



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 5

#### PUBLIC INVOLVEMENT AND LOCAL GOVERNMENT

### CHAPTER 2

#### LOCAL GOVERNMENT

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

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

- (1) Section 244 of the National Health Service Act 2006 is amended as follows.
- (2) In subsection (2)—
  - (a) omit “an overview and scrutiny committee of”,
  - (b) for “the committee” (in each place where it occurs) substitute “the authority”,
  - (c) for “local NHS bodies” (in each place where it occurs) substitute “relevant NHS bodies or relevant health service providers”,
  - (d) for “local NHS body” (in each place where it occurs except paragraph (f)) substitute “relevant NHS body or relevant health service provider”,
  - (e) omit the words in brackets in paragraph (c), and
  - (f) in subsection (f) for “any officer of a local NHS body” substitute “any member or employee of a relevant NHS body, or a relevant health service provider or member or employee of a relevant health service provider,”.
- (3) After subsection (2) insert—

“(2ZA) If (by virtue of subsection (2)(c)) regulations make provision as to matters on which relevant NHS bodies or relevant health service providers must consult the authority, the regulations may also make provision—

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- (a) as to circumstances in which the authority may refer any of those matters to the Secretary of State, the regulator or the Board;
  - (b) conferring powers on the Secretary of State to give directions to the Board in relation to a matter referred to the Secretary of State by virtue of regulations under paragraph (a);
  - (c) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter so referred;
  - (d) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter referred to the Board by virtue of regulations under paragraph (a);
  - (e) conferring powers on the Secretary of State to give directions to the Board as to the exercise of its powers by virtue of regulations under paragraph (c) or (d).
- (2ZB) The powers that may be conferred under any of paragraphs (b) to (d) of subsection (2ZA) include powers to require the person to whom the direction is given—
- (a) to consult (or consult further) with the authority on the matter in question;
  - (b) to determine the matter in a particular way;
  - (c) to take, or not to take, any other steps in relation to the matter.
- (2ZC) If (by virtue of subsection (2ZA)(a)) regulations make provision for an authority to refer a matter to the Secretary of State, the regulator or the Board, the regulations may also provide for any provision of section 101 of the Local Government Act 1972—
- (a) not to apply in relation to the discharge by the authority of that function, or
  - (b) to apply in relation to its discharge with such modifications as may be prescribed.
- (2ZD) Any functions conferred on a local authority by regulations under this section are not to be the responsibility of an executive of the authority under executive arrangements (within the meaning of Part 1A of the Local Government Act 2000).
- (2ZE) Regulations under this section may authorise a local authority to arrange for its functions under the regulations to be discharged by an overview and scrutiny committee of the authority.”
- (4) For subsection (3) substitute—
- “(3) For the purposes of subsections (2) and (2ZA)—
- “relevant NHS body”, in relation to an authority to which this section applies, means an NHS body, other than a Special Health Authority, which is prescribed for those purposes in relation to the authority;
- “relevant health service provider”, in relation to an authority to which this section applies, means a body or person which—
- (a) provides services in pursuance of arrangements made—
    - (i) by the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1,

