



Health and Social Care Act 2012

2012 CHAPTER 7

PART 5

PUBLIC INVOLVEMENT AND LOCAL GOVERNMENT

CHAPTER 1

PUBLIC INVOLVEMENT

Local Healthwatch organisations

182 Activities relating to local care services

- (1) Section 221 of the Local Government and Public Involvement in Health Act 2007 (health services and social services) is amended as follows.
- (2) In subsection (2)—
 - (a) in each of paragraphs (a) to (c), before “people” insert “local”, and
 - (b) omit the “and” preceding paragraph (d).
- (3) At the end of that paragraph, insert “and to the Healthwatch England committee of the Care Quality Commission.”
- (4) After that paragraph insert—
 - “(e) providing advice and information about access to local care services and about choices that may be made with respect to aspects of those services;
 - (f) reaching views on the matters mentioned in subsection (3) and making those views known to the Healthwatch England committee of the Care Quality Commission;
 - (g) making recommendations to that committee to advise the Commission about special reviews or investigations to conduct

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- (or, where the circumstances justify doing so, making such recommendations direct to the Commission);
- (h) making recommendations to that committee to publish reports under section 45C(3) of the Health and Social Care Act 2008 about particular matters; and
- (i) giving that committee such assistance as it may require to enable it to carry out its functions effectively, efficiently and economically.”
- (5) In subsection (3), after “(2)(b)” insert “and (f)”.
- (6) After that subsection insert—
- “(3A) A person to whom views are made known or reports or recommendations are made under subsection (2)(d) must, in exercising any function relating to care services, have regard to the views, reports or recommendations.”
- (7) After subsection (3A) insert—
- “(3B) Each local authority must ensure that only one set of arrangements under subsection (1) in relation to its area is in force at any one time.”
- (8) In subsection (6), after the definition of “local care services” insert—
- ““local people”, in relation to a local authority, means—
- (a) people who live in the local authority’s area,
- (b) people to whom care services are being or may be provided in that area,
- (c) people from that area to whom care services are being provided in any place, and
- who are (taken together) representative of the people mentioned in paragraphs (a) to (c);”.
- (9) In the title to section 221, omit “: local involvement networks”.
- (10) For the cross-heading preceding that section substitute “Local arrangements”.
- (11) After section 45C of the Health and Social Care Act 2008 (inserted by section 181(4)), insert—

“45D Granting licence to use trade mark

- (1) The Commission may grant a Local Healthwatch organisation a licence authorising the use, in relation to the carrying-on of activities under arrangements made under section 221(1) of the Local Government and Public Involvement in Health Act 2007, of a registered trade mark of which the Commission is the proprietor.
- (2) A licence under this section may not provide for the grant of a sub-licence by the licensee other than a sub-licence authorising the use of the mark by a Local Healthwatch contractor in relation to the carrying-on of activities under Local Healthwatch arrangements.
- (3) In this section—
- “Local Healthwatch arrangements” has the meaning given by section 222 of the Local Government and Public Involvement in Health Act 2007,

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“Local Healthwatch contractor” has the meaning given by section 223 of that Act, and

“registered trade mark” and “use” have the same meaning as in the Trade Marks Act 1994.”

183 Local authority arrangements

(1) Section 222 of the Local Government and Public Involvement in Health Act 2007 (arrangements under section 221 of that Act) is amended as follows.

(2) For subsection (2) substitute—

“(2) The arrangements must be made with a body corporate which—

- (a) is a social enterprise, and
- (b) satisfies such criteria as may be prescribed by regulations made by the Secretary of State.

(2A) For so long as the arrangements are in force, the body with which they are made—

- (a) has the function of carrying on in A’s area the activities specified in section 221(2), and
- (b) is to be known as the “Local Healthwatch organisation” for A’s area.

(2B) But the arrangements may authorise the Local Healthwatch organisation to make, in pursuance of those arrangements, arrangements (“Local Healthwatch arrangements”) with a person (other than A) for that person—

- (a) to assist the organisation in carrying on in A’s area some or all of the activities, or
- (b) (subject to provision made under section 223(2)(e)) to carry on in A’s area some (but not all) of the activities on the organisation’s behalf.”

(3) In subsection (3), for the words from the beginning to “who is not” substitute “None of the following is capable of being a Local Healthwatch organisation”.

