

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 6 – Primary Care Services

##### *Section 207 - Control of entry on pharmaceutical lists*

1236. This section makes amendments to paragraphs 129, 130 and 136 of Schedule 12 to the NHS Act.
1237. *Subsection (2)* amends subsection (2)(c) of section 129 of the NHS Act. Section 129 makes provision in respect of the control of entry test which applies in respect of the right to be included on the pharmaceutical list in order to provide pharmaceutical services. The amendments to subsection (2)(c) provide that the NHS Commissioning Board is to be responsible for determining applications for market entry in England (inclusion in the pharmaceutical list or additional premises) in line with the relevant pharmaceutical needs assessment as prescribed in regulations.
1238. *Subsection (3)* inserts a new subsection (2ZA) into section 129 of the NHS Act which provides that the NHS Commissioning Board may not include the Secretary of State and such other persons as may be prescribed in regulations in a pharmaceutical list.
1239. *Subsection (4)* amends subsection (2A) of section 129 of the NHS Act consequential to the establishment of the NHS Commissioning Board and the requirement to have regard to a pharmaceutical needs assessment prepared in respect of a particular area before granting an application.
1240. *Subsection (5)* substitutes subsection (2B) of section 129 of the NHS Act so as to define the “relevant area” in relation to a needs statement, for the purposes of subsection (2A), by reference to the area to which an application relates. The intention is that regulations will make provision for the relevant area to be linked to the area of the pharmaceutical needs assessment as currently published and updated by PCTs and in future by health and wellbeing boards.
1241. *Subsections (6) and (7)* amend subsections (2C) and (4)(c) of 129 of the NHS Act consequential to the amendments at subsections (4) and (5) of this section.
1242. *Subsection (8)* makes amendments to subsection (6)(g) of section 129 of the NHS Act to put it beyond doubt that regulations under section 129 may provide for the removal of a person from the pharmaceutical list for reasons that are not connected to a person’s fitness to practise, and are not the grounds specified in subsection (6)(d), but rather are other grounds prescribed in regulations. The intention is that, for consistency with the amendments made to section 130 of the NHS Act, any appeals against decisions to remove a person from a list on other prescribed grounds are to be made to the Secretary of State (that is, in practice, to the National Health Service Litigation Authority).
1243. *Subsections (9), (11) and (12)* amend subsection (10B) of section 129 and section 136 of, and Schedule 12 to, the NHS Act consequential to the responsibility for pharmaceutical needs assessments transferring to health and wellbeing boards and as

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

a consequence of pharmaceutical needs assessments being carried out by reference to “relevant areas” as defined in section 129 of the NHS Act.

1244. *Subsection (10)* amends section 130 of the NHS Act so as to ensure that appeals against the NHS Commissioning Board’s determination of an application for inclusion in the pharmaceutical list are heard by the First Tier Tribunal only if they are on fitness to practise grounds. The amendments also provide that if the First Tier Tribunal does allow an appeal, it would not have to re-determine the application but can remit the matter back to the NHS Commissioning Board. Appeals on other grounds are to be made to the Secretary of State. It is intended that the current position, whereby the Secretary of State’s functions relating to hearing appeals on pharmaceutical list matters are delegated to the National Health Service Litigation Authority will be maintained.