

# HEALTH ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Quality and Delivery of NHS Services

##### Chapter 3 – Direct payments

#### Overview of provisions

##### Direct payments pilot schemes

124. New section 12C(1)(a) provides for the Secretary of State to have power to make pilot schemes under regulations under new section 12B through which the Secretary of State could make direct payments. By directions in writing under sections 7 and 273(4)(c) of the NHS Act, the Secretary of State could delegate the operation of a pilot scheme to a PCT (or a Strategic or Special Health Authority). The Government intends to set up a programme of pilot schemes led by different PCTs to assess the effectiveness of direct payments. In *Personal Health Budgets: First Steps*, the Government invited PCTs to apply to become personal health budget pilots, and it has received a number of applications. The Government intends that there should be a further stage in the application process to select direct payment pilot sites.
125. A pilot scheme must have a specified duration and be subject to review (new section 12C(3) and (4)). The geographical scope may be specified (new section 12C(2)(a)), and a pilot scheme could also be distinguished by characteristics set out in regulations under new section 12B(2) (see section 12C(1)(b)). The Secretary of State is also able to make provision in regulations for changing or discontinuing a pilot scheme or schemes under new section 12C(2)(b).
126. The characteristics of a review of a pilot scheme may be set in regulations. For example, regulations may provide for a review to be undertaken by an independent person or that its findings must be published (new section 12C(5)). New section 12C(6) sets out subjects that a review may, in particular, examine. The Government intends that the review of the pilot schemes should be independent, and the findings should be published. It also intends that the review should cover all the matters mentioned in new section 12C(6), such as the administration of a scheme, the effect of direct payments on cost or quality of care, or the effect of direct payments on patients' behaviour.
127. New section 12C(7) to (10) provides for the Secretary of State to be able by order either to repeal the requirement for direct payments to be made only in accordance with a pilot scheme (see new section 12C(8)(a)), or to repeal new sections 12A, 12B, 12C and 12D (see new section 12C(10)). However new section 12C(7) requires the Secretary of State to have carried out a review of one or more pilot schemes before making any such order. Any such order would be subject to approval by each House of Parliament under the affirmative resolution procedure. If the Secretary of State chose to make an order under section 12C(8)(a), direct payments for health care would no longer need to be made as part of a pilot scheme, and the power to make pilot schemes provided by sections 12C(1) to (4) would be repealed. However, similar time limited schemes could

*These notes refer to the Health Act 2009 (c.21)  
which received Royal Assent on 12 November 2009*

be set up under regulations under section 12B, to continue to test possible extensions or adaptations of a direct payments model.

128. After reviewing a scheme or schemes, an order under new section 12C(8)(b) would enable the Secretary of State to amend, repeal or otherwise modify any other provision of the NHS Act to facilitate the making of direct payments, so long as the changes were necessary or expedient (see section 12C(9)). The power would enable lessons learnt about the legislation from piloting in schemes to be addressed. The order would be subject to approval by each House of Parliament under the affirmative resolution procedure. New section 12C(9) would not allow provision by order to alter unrelated aspects of the NHS Act.
129. New section 12C(10) allows the Secretary of State to repeal sections 12A, 12B, 12C and 12D, for example if, following a review, the Secretary of State does not believe that direct payments are a viable way of delivering services.