



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 1

#### THE HEALTH SERVICE IN ENGLAND

##### *The health service: overview*

#### **1 Secretary of State's duty to promote comprehensive health service**

For section 1 of the National Health Service Act 2006 (Secretary of State's duty to promote health service) substitute—

##### **“1 Secretary of State's duty to promote comprehensive health service**

- (1) The Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement—
  - (a) in the physical and mental health of the people of England, and
  - (b) in the prevention, diagnosis and treatment of physical and mental illness.
- (2) For that purpose, the Secretary of State must exercise the functions conferred by this Act so as to secure that services are provided in accordance with this Act.
- (3) The Secretary of State retains ministerial responsibility to Parliament for the provision of the health service in England.
- (4) The services provided as part of the health service in England must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed.”

#### **Commencement Information**

**II** S. 1 in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#)

*Status: Point in time view as at 01/10/2012. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 01/04/2013

## 2 The Secretary of State's duty as to improvement in quality of services

After section 1 of the National Health Service Act 2006 insert—

### “1A Duty as to improvement in quality of services

- (1) The Secretary of State must exercise the functions of the Secretary of State in relation to the health service with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—
  - (a) the prevention, diagnosis or treatment of illness, or
  - (b) the protection or improvement of public health.
- (2) In discharging the duty under subsection (1) the Secretary of State must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
  - (a) the effectiveness of the services,
  - (b) the safety of the services, and
  - (c) the quality of the experience undergone by patients.
- (4) In discharging the duty under subsection (1), the Secretary of State must have regard to the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.”

VALID FROM 01/04/2013

## 3 The Secretary of State's duty as to the NHS Constitution

After section 1A of the National Health Service Act 2006 insert—

### “1B Duty as to the NHS Constitution

- (1) In exercising functions in relation to the health service, the Secretary of State must have regard to the NHS Constitution.
- (2) In this Act, “NHS Constitution” has the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 1 of that Act).”

VALID FROM 01/04/2013

## 4 The Secretary of State's duty as to reducing inequalities

After section 1B of the National Health Service Act 2006 insert—

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### **“1C Duty as to reducing inequalities**

In exercising functions in relation to the health service, the Secretary of State must have regard to the need to reduce inequalities between the people of England with respect to the benefits that they can obtain from the health service.”

VALID FROM 01/04/2013

## **5 The Secretary of State's duty as to promoting autonomy**

After section 1C of the National Health Service Act 2006 insert—

### **“1D Duty as to promoting autonomy**

- (1) In exercising functions in relation to the health service, the Secretary of State must have regard to the desirability of securing, so far as consistent with the interests of the health service—
  - (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner that it considers most appropriate, and
  - (b) that unnecessary burdens are not imposed on any such person.
- (2) If, in the case of any exercise of functions, the Secretary of State considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Secretary of State of the duties under section 1, the Secretary of State must give priority to the duties under that section.”

VALID FROM 01/04/2013

## **6 The Secretary of State's duty as to research**

After section 1D of the National Health Service Act 2006 insert—

### **“1E Duty as to research**

In exercising functions in relation to the health service, the Secretary of State must promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.”

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VALID FROM 01/04/2013

## 7 The Secretary of State's duty as to education and training

After section 1E of the National Health Service Act 2006 insert—

### “1F Duty as to education and training

- (1) The Secretary of State must exercise the functions of the Secretary of State under any relevant enactment so as to secure that there is an effective system for the planning and delivery of education and training to persons who are employed, or who are considering becoming employed, in an activity which involves or is connected with the provision of services as part of the health service in England.
- (2) Any arrangements made with a person under this Act for the provision of services as part of that health service must include arrangements for securing that the person co-operates with the Secretary of State in the discharge of the duty under subsection (1) (or, where a Special Health Authority is discharging that duty by virtue of a direction under section 7, with the Special Health Authority).
- (3) In subsection (1), “relevant enactment” means—
  - (a) section 63 of the Health Services and Public Health Act 1968,
  - (b) this Act,
  - (c) the Health and Social Care Act 2008,
  - (d) the Health Act 2009, and
  - (e) the Health and Social Care Act 2012.”

## 8 Secretary of State's duty as to reporting on and reviewing treatment of providers

After section 1F of the National Health Service Act 2006 insert—

### “1G Secretary of State's duty as to reporting on and reviewing treatment of providers

- (1) The Secretary of State must, within one year of the passing of the Health and Social Care Act 2012, lay a report before Parliament on the treatment of NHS health care providers as respects any matter, including taxation, which might affect their ability to provide health care services for the purposes of the NHS or the reward available to them for doing so.
- (2) The report must include recommendations as to how any differences in the treatment of NHS health care providers identified in the report could be addressed.
- (3) The Secretary of State must keep under review the treatment of NHS health care providers as respects any such matter as is mentioned in subsection (1).
- (4) In this section—

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- (a) “NHS health care providers” means persons providing or intending to provide health care services for the purposes of the NHS, and
- (b) “health care services for the purposes of the NHS” has the same meaning as in Part 3 of the Health and Social Care Act 2012.”