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- (ii) by a local authority for the purpose of the exercise of its functions under or by virtue of section 2B or 6C(1) or Schedule 1, or
      - (iii) by the Board, a clinical commissioning group or a local authority by virtue of section 7A, and
    - (b) is prescribed, or is of a description prescribed, for those purposes in relation to the authority.”
- (5) After subsection (3) insert—
  - “(3A) In subsection (2)(f) “member”—
    - (a) in relation to a clinical commissioning group, includes a person who is not a member of the group but is a member of a committee or sub-committee of it;
    - (b) in relation to a relevant health service provider which is a body corporate, includes a person who is not a member of the body but is a director of it;
    - (c) in relation to an NHS trust, means a director of the trust;
    - (d) in relation to an NHS foundation trust, means a director or governor of the trust.
  - (3B) For the purposes of subsection (2)(f)—
    - (a) a member of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as a member of the group or (as the case may be) relevant health service provider, and
    - (b) an employee of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as an employee of the group or (as the case may be) relevant health service provider.”
- (6) In subsection (5), for “this section, section 245 and section 246” substitute “this section and section 245”.
- (7) For the heading to section 244 substitute “Review and scrutiny by local authorities”.
- (8) For the title to Chapter 3 of Part 12 of the National Health Service Act 2006 substitute “Review and scrutiny by local authorities”.
- (9) Until the coming into force of paragraph 19 of Schedule 3 to the Localism Act 2011, section 21 of the Local Government Act 2000 (overview and scrutiny committees) is amended as follows—
  - (a) in subsection (2)(f)—
    - (i) omit “section 244 of the National Health Service Act 2006 or”,
    - (ii) for “either of those sections” substitute “that section”,
    - (iii) for “the Act concerned” substitute “that Act”, and
    - (iv) for “the section concerned” substitute “that section”,
  - (b) omit subsection (2A)(a) and (b), and
  - (c) in subsection (4) at the end insert “or under section 244(2ZE) of the National Health Service Act 2006.”
- (10) In section 9F of the Local Government Act 2000 (overview and scrutiny committees) (as inserted by Schedule 2 to the Localism Act 2011)—

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- (a) omit subsection (2)(f),
- (b) omit subsection (3)(a) and (b), and
- (c) in subsection (5) omit the word “or” following paragraph (a) and after paragraph (b) insert “or
  - (c) any functions which may be conferred on it by virtue of regulations under section 244(2ZE) of the National Health Service Act 2006 (local authority scrutiny of health matters).”

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

- (1) Section 245 of the National Health Service Act 2006 (joint overview and scrutiny committees) is amended in accordance with subsections (2) to (4).
- (2) In subsection (1) for the words from “relevant functions” to the end of the subsection substitute ““relevant functions” means functions under regulations under section 244(2) to (2ZC).”
- (3) In subsection (2)(c), in each of sub-paragraphs (i) and (ii), for “relevant functions of the committee” substitute “relevant functions exercisable by the committee”.
- (4) After subsection (4) insert—
  - “(4A) The regulations may provide that, where a relevant function in relation to a local authority is exercisable by a joint overview and scrutiny committee by virtue of arrangements under regulations under subsection (2)(a), the local authority may not discharge the function.”
- (5) Omit subsections (5) and (9).
- (6) Section 246 of that Act (exempt information) is amended in accordance with subsections (7) to (9).
- (7) In subsection (1) for the words from “a meeting of” to the end of the subsection substitute “a meeting of a local authority or a committee of a local authority which is an item relating to functions of the authority under regulations under section 244(2) to (2ZC).”
- (8) In subsection (5) for “overview and scrutiny committees” substitute “local authorities”.
- (9) In the heading to section 246 for “Overview and scrutiny committees” substitute “Business relating to functions of local authorities by virtue of section 244”.
- (10) Section 247 of that Act (application to the City of London) is amended in accordance with subsections (11) to (13).
- (11) For subsection (1) substitute—
  - “(1) This section applies to a committee of the Common Council appointed to exercise functions that the Council has under regulations under section 244(2) to (2ZC).”
- (12) In subsection (2)—
  - (a) for the words from the beginning to “apply” substitute “Section 245(2)(b) and (c) applies”, and
  - (b) omit the words from “and as if” to the end of the subsection.

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- (13) In subsection (4)—
- (a) for “subsections (2) to (3A)” substitute “subsections (3) and (3A)”, and
  - (b) for the words from “in the case of the committee” to the end of the subsection substitute “in the case of a committee to which this section applies, references to functions under regulations under section 244(2) to (2ZC) which are exercisable by the committee.”
- (14) Omit section 247A (application to local authorities without overview and scrutiny committees).
- (15) In consequence of the amendments made by subsections (2), (7), (11), (13)(a) and (14), paragraphs 75(2), 76, 77(2) and (5)(a) and 78 of Schedule 3 to the Localism Act 2011 are omitted.

