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

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Emergency powers

466. Sections 46 and 47 amend the NHS Act to make provision in relation to emergencies affecting the health service. The provisions are in addition to the provisions of the Civil Contingencies Act 2004 relating to emergencies and civil contingency planning by health service and other public bodies.

Section 46 - Role of the Board and clinical commissioning groups in respect of emergencies

467. This section inserts a new section 252A into the NHS Act and sets out the role and responsibilities of the NHS Commissioning Board and CCGs in relation to assuring NHS emergency preparedness, resilience and response. Emergency preparedness enables organisations within the health service and communities to respond to an emergency in a coordinated, proportionate, timely and effective manner.

468. Subsection (1) of section 252A confers duties on the NHS Commissioning Board and each CCG to ensure they are properly prepared for emergencies which might affect them. Similar duties would be imposed on each NHS provider as a term of their contracts with the NHS Commissioning Board or CCGs to provide NHS services.

469. Subsections (2) and (4) of section 252A provide that the NHS Commissioning Board also has duties to take steps to secure that CCGs and providers of NHS services are properly prepared for emergencies.

470. Subsections (3) and (5) of section 252A provide that these duties include a responsibility for monitoring compliance by CCGs and NHS providers with their duties relating to emergency preparedness under this section and, in the case of NHS providers, under the terms of their service contracts with the NHS Commissioning Board or CCGs.

471. Subsection (6) of section 252A allows the NHS Commissioning Board to coordinate the responses between CCGs and service providers to emergencies that might affect those bodies. Subsection (7) of section 252A allows the NHS Commissioning Board to arrange for any other person or body to exercise any of its functions under subsections (2) to (6) of that section in relation to securing the preparedness of CCGs and NHS providers.

472. Subsection (8) of section 252A ensures that if the NHS Commissioning Board makes arrangements under subsection (7) of that section for another body or person to carry out any of its responsibilities for emergency planning, resilience and response, it may also arrange for that other person or body to exercise any functions that the Board has by virtue of the NHS Commissioning Board being a Category 1 responder under the Civil Contingency Act 2004.

473. Subsection (9) of section 252A requires that all relevant service providers must appoint an individual to be responsible for ensuring that the provider is properly prepared for any relevant emergency, that the provider complies with any requirements relating to emergency preparedness in its service contracts with the NHS Commissioning Board or CCGs and that the NHS Commissioning Board is provided with information that it may require so that it can carry out its duties to secure preparedness and monitor compliance with emergency preparedness obligations. The person appointed would be known as an "accountable emergency officer".

474. Subsection (10) of section 252A is an interpretation provision defining certain terms used in that section. "Relevant emergency" is defined, in relation to the NHS Commissioning Board, a CCG or a service provider respectively, as any emergency which might affect the body in question, whether by increasing the need for services it may arrange or provide, or in any other way. "Relevant service provider" is defined as a body or person providing services in pursuance of service arrangements. "Service arrangements" is defined, in relation to a relevant service provider, as arrangements made by the NHS Commissioning Board or a CCG under or by virtue of section 3, 3A, 3B, 4 or 7A or Schedule 1. The provisions therefore apply in relation to an emergency where the body may be asked to assist other NHS bodies or public authorities responding to that emergency, as well as one which directly affects their local NHS services.

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.

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.

Section 48 – New Special Health Authorities

479. This section inserts new section 28A after section 28 of the NHS Act. This new section relates to orders under section 28, which pertain to the establishment of Special Health Authorities. Section 28A proposes limitations to section 28, which would allow the Secretary of State to establish a Special Health Authority for a specific function, but only for a time-limited period. The time limit is intended to maintain a stable system architecture by ensuring that when a Special Health Authority is required for a specific purpose, it does not continue to exist once that purpose has been met. This section would only apply to Special Health Authorities established following the coming into force of this section of the Act (as outlined in subsection 28A(1)).

480. Subsection (2)(a) of new section 28A specifies that any order establishing a new Special Health Authority once the Act is in force must include provision for the abolition of that Authority on a specified day. As outlined in subsection 28A(3), this day must be within a period of 3 years from the day the Special Health Authority is established. This means that all new Special Health Authorities established once the Act is in force would be time limited to a maximum of 3 years. The establishment order must also make provision for the transfer of the staff, property and liabilities of the Authority following its abolition.

481. Orders under section 28 could be altered in line with the power to vary orders and directions in section 273(1) of the NHS Act, to change the day on which the Special Health Authority is to be abolished to an earlier or later date (28A(4)(a)). If an order is varied to provide for the abolition of a Special Health Authority on a later date, this must be no more than 3 years from the date on which the Special Health Authority would have been abolished had it not been for the variation, as outlined in 28A(5). Any such order would be subject to the affirmative Parliamentary procedure, in order to discourage the proliferation of Special Health Authorities. Orders under section 28 may also be altered to make different provision as to the transfer of officers, property and liabilities of the Authority (28A(4)(b)).

Section 49 (new sections 98A, 114A, 125A, 168A) - Primary care services: directions as to exercise of functions

482. This section inserts new powers to give directions into the NHS Act. *Subsection (1)* inserts a new section 98A into the NHS Act to provide a power of direction, in respect of those functions of either the Secretary of State or the NHS Commissioning Board that relate to the provision of primary medical services. These would be exercised by the Secretary of State in respect of the NHS Commissioning Board and by the Board in respect of CCGs. This would both permit the delegation of functions by directions and allow for the directions to set out how the functions (including delegated functions) should be exercised by the Board or the CCG.

New section 98A Exercise of functions

483. *Subsection (1)* of new section 98A provides that the Secretary of State may direct the NHS Commissioning Board to exercise on his behalf any of his functions relating to the provision of primary medical services.

484. *Subsection (2)* of new section 98A clarifies that the functions that may be directed do not include the Secretary of State's regulation and order-making powers.

485. *Subsection (3)* of new section 98A provides that the Secretary of State may direct the NHS Commissioning Board as to how it is to exercise any functions that it is directed to exercise under subsection (1). The Secretary of State has retained a number of functions that relate to the setting of the detail that must be included in primary medical services contracts and the various fees and allowances that attach to those contracts. It is envisaged that as the NHS Commissioning Board's role in commissioning primary medical services develops it may be appropriate for the Board to take responsibility for some of the more detailed operational aspects currently set by the Secretary of State. For example, it may be more appropriate for the NHS Commissioning Board to determine the rules under which contractors receive support with the cost of locum cover, a matter currently set out in directions under section 87 of the NHS Act and the Secretary of State may need to give direction to ensure the NHS Commissioning Board exercises its functions correctly.

486. *Subsection (4)* of new section 98A provides that the NHS Commissioning Board may direct a CCG to exercise on its behalf any of the Board's functions relating to the provision of primary medical services.

487. *Subsection (5)* of new section 98A provides that the NHS Commissioning Board may direct CCGs as to how to exercise any functions relating to the provision of primary medical services that it is directed to exercise. The details of the functions to be delegated will be a matter for discussion between the NHS Commissioning Board and the CCGs. It is envisaged that CCGs will play some part in monitoring primary medical service contractors and that they may have a role in commissioning some enhanced primary medical services on behalf of the NHS Commissioning Board.