#### Commencement Information

**I2** S. 8 in force at 1.6.2012 by [S.I. 2012/1319](#), [art. 2\(2\)](#)

## 9 The NHS Commissioning Board

(1) After section 1G of the National Health Service Act 2006 insert—

*“Role of the Board in the health service in England*

### **1H The National Health Service Commissioning Board and its general functions**

- (1) There is to be a body corporate known as the National Health Service Commissioning Board (“the Board”).
- (2) The Board is subject to the duty under section 1(1) concurrently with the Secretary of State except in relation to the part of the health service that is provided in pursuance of the public health functions of the Secretary of State or local authorities.
- (3) For the purpose of discharging that duty, the Board—
  - (a) has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act, and
  - (b) must exercise the functions conferred on it by this Act in relation to clinical commissioning groups so as to secure that services are provided for those purposes in accordance with this Act.
- (4) Schedule A1 makes further provision about the Board.
- (5) In this Act—
  - (a) any reference to the public health functions of the Secretary of State is a reference to the functions of the Secretary of State under sections 2A and 2B and paragraphs 7C, 8 and 12 of Schedule 1, and
  - (b) any reference to the public health functions of local authorities is a reference to the functions of local authorities under sections 2B and 111 and paragraphs 1 to 7B and 13 of Schedule 1.”

(2) Before Schedule 1 to that Act, insert the Schedule set out in Schedule 1 to this Act.

#### Commencement Information

**I3** S. 9(1) in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#) (with [art. 3\(1\)](#))

**I4** S. 9(2) in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#) (with [art. 3\(3\)](#))

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## 10 Clinical commissioning groups

After section 1H of the National Health Service Act 2006 insert—

*“Role of clinical commissioning groups in the health service in England*

### 1I Clinical commissioning groups and their general functions

- (1) There are to be bodies corporate known as clinical commissioning groups established in accordance with Chapter A2 of Part 2.
- (2) Each clinical commissioning group has the function of arranging for the provision of services for the purposes of the health service in England in accordance with this Act.”

#### Commencement Information

**I5** S. 10 in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#)

*Arrangements for provision of health services*

VALID FROM 01/04/2013

## 11 The Secretary of State's duty as to protection of public health

After section 2 of the National Health Service Act 2006 insert—

*“Provision for protection or improvement of public health*

### 2A Secretary of State's duty as to protection of public health

- (1) The Secretary of State must take such steps as the Secretary of State considers appropriate for the purpose of protecting the public in England from disease or other dangers to health.
- (2) The steps that may be taken under subsection (1) include—
  - (a) the conduct of research or such other steps as the Secretary of State considers appropriate for advancing knowledge and understanding;
  - (b) providing microbiological or other technical services (whether in laboratories or otherwise);
  - (c) providing vaccination, immunisation or screening services;
  - (d) providing other services or facilities for the prevention, diagnosis or treatment of illness;
  - (e) providing training;
  - (f) providing information and advice;
  - (g) making available the services of any person or any facilities.
- (3) Subsection (4) applies in relation to any function under this section which relates to—

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- (a) the protection of the public from ionising or non-ionising radiation, and
  - (b) a matter in respect of which the Health and Safety Executive has a function.
- (4) In exercising the function, the Secretary of State must—
- (a) consult the Health and Safety Executive, and
  - (b) have regard to its policies.”

VALID FROM 01/04/2013

## 12 Duties as to improvement of public health

After section 2A of the National Health Service Act 2006 insert—

### “2B Functions of local authorities and Secretary of State as to improvement of public health

- (1) Each local authority must take such steps as it considers appropriate for improving the health of the people in its area.
- (2) The Secretary of State may take such steps as the Secretary of State considers appropriate for improving the health of the people of England.
- (3) The steps that may be taken under subsection (1) or (2) include—
  - (a) providing information and advice;
  - (b) providing services or facilities designed to promote healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way);
  - (c) providing services or facilities for the prevention, diagnosis or treatment of illness;
  - (d) providing financial incentives to encourage individuals to adopt healthier lifestyles;
  - (e) providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment;
  - (f) providing or participating in the provision of training for persons working or seeking to work in the field of health improvement;
  - (g) making available the services of any person or any facilities.
- (4) The steps that may be taken under subsection (1) also include providing grants or loans (on such terms as the local authority considers appropriate).
- (5) In this section, “local authority” means—
  - (a) a county council in England;
  - (b) a district council in England, other than a council for a district in a county for which there is a county council;
  - (c) a London borough council;
  - (d) the Council of the Isles of Scilly;

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(e) the Common Council of the City of London.”

