

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

#### *Chapter 2 – Local Government*

#### **Scrutiny functions of local authorities**

#### *Section 190 - Scrutiny functions of local authorities*

1160. This section amends section 244 of the NHS Act which concerns a power to make regulations on review and scrutiny of matters relating to the health service (health scrutiny) by local authority overview and scrutiny committees. Amongst other things, the amendments have the effect that the regulations may make provision relating to health scrutiny by local authorities themselves. The amendments enable those regulations to authorise the local authority to arrange for an overview and scrutiny committee to discharge the health scrutiny functions.
1161. *Subsection (2)* of this section amends *subsection (2)* of section 244 of the NHS Act so that the regulation-making power it confers applies in relation to health scrutiny by a local authority itself as opposed to an overview and scrutiny committee of a local authority. Local authorities will no longer be required to have overview and scrutiny committees to discharge health scrutiny functions, but will continue to have such functions (under regulations under section 244), which they will, in general, be able to discharge in various ways. For example, local authorities may choose to continue to operate their existing health overview and scrutiny committees, or may choose to put in place other arrangements such as appointing committees involving members of the public. As such, the amendments made by this section will not prevent a local authority having an overview and scrutiny committee to discharge its health scrutiny functions.
1162. The regulation-making powers previously enabled provision to be made on the matters on which an NHS body must consult the local authority overview and scrutiny committee and to require officers of NHS bodies to attend before the committee to answer questions and NHS bodies to provide information to it. The amendments to *subsection (2)* of section 244 will instead provide that requirements to consult the local authority, to attend before it and to provide information to it can be applied to or in relation to “relevant NHS bodies” or “relevant health service providers”. This will potentially include CCGs, the NHS Commissioning Board and providers of health services commissioned by the NHS Commissioning Board, CCGs and the local authority, including independent sector providers.
1163. *Subsection (3)* inserts *new subsections (2ZA), (2ZB), (2ZC), (2ZD) and (2ZE)* into section 244 of the NHS Act.
1164. New *subsection (2ZA)* sets out the additional provision which may be made where regulations by virtue of *subsection (2)(c)* of section 244 make provision as to matters on which relevant NHS bodies or relevant health service providers must consult the local

authority. This includes provision as to circumstances in which those matters may be referred to the Secretary of State, Monitor, or the NHS Commissioning Board. It also includes provision conferring powers on the Secretary of State to give directions to the NHS Commissioning Board and on the NHS Commissioning Board to give directions to a CCG.

1165. New *subsection (2ZB)* sets out further details of the powers to give directions that may be conferred under new *subsection (2ZA)*. New *subsection (2ZC)* enables regulations under new *subsection (2ZA)* to either disapply any provision of section 101 of the Local Government Act 1972 in relation to the local authority's discharge of the function of making referrals, or to provide for such provision to apply with prescribed modifications. For example, this would enable the regulations to prevent the local authority from arranging for a committee to discharge the function of making such referrals under section 101 of the Local Government Act 1972. New *subsection (2ZD)* provides that the local authority's health scrutiny functions are not functions of an executive of the authority under executive arrangements. This means that, under such arrangements, the functions would be functions of the local authority as a whole.
1166. New *subsection (2ZE)* enables regulations under the amended section 244 to authorise a local authority to arrange for its functions, under the regulations, to be discharged by an overview and scrutiny committee.
1167. *Subsection (4)* inserts a definition of "relevant NHS body" and "relevant health service provider" into section 244. *Subsection (5)* inserts a definition of "member" in relation to various NHS bodies or certain "relevant health service providers".
1168. *Subsection (9)* amends section 21 of the Local Government Act 2000 to remove the requirement on local authorities to have health overview and scrutiny committees and to make clear that the prohibition on overview and scrutiny committees discharging particular functions does not extend to functions conferred by virtue of regulations under new *subsection (2ZE)* of section 244 of the NHS Act. This would ensure that local authorities are not prevented from arranging for overview and scrutiny committees to discharge health scrutiny functions. *Subsection (10)* makes similar amendments to section 9F of the Local Government Act 2000 (which will replace section 21 by virtue of the Localism Act 2011).

### ***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

*These notes refer to the Health and Social Care Act 2012  
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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.