488. *Subsection (6)* of new section 98A permits regulations to set out functions that the NHS Commissioning Board cannot direct a CCG to exercise on the Board's behalf (for example, it is likely that regulations would prescribe the function of entering into primary medical services contracts as a function that cannot be delegated).

489. *Subsection (7)* of new section 98A permits the NHS Commissioning Board to provide information to the CCG where that information is required by the CCG to exercise any function that the Board has directed it to exercise. The supply of information would be limited to that which the NHS Commissioning Board considers necessary to enable the CCG to perform the function effectively.

490. *Subsections (8), (9)* and *(10)* of new section 98A require the CCG report to the NHS Commissioning Board on matters that come to its attention as a result of undertaking the Board's functions and permit the Board to consider those matters when exercising its primary medical services functions, such as issues relating to a contractor's performance under its contract.

New section 114A Exercise of functions

491. This section inserts a new section 114A into the NHS Act to provide a power of direction in respect of the exercise by the NHS Commissioning Board of any of the Secretary of State's functions relating to the provision of primary dental services. This would both permit the delegation of functions by directions and allow for the directions to set out how any functions (including any functions delegated to it) were to be exercised by the NHS Commissioning Board.

492. Subsection (1) of the new section 114A provides that the Secretary of State may direct the NHS Commissioning Board to exercise on his behalf any of his functions relating to the provision of primary dental services.

493. Subsection (2) of new section 114A clarifies that the functions that may be directed do not include the Secretary of State's regulation and order-making powers.

494. Subsection (3) of new section 114A provides that the Secretary of State may direct the NHS Commissioning Board as to how it is to exercise any functions relating to the provision of primary dental services (including any functions delegated to it).

New section 125A Exercise of functions

495. This section inserts new section 125A into the NHS Act to provide a power of direction in respect of those functions of either the Secretary of State or the NHS Commissioning Board that relate to the provision of primary ophthalmic services. These will be exercised by the Secretary of State in respect of the NHS Commissioning Board and by the NHS Commissioning Board in respect of a CCG, a Special Health Authority or such other body as may be prescribed. This would both permit the delegation of functions by directions and allow for the directions to set out how the functions (including delegated functions) should be exercised by the NHS Commissioning Board, the CCG, the Special Health Authority or any prescribed body.

496. Subsection (1) of new section 125A of the Act provides that the Secretary of State may direct the NHS Commissioning Board to exercise on his behalf any of his functions relating to the provision of primary ophthalmic services.

497. Subsection (2) of new section 125A clarifies that the functions that may be directed do not include the Secretary of State's regulation and order-making powers.

498. Subsection (3) of new section 125A of the Act provides that the Secretary of State may direct the NHS Commissioning Board as to how it exercises any function relating to the provision of primary ophthalmic services (including any functions delegated to it).

499. Subsection (4) of new section 125A of the Act provides that the NHS Commissioning Board may direct a CCG, a Special Health Authority or other prescribed body to exercise on its behalf any of the NHS Commissioning Board's functions relating to the provision of primary ophthalmic services.

500. Subsection (5) of new section 125A of the Act provides that the NHS Commissioning Board may direct a CCG, a Special Health Authority or other prescribed body about the exercise of any functions relating to the provision of primary ophthalmic services (including any function delegated to it).

501. Subsection (6) of new section 125A of the Act permits regulations to set out functions that the NHS Commissioning Board cannot direct a CCG, a Special Health Authority or such other body as may be prescribed to exercise on the Board's behalf.

502. Subsection (7) of new section 125A of the Act permits the NHS Commissioning Board to provide information to the CCG, a Special Health Authority or such other body as may be prescribed where that information is required by the CCG. Special Health Authority or other prescribed body to exercise any function that the NHS Commissioning Board has directed it to exercise. The supply of information would be limited to that which the NHS Commissioning Board considered necessary to allow the function to be performed effectively.

503. Subsections (8), (9) and (10) of new section 125A of the Act require the body directed to report to the NHS Commissioning Board on matters that come to its attention as a result of undertaking the NHS Commissioning Board's functions and permit the NHS Commissioning Board to consider those matters when exercising its primary ophthalmic services functions, such as issues relating to a contractor's performance under its contract.

New section 168A Exercise of functions

504. This section inserts a new section 168A into the NHS Act to provide a power of direction in respect of the exercise by the NHS Commissioning Board of the Secretary of State's functions relating to the provision of pharmaceutical services or local pharmaceutical

services. This would both permit the delegation of functions by directions and allow for the directions to set out how any functions (including any functions delegated to it) are to be exercised by the NHS Commissioning Board.

505. Subsection (1) of new section 168A of the Act enables the Secretary of State to direct the NHS Commissioning Board to undertake certain functions in relation to the provision of pharmaceutical services or local pharmaceutical services, such as maintaining pharmaceutical lists or setting up local pharmaceutical services on his behalf.

506. Subsection (2) of new section 168A clarifies that the functions that may be directed do not include the Secretary of State's regulation and order-making powers.

507. Subsection (3) of new section 168A of the Act enables the Secretary of State to direct the NHS Commissioning Board about the exercise of any functions in relation to the provision of pharmaceutical services or local pharmaceutical services (including any functions delegated to it).

Section 50 - Charges in respect of certain public health functions

508. This section sets out when the Secretary of State or local authorities would be able to charge for steps taken in the exercise of their public health functions – i.e. their functions under new sections 2A and 2B of the NHS Act inserted by sections 11 and 12. The section inserts a new section 186A into the NHS Act. Any service which is provided under section 2A or 2B is a service provided as part of the comprehensive health service and so must be provided free of charge, unless specific provision is made for a charge in legislation (see section 1(3) of the NHS Act).

509. The new section allows the Secretary of State to charge an appropriate amount for any health protection step taken by the Secretary of State under his duty to protect public health (section 2A), including charges for any services or facilities provided. However, this power to charge does not include services or facilities that are provided to an individual in order to protect that individual's health – vaccination or screening, for example (see subsection (2)). These provisions are intended to ensure an approach consistent with the existing position for NHS services, which are generally free of charge to patients.

510. *Subsection (4)* of the new section allows the Secretary of State to make regulations specifying the steps to improve public health taken under section 2B that local authorities would be able to charge for. Subsection (4) also allows the Secretary of State to specify the health protection steps taken under section 2A (by virtue of regulations under section 6C(1)) that local authorities would be able to charge for.

511. The Secretary of State would be able to specify particular services for which a charge may be made, or particular circumstances in which such services could be charged for, and to specify the maximum amount of any charge, or how the charge is calculated. Some existing services for which local authorities charge under current legislation would now fall within the new duty to improve health, and so the new section would enable the Secretary of State to allow local authorities to continue to charge, in appropriate cases, while maintaining the general position that services under the NHS Act are free of charge.

Section 51 - Pharmaceutical services expenditure

512. Sections 164 and 165 of the NHS Act set out the general requirements for determining remuneration for NHS pharmaceutical services.

513. This section makes further provision in respect of the arrangement for pharmaceutical services expenditure by inserting a new section 165A and a new Schedule 12A into the NHS Act, which make further provisions to take into account the future NHS architecture.