### 13 Duties of clinical commissioning groups as to commissioning certain health services

(1) Section 3 of the National Health Service Act 2006 is amended as follows.

(2) In subsection (1)—

- (a) for the words from the beginning to “reasonable requirements” substitute “A clinical commissioning group must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility”, and
- (b) in each of paragraphs (d) and (e) for the words “as he considers” substitute “as the group considers”.

(3) After that subsection insert—

“(1A) For the purposes of this section, a clinical commissioning group has responsibility for—

- (a) persons who are provided with primary medical services by a member of the group, and
- (b) persons who usually reside in the group's area and are not provided with primary medical services by a member of any clinical commissioning group.

(1B) Regulations may provide that for the purposes of this section a clinical commissioning group also has responsibility (whether generally or in relation to a prescribed service or facility) for persons who—

- (a) were provided with primary medical services by a person who is or was a member of the group, or
- (b) have a prescribed connection with the group's area.

(1C) The power conferred by subsection (1B)(b) must be exercised so as to provide that, in relation to the provision of services or facilities for emergency care, a clinical commissioning group has responsibility for every person present in its area.

(1D) Regulations may provide that subsection (1A) does not apply—

- (a) in relation to persons of a prescribed description (which may include a description framed by reference to the primary medical services with which the persons are provided);
- (b) in prescribed circumstances.

(1E) The duty in subsection (1) does not apply in relation to a service or facility if the Board has a duty to arrange for its provision.”

(4) After subsection (1E) insert—

“(1F) In exercising its functions under this section and section 3A, a clinical commissioning group must act consistently with—

- (a) the discharge by the Secretary of State and the Board of their duty under section 1(1) (duty to promote a comprehensive health service), and



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- (b) the objectives and requirements for the time being specified in the mandate published under section 13A.”
- (5) Omit subsections (2) and (3).
- (6) For the heading to section 3 substitute “Duties of clinical commissioning groups as to commissioning certain health services”.
- (7) For the cross-heading preceding section 3 substitute “Arrangements for the provision of certain health services”.
- (8) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) before paragraph (za) insert—  
“(zza) regulations under section 3(1D),”.

#### Commencement Information

**I6** S. 13 partly in force: s. 13 in force for specified purposes at Royal Assent, see s. 306(1)(d)

VALID FROM 01/02/2013

#### **14 Power of clinical commissioning groups as to commissioning certain health services**

After section 3 of the National Health Service Act 2006 insert—

##### **“3A Power of clinical commissioning groups to commission certain health services**

- (1) Each clinical commissioning group may arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement—
  - (a) in the physical and mental health of the persons for whom it has responsibility, or
  - (b) in the prevention, diagnosis and treatment of illness in those persons.
- (2) A clinical commissioning group may not arrange for the provision of a service or facility under subsection (1) if the Board has a duty to arrange for its provision by virtue of section 3B or 4.
- (3) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of this section as they apply for the purposes of that section.”

#### **15 Power to require Board to commission certain health services**

After section 3A of the National Health Service Act 2006 insert—

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### “3B Secretary of State's power to require Board to commission services

- (1) Regulations may require the Board to arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of—
  - (a) dental services of a prescribed description;
  - (b) services or facilities for members of the armed forces or their families;
  - (c) services or facilities for persons who are detained in a prison or in other accommodation of a prescribed description;
  - (d) such other services or facilities as may be prescribed.
- (2) A service or facility may be prescribed under subsection (1)(d) only if the Secretary of State considers that it would be appropriate for the Board (rather than clinical commissioning groups) to arrange for its provision as part of the health service.
- (3) In deciding whether it would be so appropriate, the Secretary of State must have regard to—
  - (a) the number of individuals who require the provision of the service or facility;
  - (b) the cost of providing the service or facility;
  - (c) the number of persons able to provide the service or facility;
  - (d) the financial implications for clinical commissioning groups if they were required to arrange for the provision of the service or facility.
- (4) Before deciding whether to make regulations under this section, the Secretary of State must—
  - (a) obtain advice appropriate for that purpose, and
  - (b) consult the Board.
- (5) The reference in subsection (1)(b) to members of the armed forces is a reference to persons who are members of—
  - (a) the regular forces within the meaning of the Armed Forces Act 2006, or
  - (b) the reserve forces within the meaning of that Act.”

