorities directly as opposed to overview and scrutiny committees. This effectively enables regulations to continue to enable local authorities to make joint or other scrutiny arrangements.
1170. *Subsection (4)* has the effect that the regulation-making power in section 245 includes a power to provide that where a local authority arranges for a joint overview and scrutiny committee to exercise any of its health scrutiny functions, the local authority may not discharge that function.
1171. *Subsections (6) to (9)* amend section 246 of the NHS Act. Section 246 provides that in relation to business discussed at a meeting of an overview and scrutiny committee, information is exempt information for the purposes of provisions of the Local Government Act 1972 if certain conditions are met. Those provisions enable certain local authorities to exclude the public from meetings whenever it is likely that exempt information would otherwise be disclosed. The changes made by *subsections (6) to (9)* reflect the changes to section 244 under which scrutiny functions can be conferred directly on local authorities and could be discharged by committees. This ensures that, as with the current situation for health overview and scrutiny committees, if there is certain information being discussed in relation to health scrutiny functions at meetings – for example, commercially confidential material – the public can be excluded from meetings.
1172. *Subsections (10) to (13)* amend section 247 of the NHS Act which makes provision in relation to scrutiny by the Common Council for the City of London. The amendments made by *subsections (10) to (13)* ensure that section 247 reflects the amendments made to section 244 under which scrutiny functions can be conferred directly on local authorities and could be discharged by committees. The Common Council will have flexibility like other local authorities in discharging its health scrutiny functions.

## **Joint strategic needs assessments and strategies**

### ***Section 192 – Joint strategic needs assessments***

1173. This section amends section 116 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act), so that a local authority, and CCGs that have a boundary within or overlapping or coinciding with that local authority, have a duty to prepare a joint strategic needs assessment or assessment of relevant needs. A joint strategic needs assessment is essentially a process to identify the current and future health and social care needs of a population in a local authority area.

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1174. *Subsection (2)* amends *subsection (4)* of section 116 of the 2007 Act so that the duty to prepare the assessment of relevant needs is transferred from each partner PCT to each partner CCG of the local authority.
1175. *Subsection (3)* amends *subsection (6)* of section 116 of the 2007 Act which sets out when there is a relevant need for the purposes of section 116. The amendments replace references to a partner PCT with references to partner CCGs. They also widen the scope of a “relevant need” so that it covers both the current and future needs of the local population, and not just current needs.
1176. *Subsection (4)* amends *subsection (7)* of section 116 of the 2007 Act to replace references to “the partner PCT” with references to “the partner clinical commissioning group or the National Health Service Commissioning Board”.
1177. *Subsection (5)* amends *subsection (8)* of section 116 of the 2007 Act so that the duty to co-operate transfers from each partner PCT to each partner CCG of the local authority.
1178. *Subsection (5)* also imposes an additional duty on CCGs and local authorities to involve the Local Healthwatch organisation and the people who live or work in the local authority’s area when preparing their joint strategic needs assessment. This subsection also replaces the duty to consult each relevant district council when preparing the assessment with a duty to involve each such council.
1179. *Subsection (6)* inserts a new *subsection (8A)* into section 116 of the 2007 Act to enable the local authority or partner CCG to consult any person it thinks appropriate when preparing the joint strategic needs assessment.
1180. *Subsection (7)* substitutes the definition of “partner PCT” with a definition of “partner clinical commissioning group” and makes consequential amendments to the definition of “relevant district council”.

***Section 193 – Joint health and wellbeing strategies***

1181. This section inserts new sections 116A and 116B into the 2007 Act. New section 116A imposes a duty on local authorities and CCGs to produce “a joint health and wellbeing strategy” for meeting the needs identified in the joint strategic needs assessment.
1182. New section 116B imposes a duty on partner CCGs, the local authority and the NHS Commissioning Board (in relation to its local commissioning responsibilities) to have regard to the joint strategic needs assessment and joint health and wellbeing strategy when carrying out their functions.
1183. Section 116A does not specify the form the joint health and wellbeing strategy should take. It requires a strategy for meeting the needs identified in the joint strategic needs assessment to be prepared, and requires the local authority and partner CCGs to have regard to the Secretary of State’s mandate under section 13A of the NHS Act and any guidance issued by the Secretary of State when preparing the strategy. For example, subject to guidance, the strategy could be high level and strategic, focusing on the interface between the NHS, social care and public health commissioning, rather than being a detailed study of all the commissioning across health and social care in the local authority area.
1184. *Subsections (1) and (2)* of new section 116A have the effect that where an assessment of relevant needs is prepared under section 116, the local authority and each partner CCG must prepare a strategy for meeting those needs.
1185. *Subsection (3)* requires the local authority and its partner CCGs to consider how the needs in the joint strategic needs assessment could more effectively be met through the use of flexibilities available under section 75 of the NHS Act, such as pooled budgets, when preparing the joint health and wellbeing strategy.