(4) For subsection (4) substitute—

“(4) The arrangements must secure the result that Local Healthwatch arrangements will not be made with a body of a description specified in subsection (3) or with the National Health Service Commissioning Board.”

(5) For subsection (5) substitute—

“(5) The arrangements may (in particular) make provision as respects co-operation between the Local Healthwatch organisation for the area and one or more other Local Healthwatch organisations.”

(6) After subsection (7) insert—

“(7A) A must exercise its functions under this Part so as to secure that the arrangements—

- (a) operate effectively, and
- (b) represent value for money.

(7B) A must publish a report of its findings in seeking to secure the objective mentioned in subsection (7A).”

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(7) For subsection (8) substitute—

- “(8) For the purposes of this section, a body is a social enterprise if—
- (a) a person might reasonably consider that it acts for the benefit of the community in England, and
 - (b) it satisfies such criteria as may be prescribed by regulations made by the Secretary of State.
- (9) Regulations made by the Secretary of State may provide that activities of a prescribed description are to be treated as being, or as not being, activities which a person might reasonably consider to be activities carried on for the benefit of the community in England.
- (10) In subsections (8) and (9), “community” includes a section of the community; and regulations made by the Secretary of State may make provision about what does, does not or may constitute a section of the community.”

(8) For the title to section 222 substitute “Local Healthwatch organisations”.

(9) After section 222 insert—

“222A Local authority arrangements: conflicts of interest

- (1) In making arrangements under section 221(1), a local authority must have regard to any conflicts guidance issued by the Secretary of State.
- (2) Arrangements under section 221(1) must require the Local Healthwatch organisation, in exercising its function of carrying on the activities specified in section 221(2) or in making Local Healthwatch arrangements, to have regard to any conflicts guidance issued by the Secretary of State.
- (3) In this section, “conflicts guidance” means guidance about managing conflicts between—
 - (a) the making of arrangements under section 221(1), and
 - (b) the carrying-on of the activities specified in section 221(2).
- (4) In this section, “Local Healthwatch arrangements” has the meaning given by section 222.”

184 Local arrangements: power to make further provision

- (1) Section 223 of the Local Government and Public Involvement in Health Act 2007 (power to make further provision about local authority arrangements) is amended as follows.
- (2) In subsection (1), for “require prescribed provision to be included in local involvement network arrangements” substitute “include prescribed provision”.
- (3) After that subsection insert—

“(1A) The Secretary of State may make regulations which provide that local authority arrangements must require Local Healthwatch arrangements to include prescribed provision.”
- (4) In subsection (2)—

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- (a) for “must require local involvement network arrangements to include” substitute “must include or (as the case may be) must require Local Healthwatch arrangements to include”,
 - (b) in paragraphs (a), (c) and (d), for “a local involvement network” substitute “a Local Healthwatch organisation or a Local Healthwatch contractor”, and
 - (c) after paragraph (d) insert “;
 - (e) prescribed provision relating to the activities which a Local Healthwatch contractor may not carry on on a Local Healthwatch organisation’s behalf;
 - (f) prescribed provision relating to the obtaining by a Local Healthwatch organisation of a licence under section 45D of the Health and Social Care Act 2008 and the grant by the organisation to a Local Healthwatch contractor of a sub-licence;
 - (g) prescribed provision relating to the use by a Local Healthwatch organisation or a Local Healthwatch contractor of the trade mark to which a licence under that section relates;
 - (h) prescribed provision relating to the infringement of the trade mark to which a licence under that section relates;
 - (i) prescribed provision relating to the imposition of a requirement on a Local Healthwatch organisation to act with a view to securing that its Local Healthwatch contractors (taken together) are representative of—
 - (i) people who live in the local authority’s area,
 - (ii) people to whom care services are being or may be provided in that area, and
 - (iii) people from that area to whom care services are being provided in any place.”
- (5) After subsection (2) insert—
- “(2A) The provision which may be prescribed in relation to a Local Healthwatch contractor includes provision that relates to the contractor—
- (a) only in so far as it assists the Local Healthwatch organisation in the carrying-on of activities specified in section 221(2);
 - (b) only in so far as it carries on such activities on the organisation’s behalf.
- (2B) Regulations under this section may make provision which applies to all descriptions of Local Healthwatch contractor, which applies to all those descriptions subject to specified exceptions or which applies only to such of those descriptions as are prescribed.”
- (6) In subsection (3)—
- (a) before the definition of “a local involvement network” insert—
““care services” has the meaning given by section 221;”,
 - (b) omit the definition of “a local involvement network”,
 - (c) for the definition of “local involvement network arrangements” substitute—
““Local Healthwatch arrangements” has the meaning given by section 222;”,
 - (d) after that definition insert—

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““Local Healthwatch contractor”, in relation to a Local Healthwatch organisation, means a person with whom the organisation makes Local Healthwatch arrangements;”, and

- (e) after the definition of “prescribed provision” insert “; trade mark”, and “use” and “infringement” in relation to a trade mark, each have the same meaning as in the Trade Marks Act 1994.”