#### Commencement Information

**I7** S. 15 partly in force: s. 15 in force for specified purposes at Royal Assent, see s. 306(1)(d)

## 16 Secure psychiatric services

- (1) Section 4 of the National Health Service Act 2006 (high security psychiatric services) is amended as follows.
- (2) In subsection (1) for the words from the beginning to “duty to provide” substitute “The Board must arrange for the provision of”.
- (3) In subsection (3)—
  - (a) after “may be provided” insert “—

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- (a)”,  
and
  - (b) after paragraph (a) insert “, and  
(b) only by a person approved by the Secretary of State for the purposes of this subsection.”
- (4) After subsection (3) insert—
- “(3A) The Secretary of State may—
- (a) give directions to a person who provides high security psychiatric services about the provision by that person of those services;
  - (b) give directions to the Board about the exercise of its functions in relation to high security psychiatric services.”

#### **Commencement Information**

**I8** S. 16 partly in force: s. 16 in force for specified purposes at Royal Assent, see s. 306(1)(d)

## **17 Other services etc. provided as part of the health service**

- (1) In section 5 of the National Health Service Act 2006 (other services) for “about the Secretary of State and services under this Act” substitute “about the provision of services for the purposes of the health service in England”.
- (2) Schedule 1 to that Act is amended as follows.
- (3) In paragraph 1 (medical inspection of pupils)—
  - (a) for “The Secretary of State” substitute “A local authority”, and
  - (b) for “local authorities” substitute “the local authority”.
- (4) In paragraph 2—
  - (a) in sub-paragraph (1)—
    - (i) for “The Secretary of State” substitute “A local authority”, and
    - (ii) omit “, by arrangement with any local authority”,
  - (b) in sub-paragraph (2)—
    - (i) for “The Secretary of State” substitute “A local authority”,
    - (ii) after “educational establishment” insert “in its area”, and
    - (iii) for “a local authority” substitute “the local authority”, and
  - (c) omit sub-paragraph (3).
- (5) In paragraph 4—
  - (a) for “A local authority may not make an arrangement” substitute “A local authority may not provide for any medical inspection or treatment”, and
  - (b) for “the arrangement” substitute “the inspection or (as the case may be) treatment”.
- (6) In paragraph 5—
  - (a) omit sub-paragraph (1)(a) and the word “and” immediately following it,
  - (b) in sub-paragraph (2)—
    - (i) omit “local authority or”,
    - (ii) for “the Secretary of State” substitute “a local authority”, and

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(iii) for “him” substitute “it”.

(7) In paragraph 7A (weighing and measuring of children)—

- (a) for “The Secretary of State” (in each place it occurs) substitute “A local authority”,
- (b) in sub-paragraph (1) omit “, by arrangement with any local authority”, and
- (c) in sub-paragraph (2) —
  - (i) after “any school” insert “in its area”, and
  - (ii) for “a local authority” substitute “the local authority”.

(8) In paragraph 7B (regulations as to weighing and measuring of children)—

- (a) in sub-paragraph (1)(b) for “by the Secretary of State” substitute “by a local authority”, and
- (b) in sub-paragraph (1)(d)—
  - (i) for “by the Secretary of State” substitute “by a local authority”, and
  - (ii) after “paragraph 7A” insert “and of any other prescribed information relating to the children concerned”, and
- (c) in sub-paragraph (2) after “such weighing or measuring” insert “or in relation to information prescribed under sub-paragraph (1)”.

(9) After paragraph 7B insert—

**7C “Supply of blood and other human tissues**

The Secretary of State must for the purposes of the health service make arrangements for—

- (a) collecting, screening, analysing, processing and supplying blood or other tissues,
- (b) preparing blood components and reagents, and
- (c) facilitating tissue and organ transplantation.”

(10) In paragraph 9 (provision of vehicles for disabled persons)—

- (a) the existing text becomes sub-paragraph (1),
- (b) in that sub-paragraph—
  - (i) for “The Secretary of State may provide” substitute “A clinical commissioning group may make arrangements for the provision of”, and
  - (ii) for “persons appearing to him to be persons who have a physical impairment” substitute “persons for whom the group has responsibility and who appear to it to have a physical impairment”, and
- (c) after that sub-paragraph insert—

“(2) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of sub-paragraph (1) as they apply for the purposes of that section.”

