

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Public involvement and local government

Chapter 2 – Local Government

Scrutiny functions of local authorities

Section 191 – Amendments consequential on section 190

1169. This section makes consequential amendments to existing provisions on scrutiny in the NHS Act. *Subsections (1) to (5)* of this section amend section 245 of the NHS Act which enables regulations to be made enabling local authorities to discharge their scrutiny functions with each other through a joint overview and scrutiny committee, and to make certain other arrangements. The amendments made by *subsections (1), (2) and (3)* ensure that section 245 reflects the amendments made to section 244 whereby the regulation-making powers apply in relation to local authorities directly as opposed to overview and scrutiny committees. This effectively enables regulations to continue to enable local authorities to make joint or other scrutiny arrangements.
1170. *Subsection (4)* has the effect that the regulation-making power in section 245 includes a power to provide that where a local authority arranges for a joint overview and scrutiny committee to exercise any of its health scrutiny functions, the local authority may not discharge that function.
1171. *Subsections (6) to (9)* amend section 246 of the NHS Act. Section 246 provides that in relation to business discussed at a meeting of an overview and scrutiny committee, information is exempt information for the purposes of provisions of the Local Government Act 1972 if certain conditions are met. Those provisions enable certain local authorities to exclude the public from meetings whenever it is likely that exempt information would otherwise be disclosed. The changes made by *subsections (6) to (9)* reflect the changes to section 244 under which scrutiny functions can be conferred directly on local authorities and could be discharged by committees. This ensures that, as with the current situation for health overview and scrutiny committees, if there is certain information being discussed in relation to health scrutiny functions at meetings – for example, commercially confidential material – the public can be excluded from meetings.
1172. *Subsections (10) to (13)* amend section 247 of the NHS Act which makes provision in relation to scrutiny by the Common Council for the City of London. The amendments made by *subsections (10) to (13)* ensure that section 247 reflects the amendments made to section 244 under which scrutiny functions can be conferred directly on local authorities and could be discharged by committees. The Common Council will have flexibility like other local authorities in discharging its health scrutiny functions.