185 Independent advocacy services

- (1) After section 223 of the Local Government and Public Involvement in Health Act 2007 insert—

“223A Independent advocacy services

- (1) Each local authority must make such arrangements as it considers appropriate for the provision of independent advocacy services in relation to its area.
- (2) In this section, “independent advocacy services” means services providing assistance (by way of representation or otherwise) to persons making or intending to make—
- (a) a complaint under a procedure operated by a health service body or independent provider;
 - (b) a complaint under section 113(1) or (2) of the Health and Social Care (Community Health and Standards) Act 2003;
 - (c) a complaint to the Health Service Commissioner for England;
 - (d) a complaint to the Public Services Ombudsman for Wales which relates to a Welsh health body;
 - (e) a complaint under section 73C(1) of the National Health Service Act 2006;
 - (f) a complaint to a Local Commissioner under Part 3 of the Local Government Act 1974 about a matter which could be the subject of a complaint under section 73C(1) of the National Health Service Act 2006; or
 - (g) a complaint of such description as the Secretary of State may by regulations prescribe which relates to the provision of services as part of the health service and—
 - (i) is made under a procedure of a description prescribed in the regulations, or
 - (ii) gives rise, or may give rise, to proceedings of a description prescribed in the regulations.
- (3) Each local authority may make such other arrangements as it considers appropriate for the provision of services in relation to its area providing assistance to individuals in connection with complaints relating to the provision of services as part of the health service.
- (4) Arrangements under this section may not provide for a person to make arrangements for the provision of services by a Local Healthwatch organisation.
- (5) In making arrangements under this section, a local authority must have regard to the principle that the provision of services under the arrangements

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or arrangements made in pursuance of the arrangements should, so far as practicable, be independent of any person who is—

- (a) the subject of a relevant complaint; or
- (b) involved in investigating or adjudicating on such a complaint.

- (6) A local authority may make payments to—
 - (a) a person providing services under arrangements under this section;
 - (b) a person arranging for the provision of services in pursuance of arrangements under this section;
 - (c) a person providing services under arrangements made in pursuance of arrangements under this section.
- (7) The Secretary of State may by regulations make provision requiring a person providing services under arrangements under this section or arrangements made in pursuance of the arrangements to have cover against the risk of a claim in negligence arising out of the provision of the services.
- (8) The Secretary of State may give directions to a local authority about the exercise of its functions under this section.
- (9) A direction under subsection (8) may be varied or revoked.
- (10) In this section—

“the health service” has the same meaning as in the National Health Service Act 2006;

“health service body” means—

- (a) in relation to England, a body which, under section 2(1) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England;
- (b) in relation to Wales, a Welsh health service body (within the meaning of the Public Services Ombudsman (Wales) Act 2005);

“independent provider” means—

- (a) in relation to England, a person who, under section 2B(1) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England;
- (b) in relation to Wales, a person who is an independent provider in Wales (within the meaning of the Public Services Ombudsman (Wales) Act 2005);

“Welsh health body” means—

- (a) a Local Health Board,
- (b) an NHS trust managing a hospital or other establishment or facility in Wales,
- (c) a Special Health Authority not discharging functions only or mainly in England,
- (d) an independent provider in Wales (within the meaning of the Public Services Ombudsman (Wales) Act 2005),
- (e) a family health service provider in Wales (within the meaning of that Act), or
- (f) a person with functions conferred under section 113(2) of the Health and Social Care (Community Health and Standards) Act 2003.”

