

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8 – The National Institute for Health and Care Excellence**

##### **Establishment and general duties**

##### *Section 232 – The National Institute for Health and Care Excellence*

1367. This section establishes the National Institute for Health and Care Excellence (NICE) as a body corporate. It also gives effect to Schedule 16.

##### *Schedule 16 – The National Institute for Health and Care Excellence*

1368. This schedule deals with the constitution of NICE; in many respects it makes similar provision to that made by Schedule 1 for the NHS Commissioning Board, Schedule 8 for Monitor, and Schedule 18 for the Health and Social Care Information Centre.

1369. [Paragraph 1](#) sets out the membership of NICE. Paragraphs 2, 3, 4 and 5 set out provisions relating to non-executive directors of NICE, including their tenure, ability to be suspended or removed from post by the Secretary of State, and their remuneration (which is to be determined by the Secretary of State).

1370. [Paragraph 6](#) relates to the appointment of NICE's employees. NICE requires the approval of the Secretary of State to its policies on the payment of remuneration, allowances, pensions and gratuities before it can make any such payment to an employee.

1371. [Paragraph 7](#) provides for NICE to establish committees and sub-committees. Paragraph 8 allows NICE to regulate its own procedures. Sub-paragraph (2) enables the Secretary of State to make provisions in regulations about particular procedures in order to deal with conflicts of interest. This provision is specific to NICE due to the nature of its duties. For example, this could be used to avoid the situation whereby the chair of one of NICE's technology appraisal committees had a commercial interest in a company doing research into that particular drug. Paragraph 9 allows NICE to arrange for its functions to be exercised by a non-executive member, an employee or a committee or sub-committee.

1372. [Paragraph 10](#) confers general powers and requires NICE to obtain the permission of the Secretary of State before undertaking certain commercial ventures. NICE may, for example, provide advice to overseas Governments under regulations made under section 240. Under the paragraph 10 powers NICE would, with the approval of the Secretary of State, be able to form, participate in the forming of, invest in or provide loans and guarantees to a company and thereby be able to determine the most appropriate business model for any such activities.

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

1373. [Paragraph 11](#) enables the Secretary of State to make payments to NICE out of money provided by Parliament with such conditions as the Secretary of State thinks appropriate. Paragraph 11 also allows Secretary of State to lend money to NICE.
1374. [Paragraph 12](#) sets out a requirement for NICE to publish an annual report. The Secretary of State may also ask NICE to prepare other reports or to provide information at other times, for example as required for in-year monitoring of NICE's performance and use of central funding.
1375. [Paragraphs 13, 14 and 15](#) relate to NICE's accounts, including duties of the Comptroller and Auditor General in relation to reporting on NICE's annual accounts, and laying copies of them in Parliament.
1376. [Paragraph 16](#) relates to NICE's seal. Paragraph 17 confirms NICE's status as a non-Crown body.

***Section 233 - General duties***

1377. This section describes the matters that NICE must have regard to in developing its products.