514. Subsections (1) and (2) of new section 165A provide that the NHS Commissioning Board must give the Secretary of State such information as he or she may require in relation to the pharmaceutical remuneration paid by the NHS Commissioning Board to persons providing pharmaceutical services or local pharmaceutical services in such form or at such time or within such period as the Secretary of State may require. For example, in order for the Secretary of State to be able to discharge his duties in section 164 and 165 of the NHS Act, the Secretary of State may require the NHS Commissioning Board to notify the Secretary of State of:

- both the expenditure for which CCGs are to be liable by virtue of determinations and apportionments under the new Schedule 12A, as inserted by Schedule 3 which makes further provision about pharmaceutical remuneration; and
- the rest of the expenditure by the NHS Commissioning Board on the commissioning of pharmaceutical services under Part 4 of the NHS Act.

515. The word "remuneration" is a specific term about which provision is made by section 165(6) of the NHS Act. It covers the fees and allowances that pharmaceutical contractors (community pharmacies, appliance contractors and dispensing doctors) receive for the services provided. It also covers reimbursement for the costs of the products they supply against prescriptions.

516. Under existing legislation, the Secretary of State determines the reimbursement price paid by the NHS for the products dispensed. The Secretary of State also determines the level of fees and allowances for pharmaceutical services. These are published monthly in the Drug Tariff.

517. The prescriptions dispensed by contractors are processed by the NHS Business Services Authority which then pays the contractors. The costs – for both the services and products – are then charged to PCTs.

518. The NHS Business Services Authority charges these costs to PCTs by deducting the relevant amount from the total sums that PCTs draw down each month – based on their annual unified funding allocation.

519. In future, it is expected that the Secretary of State will continue to determine the reimbursement price paid by the NHS for the products dispensed. This is because wider interests are affected, such as pharmaceutical manufacturers and wholesalers. However, as the NHS Commissioning Board will in future be commissioning pharmaceutical services, it is expected that the NHS Commissioning Board will become responsible for determining the level of fees and allowances paid for pharmaceutical services once PCTs are abolished.

520. This section also introduces Schedule 3.

Schedule 3 – Pharmaceutical remuneration

521. This Schedule inserts new Schedule 12A into the NHS Act.

522. Paragraph 1 of the new Schedule makes provision in respect of interpretation. It defines "drugs" by reference to the meaning given in section 126 of the NHS Act so that this term includes listed appliances (such as stoma care products) as well as drugs. It also defines "pharmaceutical remuneration" so that this term includes both contractors who provide NHS pharmaceutical services and contractors who provide NHS local pharmaceutical services (which would be provided under direct contracts with the NHS Commissioning Board).

523. Paragraph 2 of the new Schedule sets out the arrangements for how pharmaceutical remuneration is to be apportioned amongst CCGs. This largely mirrors current funding flows for NHS pharmaceutical services expenditure.

524. Sub-paragraph (1) of paragraph 2 provides that the NHS Commissioning Board must determine the elements of pharmaceutical remuneration which will be apportioned to CCGs in relation to the relevant financial year in accordance with that sub-paragraph.

525. Sub-paragraph (2) of paragraph 2 provides that the elements of pharmaceutical expenditure to be apportioned each financial year, which the NHS Commissioning Board has determined in accordance with sub-paragraph (1), are to be referred to as "designated elements".

526. Sub-paragraph (3) of paragraph 2 requires the NHS Commissioning Board to notify each CCG of its determination of the designated elements of pharmaceutical remuneration on which the apportionment to CCGs during the financial year is based.

527. Sub-paragraph (4) of paragraph 2 provides that the NHS Commissioning Board must apportion among all CCGs the sums paid by it for each designated element as the Board thinks appropriate. For example, the NHS Commissioning Board could determine that the drug costs for prescriptions written in Scotland but dispensed in England are to be shared across all CCGs in an equitable way. This would reflect existing arrangements whereby such costs are shared equitably across all PCTs (since such costs cannot be attributed to an individual PCT and will not be capable in future of being attributed to an individual CCG).

528. Sub-paragraph (5) of paragraph 2 provides that when the NHS Commissioning Board is apportioning the sums paid by it to CCGs under sub-paragraph (4), the NHS Commissioning Board may, in particular, take into account the financial consequences of the prescriptions issued by GP practices in the CCG in the same way that they will be responsible for the financial consequences of referral decisions. It is intended that this will provide incentives for CCGs to work with practices in the CCG to look in the round at how to achieve the best overall health outcomes from the resources available.

529. Sub-paragraph (6) of paragraph 2 provides that the NHS Commissioning Board may deduct the amount of pharmaceutical remuneration it has apportioned to a CCG from the sums it would otherwise pay to the CCG under section 223H and where it does so it must notify the CCG.

530. Sub-paragraph (7) of paragraph 2 provides that the Secretary of State may direct the NHS Commissioning Board that a particular element (or elements) of pharmaceutical remuneration should not to be included in a determination the NHS Commissioning Board makes under sub-paragraph (1). For example, the Secretary of State might direct the NHS Commissioning Board that the cost of dental prescriptions is not to be included in a determination by the Board under sub-paragraph(1).

531. Sub-paragraph (8) of paragraph 2 provides that the NHS Commissioning Board, when determining the overall allocation to a CCG under section 223H of the NHS Act, must take account of the effect of the new Schedule 12A. The NHS Commissioning Board must therefore take account of pharmaceutical needs, alongside other relevant healthcare needs, when determining the overall allocation.

532. Sub-paragraph (9) of paragraph 2 provides that, for the purposes of sections 223H, 223I(3), and paragraph (16) of Schedule 1A, any amount of pharmaceutical remuneration apportioned by the NHS Commissioning Board for a given financial year which is notified to CCGs under sub-paragraph (6) is to be treated as expenditure of the CCG which is attributable to the performance of its functions in the relevant year.

533. Paragraph 3 of the new Schedule makes provision for the reimbursement by the NHS Commissioning Board of other pharmaceutical remuneration. Sub-paragraph (1) makes clear that paragraph 3 does not apply to elements of pharmaceutical remuneration which are designated elements under paragraph 2(2) or other remuneration of a prescribed description. Sub-paragraph (2) makes provision for the NHS Commissioning Board to require a person to reimburse it for any pharmaceutical remuneration to which paragraph 3 applies if the drugs or appliances in question were ordered by that person

or ordered in the course of the delivery of a service arranged by that person. This paragraph does not relate to the pharmaceutical remuneration attributable to CCGs. Rather, it enables the NHS Commissioning Board to require providers who deliver services that give rise to pharmaceutical expenditure to cover the costs that may arise. The NHS Commissioning Board would, for example, under sub-paragraph (2), be able to require reimbursement from an NHS foundation trust for the costs of the drugs prescribed by one of its employees (or any such costs incurred in the course of the delivery of services arranged by that person) which are dispensed in the community by a pharmaceutical contractor. Sub-paragraph (3) provides that any such sums due can be recovered summarily as a civil debt.

534. Paragraph 4 provides that the NHS Commissioning Board may, with the express consent of the Secretary of State, delegate any of its functions under Schedule 12A to a Special Health Authority or arrange for its functions to be exercised by any other person. This would, for example, enable existing arrangements to continue if so desired whereby the NHS Business Services Authority makes payments to contractors for the provision of pharmaceutical services on behalf of PCTs.

