



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 5

#### PUBLIC INVOLVEMENT AND LOCAL GOVERNMENT

### CHAPTER 1

#### PUBLIC INVOLVEMENT

#### *Healthwatch England*

#### **181 Healthwatch England**

- (1) The Health and Social Care Act 2008 is amended as follows.
- (2) In Schedule 1 (the Care Quality Commission: constitution, etc.), in paragraph 6, after sub-paragraph (1) insert—
  - “(1A) A committee of the Commission known as “the Healthwatch England committee” is to be appointed in accordance with regulations.
  - (1B) The purpose of the Healthwatch England committee is to provide the Commission or other persons with advice, information or other assistance in accordance with provision made by or under this or any other Act.”
- (3) After sub-paragraph (5) insert—
  - “(5A) Regulations under sub-paragraph (1A) must make provision requiring a person who has power to appoint a member of the Healthwatch England committee to secure that a majority of the members of the committee are not members of the Commission.
  - (5B) Regulations under sub-paragraph (1A) may specify other results which a person who has power to appoint a member of the committee must secure.

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- (5C) Regulations under sub-paragraph (1A) may, in particular, make provision as to—
- (a) eligibility for appointment;
  - (b) procedures for selecting or proposing persons for appointment.
- (5D) Regulations under sub-paragraph (1A) may, in particular, make provision as to—
- (a) the removal or suspension of members of the committee;
  - (b) the payment of remuneration and allowances to members.”
- (4) In Chapter 3 of Part 1 (quality of health and social care), before section 46 and the preceding cross-heading insert—

*“Healthwatch England and Local Healthwatch organisations*

**45A Functions to be exercised by Healthwatch England**

- (1) The Commission has the functions set out in subsections (2) to (5), but must arrange for the Healthwatch England committee to exercise the functions on its behalf.
- (2) The function in this subsection is to provide Local Healthwatch organisations with general advice and assistance in relation to—
  - (a) the making of arrangements under section 221(1) of the Local Government and Public Involvement in Health Act 2007 (local care services);
  - (b) the making of arrangements in pursuance of arrangements made under section 221(1) of that Act (see section 222(2B) of that Act);
  - (c) the carrying-on of activities specified in section 221(2) of that Act.
- (3) The function in this subsection is a power to make recommendations of a general nature to English local authorities about the making of arrangements under section 221(1) of that Act.
- (4) The function in this subsection is a power, where the Healthwatch England committee is of the opinion that the activities specified in section 221(2) of that Act are not being carried on properly in an English local authority’s area, to give the authority concerned written notice of its opinion.
- (5) The function in this subsection is to provide the persons mentioned in subsection (6) with information and advice on—
  - (a) the views of people who use health or social care services and of other members of the public on their needs for and experiences of health and social care services, and
  - (b) the views of Local Healthwatch organisations and of other persons on the standard of provision of health and social care services and on whether or how the standard could or should be improved.
- (6) The persons referred to in subsection (5) are—
  - (a) the Secretary of State;
  - (b) the National Health Service Commissioning Board;
  - (c) Monitor;

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(d) English local authorities.

- (7) A person provided with advice under subsection (5) must inform the Healthwatch England committee in writing of its response or proposed response to the advice.
- (8) The Healthwatch England committee may provide the Commission with information and advice on the matters mentioned in subsection (5)(a) and (b); and the Commission must inform the committee in writing of its response or proposed response to the advice.
- (9) The Commission must publish details of arrangements it makes under subsection (1) (including details of payments of remuneration or other amounts); and inclusion of the details in a report under section 83 is not to be regarded as a discharge of the duty imposed by this subsection.
- (10) In performing functions under this section, the Healthwatch England committee must have regard to such aspects of government policy as the Secretary of State may direct.

#### **45B Conflicts of interest**

- (1) In making arrangements under section 45A(1), the Commission must have regard to any conflicts guidance issued by the Secretary of State.
- (2) In exercising functions on behalf of the Commission, the Healthwatch England committee must 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 exercise of functions by the Commission, and
  - (b) the exercise of functions by the Healthwatch England committee on the Commission’s behalf.