### *Joint strategic needs assessments and strategies*

## **192 Joint strategic needs assessments**

- (1) Section 116 of the Local Government and Public Involvement in Health Act 2007 (health and social care: joint strategic needs assessments) is amended as follows.
- (2) In subsection (4), for paragraph (b) substitute—
- “(b) each of its partner clinical commissioning groups.”.
- (3) In subsection (6)—
- (a) for “for which a partner PCT acts” substitute “of a partner clinical commissioning group”,
  - (b) for “the partner PCT” substitute “the partner clinical commissioning group”, and
  - (c) after “a need” insert “or to be likely to be a need”.
- (4) In subsection (7)—
- (a) in paragraph (a)(ii) for “the partner PCT” substitute “the partner clinical commissioning group or the National Health Service Commissioning Board”, and
  - (b) in paragraph (b)(i) for “the partner PCT” substitute “the partner clinical commissioning group or the National Health Service Commissioning Board”.
- (5) In subsection (8)—
- (a) for “each partner PCT” substitute “each of its partner clinical commissioning groups”,
  - (b) after paragraph (b) (but before the “and” immediately following it) insert—
    - “(ba) involve the Local Healthwatch organisation for the area of the responsible local authority;
    - (bb) involve the people who live or work in that area;”, and
  - (c) in paragraph (c) for “consult” substitute “involve”.
- (6) After subsection (8) insert—
- “(8A) In preparing an assessment under this section, the responsible local authority or a partner clinical commissioning group may consult any person it thinks appropriate.”

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(7) In subsection (9)—

- (a) for the definition of “partner PCT” substitute—
  - ““partner clinical commissioning group”, in relation to a responsible local authority, means any clinical commissioning group whose area coincides with or falls wholly or partly within the area of the authority;”,
  - and
- (b) in the definition of “relevant district council”, in paragraph (b)—
  - (i) for “a partner PCT” substitute “a partner clinical commissioning group”, and
  - (ii) for “the area for which the partner PCT acts” substitute “the area of the clinical commissioning group.

### **193 Joint health and wellbeing strategies**

After section 116 of the Local Government and Public Involvement in Health Act 2007 insert—

#### **“116A Health and social care: joint health and wellbeing strategies**

- (1) This section applies where an assessment of relevant needs is prepared under section 116 by a responsible local authority and each of its partner clinical commissioning groups.
- (2) The responsible local authority and each of its partner clinical commissioning groups must prepare a strategy for meeting the needs included in the assessment by the exercise of functions of the authority, the National Health Service Commissioning Board or the clinical commissioning groups (“a joint health and wellbeing strategy”).
- (3) In preparing a strategy under this section, the responsible local authority and each of its partner clinical commissioning groups must, in particular, consider the extent to which the needs could be met more effectively by the making of arrangements under section 75 of the National Health Service Act 2006 (rather than in any other way).
- (4) In preparing a strategy under this section, the responsible local authority and each of its partner clinical commissioning groups must have regard to—
  - (a) the mandate published by the Secretary of State under section 13A of the National Health Service Act 2006, and
  - (b) any guidance issued by the Secretary of State.
- (5) In preparing a strategy under this section, the responsible local authority and each of its partner clinical commissioning groups must—
  - (a) involve the Local Healthwatch organisation for the area of the responsible local authority, and
  - (b) involve the people who live or work in that area.
- (6) The responsible local authority must publish each strategy prepared by it under this section.
- (7) The responsible local authority and each of its partner clinical commissioning groups may include in the strategy a statement of their views on how

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arrangements for the provision of health-related services in the area of the local authority could be more closely integrated with arrangements for the provision of health services and social care services in that area.