Section 52 - Secretary of State's duty to keep health service functions under review

535. This section inserts new section 247C into the NHS Act. This gives the Secretary of State a duty to keep health service functions under review. The purpose of this is to make clear on the face of legislation that Secretary of State is ultimately accountable for ensuring that the national level arm's length bodies, such as the NHS Commissioning Board, Monitor and the Care Quality Commission (including the Healthwatch England Committee of CQC), are performing their functions effectively. This duty is backed by powers of intervention in the event of significant failure (see new section 13Z2 of the NHS Act and sections 71, 245, 272 and 294 of this Act). This section was added to the Act following the Department's response to the NHS Future Forum, as a way of emphasising the Government's continuing responsibility for the NHS.

536. Section 247C also makes it explicit that the Secretary of State may report on how the national level organisations have discharged their functions, as part of his annual report on the performance of the health service (see section 53).

Section 53 - Secretary of State's annual report

537. This section inserts new section 247D into the NHS Act. This section would require the Secretary of State to publish an annual report relating to the performance of the comprehensive health service in England, which is to be laid before Parliament. This is the first time that there has been a specific requirement for an annual report of this kind, and it is intended to ensure that the performance of the comprehensive health service is subject to the appropriate Parliamentary scrutiny.

538. This report would cover both those aspects of the health service commissioned by the NHS Commissioning Board and CCGs, as well as those public health services for which the Secretary of State and local authorities are responsible. Subsection (2) requires the Secretary of State to include in the report his assessment of how effectively he has discharged his duties under sections 1A (Duty as to improvement in quality of services) and 1C (Duty as to reducing inequalities). In addition to these requirements, the report may, for example, include an assessment as to the extent to which the comprehensive health service had achieved progress in the outcomes set out in the Outcomes Framework.

Section 54 – Certification of death

539. This section makes amendments to the Coroners and Justice Act 2009 placing responsibility for the appointment of medical examiners and related activities on local authorities (in England) instead of PCTs.

Section 55 - Amendments related to Part 1 and transitional provision

540. This section gives effect to Schedules 4, 5 and 6.

Schedule 4 – Amendments of the National Health Service Act 2006

541. This Schedule makes a number of amendments to the NHS Act as a result of the changes made to the health service architecture elsewhere in Part 1 of this Act.

542. **Part 1 of Schedule 4 (the health service in England)** makes amendments to Part 1 of the NHS Act primarily as a result of the abolition of SHAs and PCTs, the establishment of the NHS Commissioning Board and CCGs and changes to the Secretary of State's role as provided for in Part 1 of this Act.

543. Paragraph 1 substitutes section 2 of the NHS Act. Previously, section 2 of the NHS Act empowered the Secretary of State to provide such services as the Secretary of State considers appropriate for the purpose of discharging his duties under the Act (section 2(1)(a)), and to do anything which is calculated to facilitate, or is conducive or incidental to the discharge of such duties (section 2(1)(b)). Section 2(1)(a) is no longer necessary because the Secretary of State will no longer be under a duty to provide services. CCGs will however have a power to arrange such services as they consider appropriate for the purposes of the health service under new section 3A (section 14). In relation to what was section 2(1)(b), the new section 2 substituted by paragraph 1 of Schedule 4 to this Act confers powers on the Secretary of State, the NHS Commissioning Board and CCGs to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions.

544. Paragraph 2 amends section 6 of the NHS Act so that instead of applying only to the Secretary of State, it applies in addition to the NHS Commissioning Board and CCGs. Section 6 allows for health services to be procured outside of England, and also for functions to be performed outside England in certain circumstances, such as transfers of patients across borders.

545. Paragraphs 3 and 4 amend sections 6A and 6B of the NHS Act. These sections deal with reimbursement of the cost of services provided in another EEA state and prior authorisation for the purpose of seeking treatment in another EEA state. The changes reflect the fact that services will in future be commissioned by the NHS Commissioning Board and CCGs, or in relation to public health, provided by the Secretary of State and local authorities.

546. References to SHAs and PCTs are removed from sections 8 (Secretary of State's directions to health service bodies), 9 (NHS contracts) and 11 (Arrangements to be treated as NHS contracts) of the NHS Act by paragraphs 5, 6 and 7 respectively. Paragraph 6 adds the NHS Commissioning Board and CCGs into the definition of "health service body" in section 9 of the NHS Act, meaning that contracts entered into by those bodies with other health service bodies will be treated as NHS contracts for the purposes of the NHS Act. Paragraph 7 adds the NHS Commissioning Board into the list of persons in section 11(1) of the NHS Act. This means that certain arrangements which it enters into in relation to ophthalmic and pharmaceutical services will be treated as NHS contracts.

547. Paragraph 8 amends section 12 of the NHS Act to reflect the fact that the Secretary of State will no longer be a provider of NHS services, but may be providing services in the exercise of public health functions. Section 12 allows the Secretary of State to make arrangements with any person or body to secure or assist in the securing of any of the services he or she is under a duty to provide. This includes arrangements with voluntary organisations, and will in future include the NHS Commissioning Board and CCGs.

548. Paragraph 9 inserts new section 12ZA into the NHS Act, which makes special provision about commissioning arrangements made by the NHS Commissioning Board and

CCGs. For example, it allows those bodies to make their facilities and employees available to service providers.

549. Paragraphs 10 to 12 amend sections 12A, 12B and 12D of the NHS Act (inserted by the Health Act 2009) to allow the NHS Commissioning Board, CCGs and local authorities rather than the Secretary of State to make monetary payments to patients in lieu of providing them with health care services. These are known as 'direct payments' or 'personal health budgets'. The amendment to section 12B allows the regulations governing the rules around administration of such payments to apply to the NHS Commissioning Board, CCGs and local authorities instead of PCTs.

550. **Part 2 of Schedule 4 (NHS bodies)**, consisting of paragraphs 13 to 23 of Schedule 4 to this Act, makes a series of amendments to Part 2 of the NHS Act (which deals with NHS bodies). Paragraph 13 amends section 28 (special health authorities). Subsection (5) of that section provides that on dissolution of a Special Health Authority, criminal liabilities may be transferred to an "NHS body"; subsection (6) defines "NHS body", but is omitted by paragraph 13. The provision is omitted as a new definition of "NHS body", which does not include SHAs and PCTs, but includes the NHS Commissioning Board and CCGs, is inserted into section 275 of the Act by paragraph 138 of Schedule 4.

551. Paragraph 14 amends section 29, which relates to the exercise of functions by Special Health Authorities, to remove references to section 14 and 19 which relate to the exercise of SHA and PCT functions

552. Paragraph 15 makes provision for the omission of Chapter 5B of Part 2 of the NHS Act, 'trust special administrators: PCTs.' This is consequential on the abolition of PCTs elsewhere in this Act.

553. Paragraph 16 amends section 67 (effect of intervention orders) which makes provision regarding the effect of an order made under section 66. Section 66 enables the Secretary of State to make an intervention order where an NHS body (other than a foundation trust) is not performing its functions adequately or at all, or where there are significant failings in the way it is being run. Section 66 is amended in Schedule 21 to this Act (relations between health services), so that it applies only to NHS trusts and Special Health Authorities. Section 67 is amended to remove the references to SHAs and PCTs. References to the NHS Commissioning Board and CCGs are not inserted, as they are subject to separate powers provided for in Part 1 of this Act.

554. Paragraph 17 amends section 70 (transfer of residual liabilities), which provides that on dissolution of certain bodies, the Secretary of State must ensure that all their liabilities are dealt with by being transferred to the Secretary of State or an NHS body.