#### **45C Reports**

- (1) As soon as possible after the end of each financial year, the Healthwatch England committee—
- (a) must make a report to the Commission (whether or not in writing) on the matters mentioned in section 45A(5)(a) and (b), and
  - (b) must publish a report on the way in which it has exercised during the year the functions exercisable by it.
- (2) The committee must—
- (a) lay before Parliament a copy of each report made under subsection (1) (b), and
  - (b) send a copy of each such report to the Secretary of State and to every Local Healthwatch organisation.
- (3) The committee may publish other reports at such times, and on such matters relating to health or social care, as it thinks appropriate.

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- (4) Where a recommendation is made to the committee under section 221(2)(h) of the Local Government and Public Involvement in Health Act 2007 (reports under subsection (3)), the committee must have regard to the recommendation.
- (5) Before publishing a report under subsection (1)(b) or (3), the committee must, so far as practicable, exclude any matter which relates to the private affairs of an individual the publication of which, in the committee’s opinion, would or might seriously and prejudicially affect that individual’s interests.
- (6) In this section, “financial year” means—
- (a) the period beginning with the date on which the committee is appointed and ending with the following 31 March, and
  - (b) each successive period of 12 months ending with 31 March.”
- (5) In section 82 (failure by Commission to discharge functions), after subsection (1) insert—
- “(1A) The Secretary of State may give a direction to the Healthwatch England committee if the Secretary of State considers that the committee—
- (a) is failing or has failed to discharge a function under section 45A or any other function it is required to discharge, or
  - (b) is failing or has failed properly to discharge a function under that section or any other function it is required to discharge,
- and that the failure is significant.”
- (6) In subsection (2) of that section—
- (a) after “(1)” insert “or (1A)”, and
  - (b) after “the Commission” insert “or (as the case may be) the committee”.
- (7) In subsection (2A) of that section (inserted by section 294), after “(1)” insert “or (1A)”.
- (8) In subsection (3) of that section—
- (a) after “the Commission” insert “or the committee”, and
  - (b) after “(1)” insert “or (1A)”.
- (9) In subsection (4) of that section (inserted by section 294), after “(1)” insert “, (1A)”.
- (10) For the title to that section substitute “Failure by the Commission or Healthwatch England in discharge of functions”.
- (11) In section 83 (reports for each financial year etc), after subsection (1) insert—
- “(1A) The reference in subsection (1)(a) to the Commission’s functions does not include a reference to its functions under section 45A.”
- (12) After subsection (2) of that section insert—
- “(2A) The reports under subsection (1)(b) and (c) must, in particular, set out (and identify as such) the contents of the report made by the Healthwatch England committee under section 45C(1)(a) in respect of the year concerned.”
- (13) In each of the following provisions, at the end of the entry for the Care Quality Commission insert “and the Healthwatch England committee”—
- (a) Part 2 of Schedule 1 to the Public Records Act 1958,

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- (b) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, and
  - (c) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.
- (14) The Healthwatch England committee is to be treated for the purposes of section 2(1) of the Public Bodies (Admission to Meetings) Act 1960 as a body that includes all the members of the Care Quality Commission.

### *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 (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—

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- (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,
  - “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.

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- (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).”
- (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—

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**“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)—
  - (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—  
““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.

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- (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 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.

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- (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.”
- (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”.

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## **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.

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- (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”.
- (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;

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- (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 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.

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- (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
  - (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—

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*Status: This is the original version (as it was originally enacted).*

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“(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.”

## 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—

- (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;



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- (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,
  - (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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)—
- (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.

(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.

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*Status: This is the original version (as it was originally enacted).*

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*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.”
- (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 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.

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*Status: This is the original version (as it was originally enacted).*

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### **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;
  - (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.

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- (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

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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.

*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.



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- (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”.

(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.

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

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*Status: This is the original version (as it was originally enacted).*

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## **CHAPTER 3**

### THE HEALTH SERVICE COMMISSIONER FOR ENGLAND

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

In section 14 of the Health Service Commissioners Act 1993 (reports etc. by the Commissioner), after subsection (2H) insert—

“(2I) Where the Commissioner is required by this section to send a report or statement of reasons to certain persons, the Commissioner may send the report or statement to such other persons as the Commissioner thinks appropriate.”