1186. *Subsection (4)* requires the local authority and its partner CCGs to have regard to the Secretary of State's mandate to the NHS Commissioning Board when preparing the joint health and wellbeing strategy. It also requires them to have regard to guidance issued by the Secretary of State in preparing the strategy. This duty mirrors the duty of a local authority and partner CCGs to have regard to guidance on the preparation of the joint strategic needs assessments under section 116 of the 2007 Act.
1187. *Subsection (5)* imposes an additional duty on CCGs and local authorities to involve the Local Healthwatch organisation and the people who live or work in the local authority's area when preparing the joint health and wellbeing strategy. This is similar to the duty imposed by section 192(5) in relation to the joint strategic needs assessment.
1188. *Subsection (6)* requires the local authority to publish the joint health and wellbeing strategy.
1189. *Subsection (7)* enables the local authority and partner CCGs to include in the strategy their views on how arrangements for the provision of health-related services could be more closely integrated with arrangements for the provision of health services and social care services in the area.
1190. *Subsection (1)* of section 116B places a duty on a local authority, and each partner CCG in exercising functions to have regard to any joint strategic needs assessment and joint health and wellbeing strategy which is relevant to the exercise of those functions. *Subsection (2)* places a duty on the NHS Commissioning Board to have regard to any joint strategic needs assessment and joint health and wellbeing strategy which is relevant to its local commissioning functions when discharging those functions.

## **Health and Wellbeing Boards: establishment**

### ***Section 194 – Establishment of Health and Wellbeing Boards***

1191. This section requires each upper tier local authority to establish a Health and Wellbeing Board for its area (*subsection (1)*).
1192. The section also sets out their membership (*subsection (2)*). This includes the director of children's services, the director of adult social services and the director of public health. There must be at least one elected representative, which may be the elected mayor or leader of the local authority and/or a councillor or councillors nominated by them (*subsections (3) and (4)*). The Local Healthwatch organisation and each relevant CCG must also appoint representatives (*subsections (5) and (6)*). A CCG may, with the consent of the Health and Wellbeing Board, be represented by the representative of another CCG which has a boundary within or coinciding with the local authority area (*subsection (7)*).
1193. *Subsection (8)* enables the Board to appoint additional persons as members. The local authority will also be able to invite other persons or representatives of other persons to become members, for example local voluntary groups or service providers (*subsection (2)(g)*). *Subsection (9)* requires the local authority to consult the Health and Wellbeing Board before appointing additional persons after the Board has been established. *Subsection (10)* requires each relevant CCG to co-operate with the Health and Wellbeing Board in the exercise of the Board's functions.
1194. *Subsection (11)* provides that the Health and Wellbeing Board is a committee of the local authority and is to be treated as if it were appointed under section 102 of the Local Government Act 1972.
1195. *Subsection (12)* enables regulations to be made to disapply legislation which applies in relation to committees appointed under section 102 of the Local Government Act 1972 or to provide for such legislation to apply with modifications in relation to Health and Wellbeing Boards.

## **Health and Wellbeing Boards: functions**

### ***Section 195 – Duty to encourage integrated working***

1196. This section imposes a duty on Health and Wellbeing Boards to encourage integrated working between commissioners of NHS, public health and social care services for the advancement of the health and wellbeing of the local population. A Health and Wellbeing Board must provide advice, assistance or other support in order to encourage partnership arrangements such as the developing of agreements to pool budgets or make lead commissioning arrangements under section 75 of the NHS Act.
1197. *Subsection (1)* requires a Health and Wellbeing Board, for the purpose of advancing the health and wellbeing of the people in its area, to encourage persons who arrange for the provision of health or social care services in its area to work in an integrated manner.
1198. *Subsection (2)* requires the Health and Wellbeing Board, in particular, to provide advice, assistance or other support as it thinks appropriate for the purpose of encouraging arrangements under section 75 of the NHS Act. These are arrangements under which, for example, NHS bodies and local authorities agree to exercise specified functions of each other or pool funds.
1199. *Subsection (3)* enables the Health and Wellbeing Board to encourage persons who arrange for the provision of services related to wider determinants of health (health-related services), such as housing, to work closely with the Board; while *subsection (4)* enables the Board to encourage such persons to work closely with commissioners of health and social care services. *Subsection (6)* defines expressions such as “health services”, “health-related services” and “social care services” for the purposes of this section.