555. Paragraph 18 amends section 71 (schemes for meeting losses and liabilities in respect of certain health service bodies) so as to remove references to SHAs and PCTs and insert references to the NHS Commissioning Board and CCGs. This enables the Secretary of State to provide in regulations that the NHS Commissioning Board and CCGs are eligible to participate in such schemes or may administer such schemes.

556. Section 73 (directions and regulations) of the NHS Act makes provision relating to directions and regulations made under the provisions specified in subsection (1). Paragraph 19 of Schedule 4 to this Act removes sections 14, 15, 19 and 20 from the list in subsection (1), as those sections relate only to SHAs and PCTs.

557. Paragraphs 20 and 21 omit Schedules 2 and 3 to the NHS Act, as they deal with the constitution of SHAs and PCTs.

558. Paragraph 22 amends Schedule 4 to the NHS Act, which deals with NHS trusts. Sub-paragraphs (2) and (3) of paragraph 15, omitted by sub-paragraph 7, provide that an NHS trust may provide high security psychiatric services only where approved by the Secretary of State. Those provisions are omitted, as this Act makes new provision requiring any provider of such services to have approval – see section 16 of this Act.

559. Schedule 6 to the NHS Act provides for the Secretary of State to make regulations or give directions about Special Health Authorities transferring staff to, making staff available to, and furnishing information to, various bodies. Paragraph 23 of Schedule 4 removes SHAs from the list of bodies to which those provisions apply.

560. **Part 3 of Schedule 4 (local authorities)** amends Part 3 of the NHS Act (local authorities and the NHS).

561. Paragraph 24 amends section 74 by removing references to a SHA and a PCT and inserting references to the NHS Commissioning Board and CCGs so that the expression 'public body' in the Local Authorities (Goods and Services) Act 1970 (c.39) includes the Board and CCGs.

562. Paragraph 25 amends section 76 by removing references to a SHA and a PCT and inserting references to the NHS Commissioning Board and a CCG so that a local authority can make payments to those bodies towards expenditure incurred or to be incurred by the body in connection with its performance of prescribed functions.

563. Paragraph 26 amends section 77 by removing the references to PCTs.

564. Paragraph 27 amends section 78(3) to remove the references to PCTs and SHAs. Section 78 provides a power for the Secretary of State to direct certain bodies to enter into partnership arrangements in the event that they fail to exercise their functions adequately. This section will eventually be entirely repealed by this Act, when section 179 (abolition of NHS trusts) is brought into force.

565. Paragraphs 28 and 29 amend sections 80 and 81 by removing references to SHAs and PCTs and inserting references to the NHS Commissioning Board and CCGs. The amendment of section 80 gives the NHS Commissioning Board and CCGs powers to supply goods and services to local authorities and such public bodies as the Secretary of State may determine. The amendment also requires the NHS Commissioning Board and CCGs to make certain services available to local authorities so far as is reasonable necessary and practicable to enable local authorities to discharge their functions relating to social services, education and public health. Section 81 is amended so that the conditions of supply under section 80 apply to the NHS Commissioning Board and CCGs.

566. **Part 4 of Schedule 4 (medical services)** makes consequential amendments to Part 4 of the NHS Act. In particular, the NHS Commissioning Board is placed under a duty to secure the provision of primary medical services in England under section 83 of the NHS Act and may make such arrangements as it considers appropriate to meet all reasonable requirements in this area including arrangements for the performance of a service outside England. The NHS Commissioning Board will be unable to provide primary medical services itself but will make arrangements for the provision of services with general practitioners and other providers.

567. Sections 89 and 94 are amended to clarify that any consequential changes made to a General Medical Services contract or a Personal Medical Services agreement as the result of the establishment of CCGs may be imposed by virtue of existing provision in section 89(2)(d) and section 94(3)(f) of the NHS Act. Provision is also included to clarify that transitional provision may be made in connection with the commencement of the amendments to section 92 of the NHS Act, for the NHS Commissioning Board to direct a PCT to exercise its functions under section 92 (personal medical services) arrangements during the interim period between the abolition of SHAs and the abolition of PCTs. A new subsection (3)(ca) is inserted into section 94 of the NHS Act which clarifies, for consistency with section 84(4)(b), that section 92 arrangements can include services performed outside England. Section 95 is omitted. Provision is also made in section 97 for the NHS Commissioning Board to recognise Local Medical Committees for an area.

568. **Part 5 of Schedule 4 (dental services)** makes consequential amendments to Part 5 of the NHS Act. In particular, the NHS Commissioning Board is placed under a duty to secure the provision of primary dental services in England under section 99 of the NHS Act and may make such arrangements as it considers appropriate to meet all reasonable requirements in this area including arrangements for the performance of primary dental services outside England. The NHS Commissioning Board will be unable to provide primary dental services itself but will make arrangements for the provisions of services with dentists and other providers.

569. Section 107 of the Act is amended to enable the NHS Commissioning Board to enter into arrangements for the provision of primary dental services instead of SHAs. Provision is also included to clarify that transitional provision in connection with the commencement of the amendments to section 107 of the NHS Act may be made for the NHS Commissioning Board to direct a PCT to exercise its functions under that section (personal dental services) arrangements during the interim period between the abolition of SHAs and the abolition of PCTs. A new subsection (3)(ca) is inserted into section 109 of the NHS Act which clarifies, for consistency with the new section 99(1A) of the Act, that section 107 arrangements can include services performed outside England. Section 110 is omitted. Provision is also made for the NHS Commissioning Board to recognise Local Dental Committees for an area.

570. **Part 6 of Schedule 4 (ophthalmic services)** makes consequential amendments to Part 6 of the NHS Act. In particular, the NHS Commissioning Board is placed under a duty to provide a sight testing service and other ophthalmic services and may make such arrangements as it considers appropriate to meet all reasonable requirements in this area including arrangements for the performance of ophthalmic services outside England. The NHS Commissioning Board will be unable to provide primary ophthalmic services itself. Provision is also made for the Board to recognise Local Optical Committees formed for an area.

571. **Part 7 of Schedule 4 (pharmaceutical services)** makes consequential amendments to provisions in Part 7 of the NHS Act in respect of pharmaceutical services. In particular, provision is made for the NHS Commissioning Board to commission pharmaceutical services for England. The NHS Commissioning Board cannot provide pharmaceutical services itself but will make arrangements for the provision of services with other persons and bodies. Further amendments are made to section 129 of the Act regarding the preparation and publication of pharmaceutical lists of NHS contractors. The NHS Commissioning Board will be required to prepare such lists by reference to the area in which the premises from which the services are provided are situated. Under section 150A of the NHS Act, the NHS Commissioning Board may remove a pharmaceutical services contractor from a list if they breach their terms of service by, for example, a repeated failure to open in accordance with contracted hours. Section 132 of the NHS Act is amended to require the NHS Commissioning Board to prepare lists of medical and dental practitioners who are authorised by it to provide pharmaceutical services by reference to an area of a prescribed description. The disqualification provisions in sections 151 to 162 of the NHS Act are also amended to enable the NHS Commissioning Board to make decisions and take action (such as suspension or removal from a list) in fitness to practise matters. Provision is also made for such matters to be referred to the First Tier Tribunal for national disqualification. Provision is made for the NHS Commissioning Board to recognise Local Pharmaceutical Services Committees for an area. Transitional provision is included in Schedule 11 to the NHS Act for the continuation of pilot schemes and in Schedule 12 to that Act for the continuation of Local Pharmaceutical Services (LPS) schemes and for such schemes to be treated as if they had been established by the NHS Commissioning Board. The Secretary of State may continue to establish LPS schemes and, in prescribed circumstances, the NHS Commissioning Board will be able to provide local pharmaceutical services itself.