(11) In paragraph 10—

- (a) in sub-paragraph (1)(a) after “provided” insert “in pursuance of arrangements made”,
- (b) in sub-paragraph (2) —

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- (i) for “The Secretary of State may” substitute “The clinical commissioning group may make arrangements for”,
  - (ii) in paragraph (a) for “adapt” substitute “the adaptation of”,
  - (iii) in paragraph (b) for “maintain and repair” substitute “the maintenance and repair of”,
  - (iv) in paragraph (c) for “take out” substitute “the taking out of”,
  - (v) in that paragraph for “pay” substitute “the payment of”,
  - (vi) in paragraph (d) for “provide” (in each place it occurs) substitute “the provision of”, and
  - (vii) in that paragraph for “execute” substitute “the execution of”,
  - (c) in sub-paragraph (3) for “The Secretary of State” substitute “A clinical commissioning group”, and
  - (d) in sub-paragraph (5) for “the Secretary of State” substitute “the clinical commissioning group”.
- (12) In paragraph 12 (provision of a microbiological service)—
- (a) in sub-paragraph (1)—
    - (i) omit paragraph (a) and the word “and” immediately following it,
    - (ii) in paragraph (b) omit “other”, and
    - (iii) in that paragraph for “that service” substitute “a microbiological service provided under section 2A”, and
  - (b) omit sub-paragraph (2).
- (13) For paragraph 13 and the cross-heading preceding it substitute—

### 13 “Powers in relation to research etc.

- (1) The Secretary of State, the Board or a clinical commissioning group may conduct, commission or assist the conduct of research into—
  - (a) any matters relating to the causation, prevention, diagnosis or treatment of illness, and
  - (b) any such other matters connected with any service provided under this Act as the Secretary of State, the Board or the clinical commissioning group (as the case may be) considers appropriate.
- (2) A local authority may conduct, commission or assist the conduct of research for any purpose connected with the exercise of its functions in relation to the health service.
- (3) The Secretary of State, the Board, a clinical commissioning group or a local authority may for any purpose connected with the exercise of its functions in relation to the health service—
  - (a) obtain and analyse data or other information;
  - (b) obtain advice from persons with appropriate professional expertise.
- (4) The power under sub-paragraph (1) or (2) to assist any person to conduct research includes power to do so by providing financial assistance or making the services of any person or other resources available.
- (5) In this paragraph, “local authority” has the same meaning as in section 2B.”

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#### Commencement Information

**I9** S. 17(13) in force at 1.10.2012 for specified purposes by S.I. 2012/1831, art. 2(2)

### 18 Regulations as to the exercise by local authorities of certain public health functions

(1) After section 6B of the National Health Service Act 2006 insert—

*“Regulations as to the exercise of functions*

#### **6C Regulations as to the exercise by local authorities of certain public health functions**

- (1) Regulations may require a local authority to exercise any of the public health functions of the Secretary of State (so far as relating to the health of the public in the authority's area) by taking such steps as may be prescribed.
  - (2) Regulations may require a local authority to exercise its public health functions by taking such steps as may be prescribed.
  - (3) Where regulations under subsection (1) require a local authority to exercise any of the public health functions of the Secretary of State, the regulations may also authorise or require the local authority to exercise any prescribed functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).
  - (4) The making of regulations under subsection (1) does not prevent the Secretary of State from taking any step that a local authority is required to take under the regulations.
  - (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a local authority of any of its functions under regulations under subsection (1) are enforceable by or against the local authority (and no other person).
  - (6) In this section, “local authority” has the same meaning as in section 2B.”
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zza) insert—
- “(zzb) regulations under section 6C(1) or (2),”.

#### Commencement Information

**I10** S. 18 partly in force; s. 18 in force for specified purposes at Royal Assent, see s. 306(1)(d)

### 19 Regulations relating to EU obligations

After section 6C of the National Health Service Act 2006 insert—

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### **“6D Regulations relating to EU obligations**

- (1) Regulations may require the Board or a clinical commissioning group to exercise a specified EU health function.
- (2) In subsection (1)—
  - (a) “EU health function” means any function exercisable by the Secretary of State for the purpose of implementing EU obligations that concern, or are connected to, the health service, other than a function of making subordinate legislation (within the meaning of the Interpretation Act 1978), and
  - (b) “specified” means specified in the regulations.
- (3) The Secretary of State may give directions to the Board or a clinical commissioning group about its exercise of any of its functions under regulations under subsection (1).
- (4) The making of regulations under subsection (1) does not prevent the Secretary of State from exercising the specified EU health function.
- (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the Board or a clinical commissioning group of any of its functions under regulations under subsection (1) are enforceable by or against the Board or (as the case may be) the group (and no other person).
- (6) The Secretary of State may, for the purpose of securing compliance by the United Kingdom with EU obligations, give directions to the Board or a clinical commissioning group about the exercise of any of its functions.”