### ***Section 196 – Other functions of Health and Wellbeing Boards***

1200. This section makes provision about the functions of Health and Wellbeing Boards.
1201. *Subsection (1)* requires the functions of CCGs and local authorities of preparing joint strategic needs assessments and joint health and wellbeing strategies to be discharged by a Health and Wellbeing Board.
1202. *Subsection (2)* enables the local authority to delegate any functions exercisable by it to the Health and Wellbeing Board it established. This could, where appropriate, potentially extend to functions relating to wider determinants of health, such as housing, that affect the health and wellbeing of the population.
1203. *Subsection (3)* enables a Health and Wellbeing Board to inform the local authority of its views on whether the authority is discharging its duty to have regard to the joint strategic needs assessment and joint health and wellbeing strategy in discharging functions.
1204. *Subsection (4)* prevents the local authority from delegating its scrutiny function (under section 244 of the NHS Act) to the Health and Wellbeing Board.

## **Health and Wellbeing Boards: supplementary**

### ***Section 197 - Participation of the NHS Commissioning Board***

1205. This section provides for participation of the NHS Commissioning Board in a Health and Wellbeing Board’s activities. The NHS Commissioning Board will be required to appoint a representative to participate in the preparation of the joint strategic needs assessment and joint health and wellbeing strategy. It will also be required, upon request of the Health and Wellbeing Board, to appoint a representative for the purpose of considering a matter in relation to its local commissioning responsibilities – for example primary medical services commissioning. This could also involve taking part in discussions to improve joint working.

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1206. *Subsections (1) and (2)* have the effect that where a Health and Wellbeing Board is preparing an assessment of relevant needs under section 116 of the 2007 Act or a joint health and wellbeing strategy under section 116A of that Act, the NHS Commissioning Board must appoint a representative to participate in the preparation of the assessment or strategy.
1207. *Subsections (3) and (4)* have the effect that where a Health and Wellbeing Board is considering a matter that relates to the NHS Commissioning Board's exercise or proposed exercise of commissioning functions in relation to the area of the local authority that established the Health and Wellbeing Board, then if the Health and Wellbeing Board so requests, the NHS Commissioning Board must appoint a representative to participate in the consideration of that matter.
1208. *Subsection (5)* enables the NHS Commissioning Board to appoint as its representative someone other than a member or employee of its, subject to the agreement of the Health and Wellbeing Board.
1209. *Subsection (6)* defines "commissioning functions" in relation to the NHS Commissioning Board, and it defines "the health service".

***Section 198 - Discharge of functions of Health and Wellbeing Boards***

1210. This section makes further provision about how the functions of Health and Wellbeing Boards could be discharged across local authority boundaries by enabling them to arrange for their functions to be exercised jointly. It enables the Boards to arrange for a joint sub-committee to advise them.

***Section 199 – Supply of information to Health and Wellbeing Boards***

1211. This section allows a Health and Wellbeing Board to request the provision of information from certain persons, for example, the Local Healthwatch organisation represented on the Board and the CCGs so represented, for the purpose of enabling or assisting it to perform functions. *Subsection (2)* requires those persons to supply the information. *Subsection (4)* requires that the information requested must relate to a function of the person from whom the information is requested, or a person in respect of whom a function is exercisable by that person. For example, information could be requested to support the analysis within the joint strategic needs assessment or the development of the joint health and wellbeing strategy. *Subsection (3)* requires the information supplied to be used only for the purpose of enabling or helping the Health and Wellbeing Board to exercise its functions.