- (8) In this section and section 116B—
- (a) “partner clinical commissioning group”, in relation to a responsible local authority, has the same meaning as in section 116, and
  - (b) “health services”, “health-related services” and “social care services” have the same meaning as in section 195 of the Health and Social Care Act 2012.

### **116B Duty to have regard to assessments and strategies**

- (1) A responsible local authority and each of its partner clinical commissioning groups must, in exercising any functions, have regard to—
- (a) any assessment of relevant needs prepared by the responsible local authority and each of its partner clinical commissioning groups under section 116 which is relevant to the exercise of the functions, and
  - (b) any joint health and wellbeing strategy prepared by them under section 116A which is so relevant.
- (2) The National Health Service Commissioning Board must, in exercising any functions in arranging for the provision of health services in relation to the area of a responsible local authority, have regard to—
- (a) any assessment of relevant needs prepared by the responsible local authority and each of its partner clinical commissioning groups under section 116 which is relevant to the exercise of the functions, and
  - (b) any joint health and wellbeing strategy prepared by them under section 116A which is so relevant.”

### *Health and Wellbeing Boards: establishment*

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

- (1) A local authority must establish a Health and Wellbeing Board for its area.
- (2) The Health and Wellbeing Board is to consist of—
- (a) subject to subsection (4), at least one councillor of the local authority, nominated in accordance with subsection (3),
  - (b) the director of adult social services for the local authority,
  - (c) the director of children’s services for the local authority,
  - (d) the director of public health for the local authority,
  - (e) a representative of the Local Healthwatch organisation for the area of the local authority,
  - (f) a representative of each relevant clinical commissioning group, and
  - (g) such other persons, or representatives of such other persons, as the local authority thinks appropriate.
- (3) A nomination for the purposes of subsection (2)(a) must be made—
- (a) in the case of a local authority operating executive arrangements, by the elected mayor or the executive leader of the local authority;

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- (b) in any other case, by the local authority.
- (4) In the case of a local authority operating executive arrangements, the elected mayor or the executive leader of the local authority may, instead of or in addition to making a nomination under subsection (2)(a), be a member of the Board.
- (5) The Local Healthwatch organisation for the area of the local authority must appoint one person to represent it on the Health and Wellbeing Board.
- (6) A relevant clinical commissioning group must appoint a person to represent it on the Health and Wellbeing Board.
- (7) A person may, with the agreement of the Health and Wellbeing Board, represent more than one clinical commissioning group on the Board.
- (8) The Health and Wellbeing Board may appoint such additional persons to be members of the Board as it thinks appropriate.
- (9) At any time after a Health and Wellbeing Board is established, a local authority must, before appointing another person to be a member of the Board under subsection (2)(g), consult the Health and Wellbeing Board.
- (10) A relevant clinical commissioning group must co-operate with the Health and Wellbeing Board in the exercise of the functions of the Board.
- (11) A Health and Wellbeing Board is a committee of the local authority which established it and, for the purposes of any enactment, is to be treated as if it were a committee appointed by that authority under section 102 of the Local Government Act 1972.
- (12) But regulations may provide that any enactment relating to a committee appointed under section 102 of that Act of 1972—
  - (a) does not apply in relation to a Health and Wellbeing Board, or
  - (b) applies in relation to it with such modifications as may be prescribed in the regulations.
- (13) In this section—
  - (a) “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);
  - (b) “elected mayor”, “executive arrangements” and “executive leader”, in relation to a local authority, have the same meaning as in Part 1A of the Local Government Act 2000;
  - (c) “relevant clinical commissioning group”, in relation to a local authority, means any clinical commissioning group whose area coincides with or falls wholly or partly within the area of the local authority.
- (14) In this section and in sections 195 to 199, “local authority” means—
  - (a) a county council in England;
  - (b) a district council in England, other than a council for a district in a county for which there is a county council;
  - (c) a London borough council;
  - (d) the Council of the Isles of Scilly;
  - (e) the Common Council of the City of London in its capacity as a local authority.