#### **Commencement Information**

**III** S. 19 partly in force; s. 19 in force for specified purposes at Royal Assent, see s. 306(1)(d)

## **20 Regulations as to the exercise of functions by the Board or clinical commissioning groups**

- (1) After section 6D of the National Health Service Act 2006 insert—

### **“6E Regulations as to the exercise of functions by the Board or clinical commissioning groups**

- (1) Regulations may impose requirements (to be known as “standing rules”) in accordance with this section on the Board or on clinical commissioning groups.
- (2) The regulations may, in relation to the commissioning functions of the Board or clinical commissioning groups, make provision—
  - (a) requiring the Board or clinical commissioning groups to arrange for specified treatments or other specified services to be provided or to be provided in a specified manner or within a specified period;
  - (b) as to the arrangements that the Board or clinical commissioning groups must make for the purpose of making decisions as to—

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- (i) the treatments or other services that are to be provided;
    - (ii) the manner in which or period within which specified treatments or other specified services are to be provided;
    - (iii) the persons to whom specified treatments or other specified services are to be provided;
  - (c) as to the arrangements that the Board or clinical commissioning groups must make for enabling persons to whom specified treatments or other specified services are to be provided to make choices with respect to specified aspects of them.
- (3) Regulations by virtue of paragraph (b) of subsection (2) may, in particular, make provision—
- (a) requiring the Board or a clinical commissioning group to take specified steps before making decisions as to the matters mentioned in that paragraph;
  - (b) as to reviews of, or appeals from, such decisions.
- (4) The regulations may—
- (a) specify matters for which provision must be made in commissioning contracts entered into by the Board or clinical commissioning groups;
  - (b) require the Board to draft terms and conditions making provision for those matters;
  - (c) require the Board or clinical commissioning groups to incorporate the terms and conditions drafted by virtue of paragraph (b) in commissioning contracts entered into by the Board or (as the case may be) clinical commissioning groups.
- (5) The regulations must—
- (a) require the Board to draft such terms and conditions as the Board considers are, or might be, appropriate for inclusion in commissioning contracts entered into by the Board or clinical commissioning groups (other than terms and conditions that the Board is required to draft by virtue of subsection (4)(a));
  - (b) authorise the Board to require clinical commissioning groups to incorporate terms and conditions prepared by virtue of paragraph (a) in their commissioning contracts;
  - (c) authorise the Board to draft model commissioning contracts.
- (6) The regulations may require the Board to consult prescribed persons before exercising any of its functions by virtue of subsection (4)(b) or (5).
- (7) The regulations may require the Board or clinical commissioning groups in the exercise of any of its or their functions—
- (a) to provide information of a specified description to specified persons in a specified manner;
  - (b) to act in a specified manner for the purpose of securing compliance with EU obligations;
  - (c) to do such other things as the Secretary of State considers necessary for the purposes of the health service.
- (8) The regulations may not impose a requirement on only one clinical commissioning group.



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- (9) If regulations under this section are made so as to come into force on a day other than 1 April, the Secretary of State must—
- (a) publish a statement explaining the reasons for making the regulations so as to come into force on such a day, and
  - (b) lay the statement before Parliament.
- (10) In this section—
- (a) “commissioning contracts”, in relation to the Board or clinical commissioning groups, means contracts entered into by the Board or (as the case may be) clinical commissioning groups in the exercise of its or their commissioning functions;
  - (b) “commissioning functions”, in relation to the Board or clinical commissioning groups, means the functions of the Board or (as the case may be) clinical commissioning groups in arranging for the provision of services as part of the health service;
  - (c) “specified” means specified in the regulations.”
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zzb) insert—
- “(zxc) regulations under section 6E, except where they do not include provision by virtue of subsection (7)(c) of that section.”.

#### Commencement Information

**112** S. 20 partly in force; s. 20 in force for specified purposes at Royal Assent, see s. 306(1)(d)

## 21 Functions of Special Health Authorities

- (1) Section 7 of the National Health Service Act 2006 (distribution of health service functions) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The Secretary of State may direct a Special Health Authority to exercise any functions of the Secretary of State or any other person which relate to the health service in England and are specified in the direction.
- (1A) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.
- (1B) Before exercising the power in subsection (1) in relation to a function of a person other than the Secretary of State, the Secretary of State must consult that person.
- (1C) Regulations may provide that a Special Health Authority specified in the regulations is to have such additional functions in relation to the health service in England as may be so specified.”
- (3) Omit subsections (2) and (3).
- (4) For the heading to that section, and for the cross-heading preceding it, substitute “Functions of Special Health Authorities”.