**Care Trusts**

***Section 200 – Care Trusts***

1212. This section amends section 77 of the NHS Act to make it possible for NHS foundation trusts or CCGs, alongside local authorities, to form Care Trusts, if they decided that this was the best way to meet the needs of their local populations. The section also makes amendments that abolish the direct role of the Secretary of State in the process of forming or removing the designation of a Care Trust.
1213. Care Trusts, provision for which is made in section 77 of the NHS Act, provide opportunities for close integrated working across health and social care services..
1214. *Subsections (1), (11) and (12)* make changes to subsections (1), (10) and (12) of section 77 of the NHS Act to make it possible for foundation trusts and CCGs to be designated as Care Trusts. Current legislation makes no provision for Care Trusts to be formed with any NHS partners other than PCTs and NHS trusts. Provisions in other Parts of this Act for the abolition of PCTs and NHS trusts mean that Care Trusts, in their current form, would cease to exist without these changes. Inclusion of NHS

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foundation trusts and CCGs in subsection (10) of section 77 ensures that forming the Care Trust will not affect any of their core functions, rights or responsibilities. In addition, new subsection (5D) (inserted by *subsection (7)*) enables the parties to agree to act separately or jointly in respect of duties imposed by section 77 on the NHS body and local authorities.

1215. *Subsections (1), (2) and (5) to (7)* address subsections (1) and (5) of Section 77 of the NHS Act; subsections (2) and (5) in particular insert new subsections (1A), (5A), (5B), (5C) and (5D). These changes end the direct involvement of the Secretary of State in the process of forming a Care Trust or removing a designation as a Care Trust. This includes removing the Secretary of State from any direct involvement in specifying the area of the Care Trust. The decision to form or remove the designation of a Care Trust would be for local bodies and they would make the designation themselves. *Subsection (4)* makes amendments to subsection (4) of section 77 which enables the designated NHS body to also be able to perform the health related functions of the local authority in agreed areas of that local authority, even though it may not exercise NHS functions in that area. In future the area served by the Care Trust will be agreed by the NHS body and local authority in the Care Trust arrangement rather than by Secretary of State and this will be influenced by the scope of their partnership agreement and the areas which the NHS body and local authority cover.
1216. Repealing subsections (2) and (3) of section 77 of the NHS Act removes the requirement to make a joint application to the Secretary of State for designation as a Care Trust. Subsection (1)(c) to (f) provides that the NHS body and the local authority wishing to form a Care Trust must satisfy themselves that the Care Trust arrangement would lead to an improvement in the health or care outcomes for their local populations. Subsection (2) of section 200 inserts new sections (1A) and (1B) into section 77 which require the body and the local authority to publish and consult on their reasoning and the proposed Care Trust governance arrangements. Regulations may prescribe the manner and form of the consultation, when a consultation must commence, how long the consultation period must be and what actions must happen after consultation. This could include publishing the date on which the Care Trust designation would begin (or end in the case that the Care Trust designation was removed) and the names of the bodies involved in the Care Trust.
1217. Subsections (2) and (5) (in particular, new subsections (1B) and (5B)) provide that having decided to form a Care Trust or remove a Care Trust designation, the NHS body and the local authority will have to notify interested parties. The prescribed persons to be notified could include the NHS Commissioning Board, Monitor, the lead elected member of the local authority and the Care Quality Commission. In addition, if local Health and Wellbeing Boards are established, notification would be extended to cover those Boards.
1218. The intention is that the NHS and health related functions of the local authority should be exercised together as far as possible in order to provide or commission integrated services.
1219. *Subsections (13) to (15)* are saving provisions. Subsection (13) ensures that that the requirement to consult (see new subsection (1A)) before being designated as a Care Trust will not apply to Care Trusts that have already gone through the process under the previous legislative requirements. Care Trusts that have already met those requirements will not have to fulfil any additional requirements to enable them to remain as Care Trusts.
1220. Subsections (14) and (15) provide that an NHS trust or PCT which became a Care Trust prior to the commencement of the new provisions but then decided to cancel the arrangement after commencement of this Section, will still need to notify the Secretary of State, who will amend the establishment order to remove the words ‘Care Trust’ from its title. These provisions will remain in force until the point when PCTs and NHS trusts are abolished. This is because the name of a PCT or NHS trust is set out in its

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establishment order which could only be amended by an order made by the Secretary of State. By repealing subsection (6) of Section 77 the requirement that an NHS body must include the words “Care Trust” in its title or branding is removed.

### ***Chapter 3 – The Health Service Commissioner for England***

#### ***Section 201 – Disclosure of reports etc. by the Health Service Commissioner***

1221. This section amends section 14 of the Health Service Commissioners Act 1993 to enable the Health Service Commissioner for England, more commonly known as the Health Service Ombudsman, to share complaints investigation reports and statements of reasons with such persons as the Ombudsman thinks appropriate. The recipients of such reports and statements of reasons would, in practice, largely be part of the NHS in England.