### *Health and Wellbeing Boards: functions*

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

- (1) A Health and Wellbeing Board must, for the purpose of advancing the health and wellbeing of the people in its area, encourage persons who arrange for the provision of any health or social care services in that area to work in an integrated manner.
- (2) A Health and Wellbeing Board must, in particular, provide such advice, assistance or other support as it thinks appropriate for the purpose of encouraging the making of arrangements under section 75 of the National Health Service Act 2006 in connection with the provision of such services.
- (3) A Health and Wellbeing Board may encourage persons who arrange for the provision of any health-related services in its area to work closely with the Health and Wellbeing Board.
- (4) A Health and Wellbeing Board may encourage persons who arrange for the provision of any health or social care services in its area and persons who arrange for the provision of any health-related services in its area to work closely together.
- (5) Any reference in this section to the area of a Health and Wellbeing Board is a reference to the area of the local authority that established it.
- (6) In this section—
  - “the health service” has the same meaning as in the National Health Service Act 2006;
  - “health services” means services that are provided as part of the health service in England;
  - “health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;
  - “social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

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

- (1) The functions of a local authority and its partner clinical commissioning groups under sections 116 and 116A of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) are to be exercised by the Health and Wellbeing Board established by the local authority.
- (2) A local authority may arrange for a Health and Wellbeing Board established by it to exercise any functions that are exercisable by the authority.
- (3) A Health and Wellbeing Board may give the local authority that established it its opinion on whether the authority is discharging its duty under section 116B of the 2007 Act.
- (4) The power conferred by subsection (2) does not apply to the functions of the authority by virtue of section 244 of the National Health Service Act 2006.

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*Health and Wellbeing Boards: supplementary*

**197 Participation of NHS Commissioning Board**

- (1) Subsection (2) applies where a Health and Wellbeing Board is (by virtue of section 196(1)) preparing—
  - (a) an assessment of relevant needs under section 116 of the Local Government and Public Involvement in Health Act 2007, or
  - (b) a strategy under section 116A of that Act.
- (2) The National Health Service Commissioning Board must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its preparation of the assessment or (as the case may be) the strategy.
- (3) Subsection (4) applies where a Health and Wellbeing Board is considering a matter that relates to the exercise or proposed exercise of the commissioning functions of the National Health Service Commissioning Board in relation to the area of the authority that established the Health and Wellbeing Board.
- (4) If the Health and Wellbeing Board so requests, the National Health Service Commissioning Board must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its consideration of the matter.
- (5) The person appointed under subsection (2) or (4) may, with the agreement of the Health and Wellbeing Board, be a person who is not a member or employee of the National Health Service Commissioning Board.
- (6) In this section—
 

“commissioning functions”, in relation to the National Health Service Commissioning Board, means the functions of the Board in arranging for the provision of services as part of the health service in England;

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

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

Two or more Health and Wellbeing Boards may make arrangements for—

- (a) any of their functions to be exercisable jointly;
- (b) any of their functions to be exercisable by a joint sub-committee of the Boards;
- (c) a joint sub-committee of the Boards to advise them on any matter related to the exercise of their functions.

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

- (1) A Health and Wellbeing Board may, for the purpose of enabling or assisting it to perform its functions, request any of the following persons to supply it with such information as may be specified in the request—
  - (a) the local authority that established the Health and Wellbeing Board;
  - (b) any person who is represented on the Health and Wellbeing Board by virtue of section 194(2)(e) to (g) or (8);
  - (c) any person who is a member of a Health and Wellbeing Board by virtue of section 194(2)(g) or (8) but is not acting as a representative.

- (2) A person who is requested to supply information under subsection (1) must comply with the request.
- (3) Information supplied to a Health and Wellbeing Board under this section may be used by the Board only for the purpose of enabling or assisting it to perform its functions.
- (4) Information requested under subsection (1) must be information that relates to—
  - (a) a function of the person to whom the request is made, or
  - (b) a person in respect of whom a function is exercisable by that person.