572. **Part 8 of Schedule 4 (charging)** makes amendments to Part 9 of the NHS Act by removing references to PCTs and SHAs.

573. Paragraph 94 amends section 176 by inserting a reference to the NHS Commissioning Board to ensure that regulations under subsection (1), which provide for the making and recovery of charges for relevant dental services, may provide for sums otherwise payable by the Board to persons providing relevant dental services to be reduced by the amount of the charges.

574. Paragraph 96 amends section 180 by inserting references to the NHS Commissioning Board so that the Secretary of State must provide by regulations for payments to be made by the NHS Commissioning Board to meet or contribute to the costs incurred in respect of optical appliances and sight tests. The amendment also inserts new subsection (6A) into section 180 to enable the NHS Commissioning Board to direct a Special Health Authority, or such other body as may be prescribed, to exercise any of the NHS Commissioning Board's functions under regulations under section 180. Section 180 of the Act is also amended to include new provision for the NHS Commissioning Board to direct a Special Health Authority or such other body as may be prescribed to exercise the Board's functions under that section and to omit subsection (10) of that section which is not consistent with the funding arrangements for the Board. The title of section 180 is also amended to reflect that this section now relates to payments for both the cost of optical appliances and sight tests.

575. Paragraph 98 amends section 183 by removing references to PCTs and inserting references to the NHS Commissioning Board and a CCG so that regulations may provide for the payment by those bodies of travelling expenses to prescribed descriptions of persons.

576. Paragraphs 99 and 100 amend sections 185 and 186 by removing references to PCTs and inserting references to the NHS Commissioning Board, CCGs and local authorities so that regulations may provide for the making and recovery of charges by those bodies in respect of more expensive supplies and repairs and replacements of appliances or vehicles in certain cases.

577. Paragraph 101 amends section 187, which enables the Secretary of State to make regulations to provide for charges in respect of services or facilities for the care of pregnant women, women who are breastfeeding and young children, or other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness. This covers certain "community health services" arranged at present by PCTs under section 3(1) of the NHS Act. The amendment ensures that the Secretary of State may continue to make provision for charges for these kinds of services, whether arranged by CCGs under section 3(1) (as amended by section 13 of this Act), or by local authorities under their new health improvement powers (new section 2B inserted by section 12 of this Act).

578. **Part 9 of Schedule 4 (fraud etc.).** Paragraph 103 amends section 195 as a result of changes made to section 2 of the NHS Act. Paragraph 104 amends section 196 by removing references to SHA and PCT and inserting references to the NHS Commissioning Board and CCGs in the definition of 'NHS body' and 'public health service contractor' for the purposes of sections 195(3) and 197(1). Paragraph 106 amends section 201 by enabling the disclosure of certain information if it is in connection with any of the functions of the NHS Commissioning Board, a CCG or a local authority as well as those of the Secretary of State. Paragraphs 105 and 107 amend sections 197 and 210 by substituting the references to 'NHS contractor' with references to 'public health service contractor'.

579. **Part 10 of Schedule 4 (property and finance).** Paragraph 108 amends section 211 by replacing the reference to a 'local social services authority' with a reference to a 'local authority' in order to accurately reflect the definition and functions of a local authority under this Act. Paragraph 109 amends section 213 by removing the reference

to a PCT as a 'relevant health service body' and providing that CCGs and the NHS Commissioning Board are 'relevant health service bodies' who the Secretary of State may provide for the transfer of trust property to and from.

580. Paragraph 110 amends section 214 which contains a power for the Secretary of State to transfer all trust property by order from any special trustees to certain health service bodies. The amendment makes provision for the NHS Commissioning Board and CCGs to be included as bodies to who all trust property can be transferred and removes the references to PCTs.

581. Paragraph 111 amends section 215 consequently upon the amendments to section 214. Paragraph 113 amends section 217 by removing references to Schedules 2 and 3 to the NHS Act (which relate to PCTs and SHAs). Paragraph 114 amends section 218 by removing references to PCTs and SHAs.

582. Paragraphs 112 and 115 amend sections 216 and 220 of the NHS Act 2006 to add a reference to this Act's provisions on transfer schemes (in sections 300 and 302). The amendments would ensure that existing provisions on property held on trust by the NHS (e.g. charitable property) continue to apply where such property is transferred by transfer schemes under this Act.

583. Paragraph 116 amends section 222 which contains a power for the Secretary of State to exclude, by way of directions, specified descriptions of activities from the list of activities that NHS bodies (other than Local Health Boards) may undertake in order to raise money. This power has been amended to enable (a) the NHS Commissioning Board to make directions excluding specified descriptions of activities in relation to CCGs and (b) the Secretary of State to make directions excluding specified descriptions of activities in relation to any other NHS body (other than Local Health Boards).

584. Paragraph 117 amends section 223 by inserting a reference to the NHS Commissioning Board so that the Board also has powers to form and invest in companies. Paragraph 117(2) also inserts new section 223A to apply section 223 to CCGs.

585. Paragraph 118 omits section 224 which concerns the funding of SHAs. Paragraphs 119 and 120 amend sections 226 and 227 to remove the references to SHAs so that the sections only apply to Special Health Authorities. Paragraph 121 omits sections 228 to 231 which concern the funding of PCTs.

586. Paragraph 122 provides for the omission of subsection 4 of section 234 to reflect the fact that PCTs are being abolished

587. Paragraph 123 amends section 236 replacing the reference to the Secretary of State with a reference to the 'prescribed CCG' so that a CCG must pay remuneration and reasonable expenses under section 236 rather than the Secretary of State. The amendment also omits the reference in section 236(2)(b), which sets out when payments may not be made to a medical practitioner, to a PCT and inserts a reference to arrangements made by the NHS Commissioning Board or a CCG which sets out when payments may not be made to a medical practitioner.

588. Paragraph 124 omits Schedule 14. Paragraph 125 amends Schedule 15 by removing references to PCTs and SHAs and by removing the requirement for the Secretary of State to prepare summarised accounts.

589. **Part 11 of Schedule 4 (public involvement and scrutiny).** Paragraph 126 removes SHAs and PCTs from the list of bodies to whom duties on public involvement and consultation in section 242 apply. Paragraph 126 omits sections 242A and 242B which provide for regulations to require SHAs to involve health service users in prescribed matters.

590. **Part 12 of Schedule 4 (miscellaneous).** Paragraph 128 inserts new section 254A into the NHS Act. This enables the Secretary of State to continue to be able to provide

support services to persons providing services or exercising functions in relation to the health service (subject to subsection 5) where it makes sense to coordinate activity centrally. This function was previously carried out in reliance of the Secretary of State's general power in section 2 of the NHS Act.

591. Support provided under this new section might include providing advice and assistance to NHS trusts and NHS foundation trusts when they procure medicines or other goods to help them get best value for money, and managing central contracts with section 223 companies which provide services to the NHS (e.g. NHS Professionals, which provides recruitment and temporary staff agency services to NHS trusts and NHS foundation trusts).