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- (5) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zcc) insert—
- “(zcd) regulations under section 7(1C).”
- (6) In section 273 of that Act (further provision about orders and directions), in subsection (4)(b)—
- (a) before paragraph (i) insert—
- “(zi) section 7 about a function of a person other than the Secretary of State,” and
- (b) in paragraph (i) after “a function” insert “of the Secretary of State”.

#### **Commencement Information**

**I13** S. 21 partly in force; s. 21 in force for specified purposes at Royal Assent, see s. 306(1)(d)

**I14** S. 21 in force at 1.10.2012 in so far as not already in force by [S.I. 2012/1831](#), [art. 2\(2\)](#) (with [art. 12](#))

## **22 Exercise of public health functions of the Secretary of State**

After section 7 of the National Health Service Act 2006 insert—

*“Exercise of Secretary of State's public health functions*

### **7A Exercise of Secretary of State's public health functions**

- (1) The Secretary of State may arrange for a body mentioned in subsection (2) to exercise any of the public health functions of the Secretary of State.
- (2) Those bodies are—
- (a) the Board;
- (b) a clinical commissioning group;
- (c) a local authority (within the meaning of section 2B).
- (3) The power conferred by subsection (1) includes power to arrange for such a body to exercise any functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).
- (4) Where the Secretary of State arranges (under subsection (1)) for the Board to exercise a function, the Board may arrange for a clinical commissioning group to exercise that function.
- (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a body mentioned in subsection (2) of any function exercisable by it by virtue of this section are enforceable by or against that body (and no other person).
- (6) Powers under this section may be exercised on such terms as may be agreed, including terms as to payment.”

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### Commencement Information

**I15** S. 22 in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#)

### *Further provision about the Board*

## **23 The NHS Commissioning Board: further provision**

- (1) In Part 2 of the National Health Service Act 2006 (health service bodies), before Chapter 1 insert—

### **“CHAPTER A1**

#### THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

#### *Secretary of State's mandate to the Board*

### **13A Mandate to Board**

- (1) Before the start of each financial year, the Secretary of State must publish and lay before Parliament a document to be known as “the mandate”.
- (2) The Secretary of State must specify in the mandate—
  - (a) the objectives that the Secretary of State considers the Board should seek to achieve in the exercise of its functions during that financial year and such subsequent financial years as the Secretary of State considers appropriate, and
  - (b) any requirements that the Secretary of State considers it necessary to impose on the Board for the purpose of ensuring that it achieves those objectives.
- (3) The Secretary of State must also specify in the mandate the amounts that the Secretary of State has decided to specify in relation to the financial year for the purposes of section 223D(2) and (3) (limits on capital and revenue resource use).
- (4) The Secretary of State may specify in the mandate any proposals that the Secretary of State has as to the amounts that the Secretary of State will specify in relation to subsequent financial years for the purposes of section 223D(2) and (3).
- (5) The Secretary of State may also specify in the mandate the matters by reference to which the Secretary of State proposes to assess the Board's performance in relation to the first financial year to which the mandate relates.
- (6) The Secretary of State may not specify in the mandate an objective or requirement about the exercise of the Board's functions in relation to only one clinical commissioning group.
- (7) The Board must—
  - (a) seek to achieve the objectives specified in the mandate, and

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- (b) comply with any requirements so specified.
- (8) Before specifying any objectives or requirements in the mandate, the Secretary of State must consult—
  - (a) the Board,
  - (b) the Healthwatch England committee of the Care Quality Commission, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (9) Requirements included in the mandate have effect only if regulations so provide.

### 13B The mandate: supplemental provision

- (1) The Secretary of State must keep the Board's performance in achieving any objectives or requirements specified in the mandate under review.
- (2) If the Secretary of State varies the amount specified for the purposes of section 223D(2) or (3), the Secretary of State must revise the mandate accordingly.
- (3) The Secretary of State may make any other revision to the mandate only if—
  - (a) the Board agrees to the revision,
  - (b) a parliamentary general election takes place, or
  - (c) the Secretary of State considers that there are exceptional circumstances that make the revision necessary.
- (4) Revisions to the mandate which consist of adding, omitting or modifying requirements have effect only if regulations so provide.
- (5) If the Secretary of State revises the mandate, the Secretary of State must—
  - (a) publish the mandate (as so revised), and
  - (b) lay it before Parliament, together with an explanation of the reasons for making the revision.

#### *General duties of the Board*

### 13C Duty to promote NHS Constitution

- (1) The Board must, in the exercise of its functions—
  - (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
  - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

### 13D Duty as to effectiveness, efficiency etc.

The Board must exercise its functions effectively, efficiently and economically.