### *Care Trusts*

## **200 Care Trusts**

- (1) In section 77 of the National Health Service Act 2006 (Care Trusts), in subsection (1)
  - (a) in paragraph (a), after “an NHS trust” insert “or a clinical commissioning group or an NHS foundation trust”,
  - (b) omit the “and” preceding paragraph (b),
  - (c) in paragraph (b), for “the Secretary of State considers” substitute “the body and the local authority concerned consider”,
  - (d) in that paragraph, for “a local authority” substitute “the local authority”,
  - (e) after paragraph (b), insert “, and
    - (c) the requirements in subsection (1A) are satisfied,”, and
  - (f) for “the Secretary of State may” substitute “the body and the local authority may jointly”.
- (2) After that subsection insert—

“(1A) The body and the local authority must, before designating the body as a Care Trust under this section—

  - (a) publish in the prescribed form and manner—
    - (i) the reasons why they consider that the proposed designation would be likely to have the result mentioned in subsection (1) (b), and
    - (ii) information about the proposed governance arrangements of the Care Trust, and
  - (b) consult on the proposed designation in accordance with regulations.

(1B) Where a body has been designated as a Care Trust under this section, the body and the local authority must notify prescribed persons of the designation.”
- (3) Omit subsections (2) and (3) of that section.
- (4) In subsection (4) of that section—
  - (a) for “The direction is that while the body is designated it” substitute “A body designated as a Care Trust under this section”,
  - (b) for “specified in the direction” substitute “agreed”,
  - (c) for “so specified” substitute “so agreed”, and
  - (d) at the end insert “; and “agreed” means agreed by the body and the local authority”.

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- (5) For subsection (5) of that section substitute—
- “(5) Where a body is designated as a Care Trust under this section, the body and the local authority may jointly revoke that designation.
- (5A) Before revoking a designation as a Care Trust under this section, the body and the local authority must consult on the proposed revocation of the designation in accordance with regulations.
- (5B) Where the designation of a body as a Care Trust under this section has been revoked, the body and the local authority must notify prescribed persons of the revocation.”
- (6) After subsection (5B) of that section insert—
- “(5C) Regulations under subsection (1A)(b) or (5A) may include provision requiring a body and a local authority to publish prescribed information following a consultation.”
- (7) After subsection (5C) of that section insert—
- “(5D) Where a duty is imposed by or by virtue of this section on a body and a local authority, they may make arrangements for the function to be discharged—
- (a) by both of them acting jointly,
- (b) by each of them acting separately, or
- (c) by one of them acting on behalf of both of them.”
- (8) Omit subsection (6) of that section.
- (9) Omit subsection (7) of that section.
- (10) In subsection (9) of that section—
- (a) omit paragraph (a),
- (b) omit paragraph (b),
- (c) omit paragraph (c), and
- (d) in paragraph (d), for “subsection (3)” substitute “subsection (4)”.
- (11) In subsection (10) of that section, after “NHS trust” insert “or clinical commissioning group or NHS foundation trust”.
- (12) In subsection (12) of that section, in the definition of “NHS functions” after “NHS trust” insert “or clinical commissioning group or NHS foundation trust”.
- (13) Subsections (1)(e) and (2) do not apply in relation to a Primary Care Trust or an NHS trust which has satisfied any requirement in relation to consultation imposed by virtue of subsection (9) of section 77 of the National Health Service Act 2006 before the commencement of those subsections.
- (14) A Primary Care Trust or NHS trust which, after the commencement of subsection (5), has its designation as a Care Trust revoked must notify the Secretary of State of that revocation.
- (15) Despite the repeal of subsection (6) of section 77 of the National Health Service Act 2006 by subsection (8), that subsection continues to have effect so far as it applies to the revocation of designations—
- (a) in relation to Primary Care Trusts, until the commencement of section 34, and

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- (b) in relation to NHS trusts, until the commencement of section 179.