

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Emergency powers

Section 47 - Secretary of State's emergency powers

475. Section 253 of the NHS Act confers on the Secretary of State the power to give directions to any body or person exercising functions under the Act (other than NHS foundation trusts), where he considers it necessary by reason of an emergency to do so in order to ensure that a service under the Act is provided. The amendments extend the Secretary of State's powers and make them consistent with the new framework for the health service provided for by the Act. This is necessary because, under the new framework, the Secretary of State will not have a general power to give directions to NHS bodies about how they exercise their functions.
476. *Subsection (2)* amends subsection (1) of section 253 to enable the Secretary of State to give a direction under that section where he considers it is appropriate to do so by reason of an emergency. The effect of the amendment is that the power to give directions is not limited to giving directions to ensure that a service is provided. *Subsection (3)* inserts a new subsection (1A) into section 253 which provides that the Secretary of State's power to direct applies to all NHS bodies except Local Health Boards (which are Welsh NHS bodies) – i.e. it covers the NHS Commissioning Board, CCGs, Special Health Authorities, NHS trusts and NHS foundation trusts. The power also applies to the National Institute for Health and Care Excellence (NICE), the Health and Social Care Information Centre (the Information Centre) and any provider of NHS services.
477. *Subsection (4)* substitutes new subsections (2) and (2A) of section 253 which specify how the direction-making powers may be exercised. A distinction is made between NHS bodies, NICE and the Information Centre, on the one hand, and a provider of NHS services on the other. In relation to NHS bodies, NICE and the Information Centre, the Secretary of State may direct the body: about the exercise of any of its functions; to cease to exercise its functions; to exercise its functions concurrently with another body; or to exercise the functions of another body under the NHS Act. In relation to providers, the power is more limited and the Secretary of State can direct the provider: about the provision of NHS services by the provider; to cease to provide services or to provide additional services. This ensures that the Secretary of State may give directions to both NHS bodies and providers of NHS services not only regarding their own activities but also to ensure coordination between bodies in exercising their activities in times of emergency. *Subsection (5)* inserts three new subsections into section 253. New subsection (2B) enables the Secretary of State to direct the NHS Commissioning Board to exercise the Secretary of State's functions under section 253. New subsection (2C) enables the Secretary of State to direct the Board about its exercise of any functions that are the subject of a direction under new subsection (2B). New subsection (2C) defines "specified" to mean specified in the direction.

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

478. *Subsection (6)* omits subsection (4) of section 253 so as to remove the exclusion of NHS foundation trusts from the Secretary of State's emergency powers. *Subsection (7)* amends section 273 of the NHS Act (further provision about orders and directions under the Act) so that directions under section 253 can be given either in writing or by regulations, as is the case with many other directions under the NHS Act.