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- (2) Omit section 248 of the National Health Service Act 2006 (arrangements by the Secretary of State for the provision of independent advocacy arrangements).
- (3) In section 134 of the Mental Health Act 1983 (correspondence of patients), in subsection (3A)(b)(ii), for “section 248 of the National Health Service Act 2006” substitute “section 223A of the Local Government and Public Involvement in Health Act 2007”.
- (4) In section 59 of the Safeguarding Vulnerable Groups Act 2006 (vulnerable adults), in subsection (10)(e), for “section 248 of the National Health Service Act 2006 (c. 41)” substitute “section 223A of the Local Government and Public Involvement in Health Act 2007”.

186 Requests, rights of entry and referrals

- (1) Section 224 of the Local Government and Public Involvement in Health Act 2007 (duties of services-providers to respond to requests for information etc.) is amended as follows.
 - (2) In subsection (1), in paragraphs (a) and (b), for “a local involvement network” substitute “a Local Healthwatch organisation or a Local Healthwatch contractor”.
 - (3) For subsection (3) substitute—
 - “(3) For the purposes of subsection (1), something is done by a Local Healthwatch organisation if it is done by that organisation—
 - (a) in the carrying-on, under arrangements made under section 221(1), of activities specified in section 221(2), or
 - (b) in compliance with a requirement imposed by virtue of section 223(2)(i).
 - (3A) For the purposes of subsection (1), something is done by a Local Healthwatch contractor if it is done by that contractor in the carrying-on, under Local Healthwatch arrangements, of activities specified in section 221(2).”
 - (4) After subsection (4) insert—
 - “(5) In this section—
 - “Local Healthwatch arrangements” has the meaning given by section 222;
 - “Local Healthwatch contractor” has the meaning given by section 223.”
- (5) In the title to that section, for “local involvement networks” substitute “Local Healthwatch organisations or contractors”.
- (6) Section 225 of that Act (duties of services-providers to allow entry to premises) is amended as follows.
- (7) In subsection (2), in paragraph (f), and in subsection (5), for “a local involvement network” substitute “a Local Healthwatch organisation or a Local Healthwatch contractor”.
- (8) In subsection (4), in paragraph (a), after “section 221(1)” insert “or Local Healthwatch arrangements”.

(9) After subsection (5) insert—

“(5A) In this section—

“Local Healthwatch arrangements” has the meaning given by section 222;

“Local Healthwatch contractor” has the meaning given by section 223.”

(10) Omit subsection (6).

(11) For the title to that section substitute “Duties of services-providers to allow entry by Local Healthwatch organisations or contractors”.

(12) Section 226 of that Act (referrals of social care matters) is amended as follows.

(13) In subsections (1) and (5), for “a local involvement network” substitute “a Local Healthwatch organisation or a Local Healthwatch contractor”.

(14) For subsection (7) substitute—

“(7) For the purposes of this section, something is done by a Local Healthwatch organisation if it is done by that organisation in the carrying-on, under arrangements made under section 221(1), of activities specified in section 221(2).

(7A) For the purposes of this section, something is done by a Local Healthwatch contractor if it is done by that contractor in the carrying-on, under Local Healthwatch arrangements, of activities specified in section 221(2).”

(15) In subsection (8), before the definition of “overview and scrutiny committee” insert—
““Local Healthwatch arrangements” has the meaning given by section 222;
“Local Healthwatch contractor” has the meaning given by section 223;”.

(16) For the title to that section substitute “Referrals of social care matters”.

187 Annual reports

(1) Section 227 of the Local Government and Public Involvement in Health Act 2007 (annual reports) is amended as follows.

(2) In subsection (2), omit “by a local authority with another person (“H”)”.

(3) In that subsection, in paragraph (a)—

(a) in sub-paragraph (i)—

(i) omit “, for each local involvement network,”,

(ii) for “the network”, in the first place it appears, substitute “the Local Healthwatch organisation”,

(iii) for “the network”, in the second place it appears, substitute “the organisation”,

(iv) after “carried on” insert “under the arrangements or arrangements made”,

(b) omit sub-paragraph (ii), and

(c) omit sub-paragraph (iii) and the preceding “and”.

