

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5 – Public involvement and local government**

##### *Chapter 1 – Public involvement*

##### **Healthwatch England**

##### *Section 181 - Healthwatch England*

1112. This section amends Schedule 1 to and Part 1 of the Health and Social Care Act 2008 (the 2008 Act) and makes consequential amendments to other enactments in relation to the establishment of Healthwatch England as a statutory committee of the Care Quality Commission (CQC).
1113. *Subsection (2)* inserts new sub-paragraphs into paragraph 6 of Schedule 1 to the 2008 Act. New sub-paragraph (1A) provides for the establishment of the Healthwatch England committee of the CQC in accordance with regulations. New sub-paragraph (1B) sets out Healthwatch England’s purpose. Healthwatch England will be a national body representing the views of users of health and social care services, other members of the public and Local Healthwatch organisations (as to which see section 182).
1114. New sub-paragraph (5A), inserted by *subsection (3)*, requires the regulations under sub-paragraph (1A) to require the person with power to appoint members to secure that a majority of the members are not members of the CQC. New sub-paragraph (5B) enables those regulations to specify other results to be secured. New sub-paragraph (5C) enables the regulations, in particular, to make provision about eligibility for appointment as a member, and about procedures for selecting or proposing persons to be appointed as members. New sub-paragraph (5D) enables the regulations, in particular, to make provision as to the removal or suspension of members and the payment of remuneration or allowances.
1115. *Subsection (4)* inserts new sections 45A to 45C into Chapter 3 of Part 1 of the 2008 Act. *Subsections (1) to (6)* of section 45A make provision as to the functions to be performed by Healthwatch England. *Subsection (1)* provides that those functions are functions of the CQC which the CQC must arrange for Healthwatch England to exercise on its behalf.
1116. The function in *subsection (2)* is a duty to provide Local Healthwatch organisations with advice and assistance of a general nature in relation to the making of arrangements with local authorities under section 221(1) of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act) (local arrangements relating to patient and public involvement in health and social care), the making of arrangements, pursuant to those arrangements, with “Local Healthwatch contractors” and the carrying-on of activities mentioned in section 221(2) of the 2007 Act. Those activities relate to patient and public involvement in health and social care. “Local Healthwatch contractors” are persons

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(individuals or bodies) who assist a Local Healthwatch organisation to carry on those activities or who carry on some of those activities on its behalf.

1117. The function in *subsection (3)* is a power to make recommendations to English local authorities about the making of arrangements with Local Healthwatch organisations under section 221(1) of the 2007 Act. The function in *subsection (4)* is a power to give written notice to an English local authority in circumstances where Healthwatch England is of the view that the activities mentioned in section 221(2) are not being properly carried on in its area.
1118. The function in *subsection (5)* read with *subsection (6)* is a duty to advise and provide information to the Secretary of State, the NHS Commissioning Board, Monitor and English local authorities on various matters. Those matters are the views of users of health or social care services and others on their needs for such services and their experiences of such services and the views of Local Healthwatch organisations and other persons on the standard of provision of such services and whether or how this could or should be improved.
1119. The function in *subsection (5)* could include informing the NHS Commissioning Board of concerns Healthwatch England has identified from feedback from Local Healthwatch organisations about problems with, for example, the commissioning of maternity services across England. *Subsection (7)* requires the Secretary of State, the NHS Commissioning Board, Monitor and English local authorities to inform Healthwatch England in writing of their response or proposed response, to advice given by Healthwatch England.
1120. *Subsection (8)* enables Healthwatch England to provide the CQC with advice and information on various matters. Those matters are the views of users of health or social care services and others on their needs for such services and their experiences of such services and the views of Local Healthwatch organisations and other persons on the standard of provision of such services and whether or how this could or should be improved. *Subsection (8)* also requires the CQC to inform Healthwatch England in writing of its response, or proposed response, to advice given by Healthwatch England.
1121. The CQC is required by *subsection (9)* of new section 45A to publish details of what arrangements it has made for Healthwatch England to perform its functions and these details must be published in a separate report to that published under section 83 (annual reports of the CQC). Healthwatch England is required by *subsection (10)*, when performing functions, to have regard to particular aspects of government policy where the Secretary of State so directs.
1122. New section 45B requires the CQC and Healthwatch England to have regard to any guidance from the Secretary of State on managing conflicts of interest between themselves. It requires the CQC, in making arrangements for Healthwatch England to exercise functions on its behalf under section 45A, and Healthwatch England, in exercising functions on behalf of the CQC, to have regard to any guidance issued by the Secretary of State on managing conflicts between the exercise of functions by the CQC and the exercise of functions on behalf of the CQC by Healthwatch England.
1123. New section 45C requires Healthwatch England to report annually to the CQC on the views of users of health or social care services and others on their needs for such services and their experiences of such services and the views of Local Healthwatch organisations and other persons on the standard of service provision and whether or how this could or should be improved. It also requires Healthwatch England to publish a report each year on how it has discharged functions during the year. *Subsection (2)* requires Healthwatch England to lay before Parliament its report on how it has discharged its functions and to send a copy of this report to the Secretary of State and to each Local Healthwatch organisation. *Subsection (3)* allows Healthwatch England to publish other reports at other times about matters relating to health and social care. *Subsection (4)* places a duty on Healthwatch England to have regard to recommendations from Local

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Healthwatch organisations to publish reports on particular matters under *subsection (3)*. *Subsection (5)* requires that before publishing reports under section 45C(1)(b) or (3) Healthwatch England must exclude, as far as is practicable, information relating to an individual's private affairs which, if published, would seriously and prejudicially affect that individual's interests or might do so.

1124. *Subsections (5) to (10)* of section 181 amend section 82 of the 2008 Act which concerns a power for the Secretary of State to issue a direction to the CQC if the Secretary of State considers that the CQC is failing to carry out its functions, or to carry them out properly and enables the Secretary of State to carry out the CQC's functions if the CQC fails to comply with the direction. The amendments to section 82 ensure that the Secretary of State may similarly direct Healthwatch England if the Secretary of State considers that it is significantly failing or has significantly failed to carry out, or properly carry out, the functions set out in new section 45A or any other functions it is required to discharge. If Healthwatch England fails to comply with the direction, the amendments to section 82 enable the Secretary of State to carry out the function in question or to arrange for someone else to carry out the function.
1125. *Subsections (11) and (12)* of this section insert new *subsections (1A) and (2A)* into section 83 of the 2008 Act. New *subsection (1A)* has the effect that the duty on the CQC to report annually on its exercise of functions does not apply in relation to its functions under section 45A. The CQC is required by section 45A(1) to arrange for Healthwatch England to carry out those functions and the preparation of annual reports on those functions is the duty of Healthwatch England itself under section 45C(1) of the 2008 Act. New *subsection (2A)* inserted by *subsection (12)* has the effect that the CQC's annual report on the provision of NHS care and adult social services must separately set out and identify the contents of Healthwatch England's report made to it on the matters mentioned in section 45A(5). Those matters are the views of users of health or social care services and others on their needs for such services and their experiences of such services and the views of Local Healthwatch organisations and other persons on the standard of service provision and whether or how this could or should be improved.
1126. *Subsection (13)* makes consequential amendments to the Public Records Act 1958, the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 to provide that the records of Healthwatch England are public records for the purposes of the Public Records Act 1958 and that its members are disqualified from being members of the House of Commons and of the Northern Ireland Assembly.
1127. *Subsection (14)* has the effect that meetings of the Healthwatch England committee will, in general, have to be open to the public as per the Public Bodies (Admission to Meetings) Act 1960.