592. The power does not allow the Secretary of State to commission or provide health services. Nor does it allow him or her to give financial assistance to the private sector.

593. Paragraph 129(4) amends section 256 by substituting references to PCTs with references to the NHS Commissioning Board or CCGs so that those bodies they have power to make payments towards expenditure on community services.

594. Paragraph 129(4) confers additional powers for the Secretary of State to specify minimum sums that the NHS Commissioning Board must pay to local authorities (or certain other bodies exercising functions in relation to housing) towards expenditure on local authority social care or other community services. This would not affect the powers off the NHS Commissioning Board to make payments to local authorities under these powers in addition to those sums, or the powers of CCGs.

595. The Secretary of State may specify in directions the bodies to which those payments must be made and the functions in respect of which the payments must be made. The Secretary of State may also specify the minimum amount to be paid to each local authority (or other body) specified in the direction. Although a direction would relate to a particular financial year, the Secretary of State would be able to amend the direction at any time during the year, in order to change the minimum amount payable (either in total or to a particular body).

596. The existing powers in section 256 for the Secretary of State to give directions as to the conditions that should apply to such payments continue to apply. These directions could, for example, include a requirement on a local authority to obtain the agreement of their health and wellbeing board as to how the funds are spent.

597. Paragraph 130 amends section 257 by substituting the reference to a PCT with reference to the NHS Commissioning Board and a CCG as a result of amendments made to section 256.

598. Paragraph 131 amends section 258 to provide that the Secretary of State, the NHS Commissioning Board and CCGs must exercise their functions to secure that such facilities, as they consider to be reasonably required, are made available in connection with clinical teaching and research. The amendment to this section also removes the references to PCTs and SHAs

599. Paragraph 132 amends section 259 as a result of amendments made to the provisions relating to primary medical services (Part 4 of the NHS Act). Paragraph 133 omits section 268.

600. Paragraph 135 inserts a new section 271A of the NHS Act so as to provide that services commissioned by the NHS Commissioning Board or a CCG, or provided or commissioned by a local authority in the exercise of its public health functions, are to be treated as “services of the Crown” for the purposes of Schedule 1 to the Registered Designs Act 1949 and sections 55 to 59 of the Patents Act 1977.

601. Paragraph 136 amends section 272 to remove any references to provisions that concern PCTs and SHAs.

602. Paragraph 137 inserts a reference to the NHS Commissioning Board in section 273 to ensure that a direction under the NHS Act by the NHS Commissioning Board must be given by an instrument in writing.

603. Paragraph 138 inserts a new definition of "NHS body" into section 275 and makes transitional provision to ensure the definition includes a reference to PCTs until they are abolished.

604. Paragraph 139 amends section 276, which lists various expressions defined by other provisions of the Act. The amendment removes the references to 'NHS Body' and 'PCT order' from the index of defined expressions and inserts references to the definitions in the NHS Act of "public health functions of the Secretary of State" and "public health functions of local authorities", and the NHS Constitution.

Schedule 5 – Part 1: amendments of other enactments

605. This Schedule makes a number of consequential amendments to other Acts. Most of the consequential amendments in this Schedule address references to 'PCTs' and 'SHAs', removing references to those bodies and inserting references to CCGs, the NHS Commissioning Board and local authorities as necessary.

606. The following amendments make more substantive changes to other Acts:

Act	***Amendment***
National Assistance Act 1948 (c.29), section 24.	This amends the definition of "NHS accommodation" in light of amendments to section 117 of the Mental Health Act 1983, removing references to PCTs.
Local Government Act 1974 (c.7), section 26.	This extends the matters subject to investigation by the local government ombudsman to cover services provided, or to be provided, by local authorities pursuant to arrangements under section 7A of the NHS Act to exercise Secretary of State's public health functions.
Mental Health Act 1983 (c.20), sections 39 and 145.	The amendment to section 39 removes references to PCTs and inserts references to CCGs and the NHS Commissioning Board for the purposes of requiring them to provide information under section 39. The NHS Commissioning Board will only be required to provide information in relation to services or facilities the provision of which the Board arranges.
	The amendment to section 145 makes provision for circumstances in which Secretary of State may manage a hospital in exercise of public health functions.
Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33), section 11.	The amendment to section 11 removes the duty on the Secretary of State to lay reports before Parliament on the development of health and social care services for persons with mental illness and for persons with learning disabilities.
Local Government and Housing Act 1989 (c.42), section 2.	The amendment to section 2 of the Local Government and Housing Act 1989 (politically restricted posts) adds the director of public health to the list of statutory chief officers in section 2(6). As a statutory chief officer, a person appointed as a director of public health would hold a "politically restricted post", prevented by the 1989 Act from being a member of a local authority and subject to other restrictions on political activity. This puts directors of

Act	***Amendment***
	public health in the same position as other statutory chief officers such as directors of adult social services.
Freedom of Information Act 2000 (c.36,) Part 3 of schedule 1.	The amendment inserts references to CCGs and the NHS Commissioning Board as 'public authorities' for the purposes of the Act.
Health and Social Care (Community Health and Standards) Act 2003 (c.43,)section 45.	The amendment removes the reference to regulations under section 12A(4) of the NHS Act, reflecting the changes to section 117 of the Mental Health Act 1983.
Licensing Act 2003 (c.17), sections 5, 13, 16, 69 and 172B.	The Police Reform and Social Responsibility Act 2011 amends the Licensing Act 2003 to add PCTs to the list of existing responsible authorities that are entitled to make representations to a licensing authority in relation to the application for the grant, variation or review of a licence to use premises for the supply of alcohol or to undertake certain entertainment activities. The 2011 Act also adds PCTs to the list of bodies which a licensing authority must consult before determining or revising its statement of licensing policy, and makes provision for representations by responsible authorities, including PCTs, in relation to the new "early morning alcohol restriction orders".
	The amendments to sections 5(3), 13 (4), 69(4) and 172B(4) of the Licensing Act 2003 omit references to PCTs in the definitions of "relevant authority" and insert references to "the local authority in England whose public health functions are within the meaning of the NHS Act 2006 and are exercisable in respect of an area any part of which is in the licensing authority's area".
	The effect is that local authorities with responsibility for health improvement under section 2B of the NHS Act (as inserted by section 11 of this Act) would be responsible authorities able to make representations in relation to licence applications and early morning alcohol restriction orders affecting their area.
Civil Contingencies Act 2004 (c.44), Schedule 1.	The amendment removes references to SHAs and PCTs, and provides that the NHS Commissioning Board is a "category one responder" and CCGs are "category two responders" for the purposes of Part 1 of the Act. Category one responses have specific responsibilities to plan and respond to emergencies, while category two responders have responsibilities to co-operate with such arrangements.
Mental Capacity Act 2005 (c.9), sections 35, 64 and Schedule A1.	The amendment to section 35 makes local authorities, instead of the Secretary of State, responsible for making arrangements to enable independent mental capacity advocates to represent and support specified persons.
	The amendment to Schedule A1 removes references to PCTs and SHAs and inserts references to a local authority as the supervisory body if the relevant person is ordinarily resident in England. There are also minor changes to the situation in Wales as regards the determination of who is a supervisory body. The reference to the Welsh Ministers, in contrast to the references in the Act to the National