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- (4) In subsection (3)—
- (a) after paragraph (a) insert “and”,
 - (b) in paragraph (b)—
 - (i) omit the words from “, if it is” to “(2)(a)(ii),”, and
 - (ii) in sub-paragraph (i), for “H in respect of the network” substitute “the Local Healthwatch organisation in its capacity as such, and the amounts spent by its Local Healthwatch contractors in their capacity as such”, and
 - (c) omit paragraph (c) and the preceding “and”.
- (5) In subsection (4)—
- (a) after paragraph (a) insert—
 - “(aa) the National Health Service Commissioning Board;
 - (ab) each clinical commissioning group, whose area or any part of whose area falls within the area of the local authority;”;
 - (b) after paragraph (ca) insert—
 - “(cb) the Healthwatch England committee of the Care Quality Commission;”, and
 - (c) omit paragraph (d) (but not the following “and”).
- (6) In subsection (5)—
- (a) in paragraph (a)—
 - (i) omit the words from the beginning to “(2)(a)(ii),”,
 - (ii) for “the network” substitute “the Local Healthwatch organisation”, and
 - (iii) after “carried on” insert “under the arrangements made under section 221(1) or arrangements made”, and
 - (b) omit paragraph (b) and the “and” preceding it.
- (7) Omit subsections (6) to (8).
- (8) In subsection (9), after the definition of “financial year” insert—
- ““Local Healthwatch contractor” has the meaning given by section 223;”.
- (9) For the title to section 227 substitute “Local Healthwatch organisations: annual reports”.

188 Transitional arrangements

- (1) This section applies where arrangements made under section 221 of the Local Government and Public Involvement in Health Act 2007 before the commencement of this Chapter provide for the arrangements to come to an end at a time that falls after that commencement.
- (2) The Secretary of State may make a scheme providing for the transfer from the person with whom the local authority in question made the arrangements of property, rights and liabilities to the Local Healthwatch organisation for the authority’s area.
- (3) A scheme under this section may make provision for rights and liabilities relating to an individual’s contract of employment; and the scheme may, in particular, make

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provision which is the same as or similar to provision in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

- (4) A scheme under this section may provide for the transfer of property, rights or liabilities—
 - (a) whether or not they would otherwise be capable of being transferred;
 - (b) irrespective of any requirement for consent that would otherwise apply.
- (5) A scheme under this section may create rights, or impose liabilities, in relation to property, rights or liabilities transferred.
- (6) A scheme under this section may provide for things done by or in relation to the transferor for the purposes of or in connection with anything transferred to be—
 - (a) treated as done by or in relation to the transferee or its employees;
 - (b) continued by or in relation to the transferee or its employees.
- (7) A scheme under this section may in particular make provision about continuation of legal proceedings.
- (8) A scheme under this section may include provision requiring the local authority to pay compensation to the transferor; and for that purpose the scheme may—
 - (a) impose a duty on the local authority to determine the amount of the compensation;
 - (b) confer power on the Secretary of State to do so.
- (9) A scheme under this section may include supplementary, incidental and consequential provision.
- (10) Omit section 228 of the Local Government and Public Involvement in Health Act 2007 (previous transitional arrangements).

189 Consequential provision

- (1) In the Schedule to the Public Bodies (Admission to Meetings) Act 1960, after paragraph (bk) (as inserted by paragraph 2 of Schedule 13) insert—
 - “(bl) Local Healthwatch organisations, as regards the carrying-on of activities specified in section 221(1) of the Local Government and Public Involvement in Health Act 2007 (local care services);”.
- (2) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975, at the appropriate place insert—

“Director of a Local Healthwatch organisation.”
- (3) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, at the appropriate place insert—

“Director of a Local Healthwatch organisation.”
- (4) In Part 2 of Schedule 1 to the Freedom of Information Act 2000 (local government), after paragraph 35D insert—

“35E A Local Healthwatch organisation, in respect of information held in connection with—
 - (a) arrangements made under section 221(1) of the Local Government and Public Involvement in Health Act 2007, or

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- (b) arrangements made in pursuance of arrangements made under section 221(1) of that Act.”
- (5) In section 65H of the National Health Service Act 2006 (NHS foundation trust special administration provisions: consultation requirements), in subsection (8), for subsection (e) substitute—
 - “(e) a Local Healthwatch organisation;”.
- (6) In section 4 of the Health and Social Care Act 2008 (matters to which the Care Quality Commission must have regard)—
 - (a) in subsection (1)(c)—
 - (i) for “local involvement networks” substitute “Local Healthwatch organisations or Local Healthwatch contractors”, and
 - (ii) omit “in their areas”; and
 - (b) for subsection (3) substitute—
 - “(3) In subsection (1)(c), “Local Healthwatch contractor” has the meaning given by section 223 of the Local Government and Public Involvement in Health Act 2007.”