Act	*Amendment*
	Assembly for Wales, is necessitated by devolution. The amendment also makes provision for circumstances in which Secretary of State may manage a hospital in exercise of public health functions.
Safeguarding Vulnerable Groups Act 2006 (c.47), sections 6, 17, 21 and 59.	The amendment removes references to SHAs and PCTs and inserts references to CCGs and the NHS Commissioning Board in section 17.
	The amendment also removes references to section 12A(4) of the NHS Act, reflecting the changes to section 117 of the Mental Health Act 1983.
Health and Social Care Act 2008 (c.14), sections 30, 39, 46, 48, 49, 54, 59, 64, 70, 72 and 81.	The amendment removes references to SHAs and PCTs and where appropriate, inserts references to CCGs and the NHS Commissioning Board.
	The amendment to sections 30 and 39 requires the Care Quality Commission to give notice to certain NHS bodies (when required by regulations) if it takes action against a registered provider.
	The amendment to section 46 removes the requirement on the Care Quality Commission to conduct periodic reviews of health care provided or commissioned by NHS bodies. The amendments to sections 48, 49, 70 and 72 also reflect this change.
	The amendment to section 54 inserts a reference to the NHS Commissioning Board and CCGs so that they are not included in the definition of 'English NHS Body' for the purpose of section 54(1) which relates to the Care Quality Commission's power to undertake studies designed to enable it to make recommendations for improving the management of an English NHS body.
	The amendment to section 59 means that the Secretary of State will not have the power to confer additional functions on the Care Quality Commission relating to improving the economy, efficiency and effectiveness and the financial or other management or operations of certain NHS bodies.
	The amendment to section 81 requires that the Care Quality Commission consults the NHS Commissioning Board on their proposals for the topics of their reviews, studies and investigations.

Schedule 6 – Part 1: transitional provision

607. This Schedule is concerned with the transitional arrangements for the establishment of CCGs, the exercise of functions by CCGs during the 'initial period' and for arrangements prior to the abolition of SHAs and PCTs. The initial period is defined in paragraph 1(2) as the period beginning with the commencement of section 25 and ending on a day specified by the Secretary of State for the purposes of new section 14A (the date from which the NHS Commissioning Board must ensure every provider of primary medical services is a member of a CCG and that the areas specified in the constitutions of CCGs cover the whole of England and do not coincide or overlap). It is envisaged that this 'initial period' will run from 1 October 2012 (at the latest) to 31 March 2013. Initial applications are applications made during the initial period. It is proposed that SHAs and PCTs will be abolished at the end of the initial period.

608. Paragraph 2 of Schedule 6 allows the Secretary of State to consult a Special Health Authority on proposals for the annual mandate for the Board under new section 13A of the NHS Act and on regulations requiring the NHS Commissioning Board to commission services under section 3B of the NHS Act, before the NHS Commissioning Board is established. A Special Health Authority known as the NHS Commissioning Board Authority was established on 31 October 2011 to make preparations for the establishment and operation of the NHS Commissioning Board

609. Paragraphs 3 and 4 of Schedule 6 make provision so that the directions given to SHAs and PCTs under section 7 of the NHS Act continue to have effect, and the Secretary of State can issue new directions to those bodies under that section, until those bodies are abolished.

610. Paragraph 5 of Schedule 6 allows existing directions from the Secretary of State to Special Health Authorities to continue once section 21 has been commenced. This means that for existing Special Health Authorities - NHS Blood and Transplant, NHS Business Services Authority and the NHS Litigation Authority - there would be no need to re-issue the current directions specifying their functions and they would continue in force as if given under the new power.

611. Paragraph 7 provides that, during the initial period, the Secretary of State may direct the Board to exercise any of the functions of the Secretary of State that relate to SHAs or PCTs, but not including the Secretary of State's powers or duties to make orders or regulations. This will, for instance, enable the Secretary of State to arrange for the Board to hold PCTs to account for their performance during 2012/13.

612. Paragraph 8 of the Schedule makes provision for the conditional establishment of CCGs during the initial period in any cases where the Board is not fully satisfied as to the matters, as to which it would have to satisfy itself before granting an application for establishment, set out in new section 14C. Regulations may be made authorising the NHS Commissioning Board in these circumstances to grant initial applications, but allowing the NHS Commissioning Board to impose conditions or to give a direction that the CCG exercise some of its functions in a certain way or not to exercise specified functions. If the regulations authorise the NHS Commissioning Board to give such a direction, they may also authorise or require the NHS Commissioning Board to exercise any functions specified on behalf of the CCG, or arrange for another CCG to exercise those functions. Regulations may also make provision requiring the NHS Commissioning Board to keep any conditions or directions under review and make provision about how the NHS Commissioning Board varies or removes any conditions or directions imposed.

613. Paragraph 8(6) enables regulations to be made making modifications to the NHS Act as far as it applies to CCGs established on the grant of an initial application. These regulations may provide that the Board's power to dissolve a CCG (in new section 14Z21) applies where a CCG established with conditions fails to comply with those conditions. The regulations may also make provision about the factors that the Board must or may take into account when exercising these powers, and the procedures to be followed. Paragraph 5(12) provides that, where a conditionally established CCG ceases to be subject to any conditions or directions, it is deemed to have been established on an application granted under new section14C.

614. Paragraph 9 of the Schedule provides that, where an application for the establishment of a CCG is granted under section 14C during the initial period, the Board may direct it to exercise only some of its functions during this initial period. This power of direction is necessary to avoid CCGs having concurrent statutory responsibility for commissioning functions that remain with PCTs during the initial period. It is intended that PCTs will retain legal responsibility for commissioning until 1st April 2013. This means that, where CCGs commission services for patients during the initial period, they will be doing so on behalf of PCTs (see paragraph 11 of the Schedule) rather than through exercising the CCG's own statutory functions

615. Paragraph 10 of the Schedule provides that a CCG may, in the initial period, while it is carrying out limited functions, undertake preparatory work to help it prepare to exercise its functions after the end of the initial period (even if that CCG has had conditions imposed on it by a direction from the NHS Commissioning Board).

616. Paragraph 11 provides that, during the initial period, a PCT can make arrangements with a CCG under which the CCG carries out functions of the PCT on the PCT's behalf. This will allow CCGs to carry out, on behalf of PCTs, commissioning functions very similar to those for which they are proposed to be responsible for in their own right from April 2013 onwards. These arrangements are intended to support a smooth transition from PCT commissioning to CCGs commissioning. However the legal responsibility for the commissioning will remain with the PCT.

617. Paragraph 11(2) ensures that references in the listed provisions of the NHS Act to the functions of a CCG include any function of a PCT the group is exercising on the PCT's behalf, under arrangements made under paragraph 11(1) during the initial period.

618. Paragraph 12 enables the Secretary of State to make payments to the NHS Commissioning Board towards meeting the expenditure that the NHS Commissioning Board incurs in exercising its functions during the initial period. Such payments may be made at such times and on such terms and conditions that the Secretary of State considers appropriate.

619. Paragraph 13 confers powers on PCTs to provide assistance or support to a CCG during the initial period, including financial assistance, or make available the employees or other resources of the PCT, to such a group. The support may be provided on such terms and conditions, including restrictions on the use of financial support, as the PCT considers appropriate