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### 13E Duty as to improvement in quality of services

- (1) The Board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—
  - (a) the prevention, diagnosis or treatment of illness, or
  - (b) the protection or improvement of public health.
- (2) In discharging its duty under subsection (1), the Board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
  - (a) the effectiveness of the services,
  - (b) the safety of the services, and
  - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), the Board must have regard to—
  - (a) any document published by the Secretary of State for the purposes of this section, and
  - (b) the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

### 13F Duty as to promoting autonomy

- (1) In exercising its functions, the Board must have regard to the desirability of securing, so far as consistent with the interests of the health service—
  - (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate, and
  - (b) that unnecessary burdens are not imposed on any such person.
- (2) If, in the case of any exercise of functions, the Board considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Board of its duties under sections 1(1) and 1H(3)(b), the Board must give priority to those duties.

### 13G Duty as to reducing inequalities

- The Board must, in the exercise of its functions, have regard to the need to—
- (a) reduce inequalities between patients with respect to their ability to access health services, and
  - (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

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### **13H Duty to promote involvement of each patient**

The Board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

- (a) the prevention or diagnosis of illness in the patients, or
- (b) their care or treatment.

### **13I Duty as to patient choice**

The Board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

### **13J Duty to obtain appropriate advice**

The Board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

- (a) the prevention, diagnosis or treatment of illness, and
- (b) the protection or improvement of public health.

### **13K Duty to promote innovation**

- (1) The Board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).
- (2) The Board may make payments as prizes to promote innovation in the provision of health services.
- (3) A prize may relate to—
  - (a) work at any stage of innovation (including research);
  - (b) work done at any time (including work before the commencement of section 23 of the Health and Social Care Act 2012).

### **13L Duty in respect of research**

The Board must, in the exercise of its functions, promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

### **13M Duty as to promoting education and training**

The Board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

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### 13N Duty as to promoting integration

- (1) The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
  - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) The Board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—
  - (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (3) The Board must encourage clinical commissioning groups to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure—
  - (a) that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or
  - (b) that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).
- (4) In this section—

“health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

### 13O Duty to have regard to impact on services in certain areas

- (1) In making commissioning decisions, the Board must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England.
- (2) In this section, “commissioning decisions”, in relation to the Board, means decisions about the carrying out of its functions in arranging for the provision of health services.

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### 13P **Duty as respects variation in provision of health services**

The Board must not exercise its functions for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

- (a) whether the persons in question are in the public or (as the case may be) private sector, or
- (b) some other aspect of their status.

#### *Public involvement*

### 13Q **Public involvement and consultation by the Board**

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by the Board in the exercise of its functions (“commissioning arrangements”).
- (2) The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—
  - (a) in the planning of the commissioning arrangements by the Board,
  - (b) in the development and consideration of proposals by the Board for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
  - (c) in decisions of the Board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

#### *Functions in relation to information*

### 13R **Information on safety of services provided by the health service**

- (1) The Board must establish and operate systems for collecting and analysing information relating to the safety of the services provided by the health service.
- (2) The Board must make information collected by virtue of subsection (1), and any other information obtained by analysing it, available to such persons as the Board considers appropriate.
- (3) The Board may impose charges, calculated on such basis as it considers appropriate, in respect of information made available by it under subsection (2).



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- (4) The Board must give advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service.
- (5) The Board must monitor the effectiveness of the advice and guidance given by it under subsection (4).
- (6) A clinical commissioning group must have regard to any advice or guidance given to it under subsection (4).
- (7) The Board may arrange for any other person (including another NHS body) to exercise any of the Board's functions under this section.
- (8) Arrangements made under subsection (7) do not affect the liability of the Board for the exercise of any of its functions.

### 13S **Guidance in relation to processing of information**

- (1) The Board must publish guidance for registered persons on the practice to be followed by them in relation to the processing of—
  - (a) patient information, and
  - (b) any other information obtained or generated in the course of the provision of the health service.
- (2) Registered persons who carry on an activity which involves, or is connected with, the provision of health care must have regard to any guidance published under this section.
- (3) In this section, “patient information”, “processing” and “registered person” have the same meaning as in section 20A of the Health and Social Care Act 2008.

#### *Business plan and report*

### 13T **Business plan**

- (1) Before the start of each financial year, the Board must publish a business plan setting out how it proposes to exercise its functions in that year and each of the next two financial years.
- (2) The business plan must, in particular, explain how the Board proposes to discharge its duties under—
  - (a) sections 13E, 13G and 13Q, and
  - (b) sections 223C to 223E.
- (3) The business plan must, in particular, explain how the Board proposes to achieve the objectives, and comply with the requirements, specified in the mandate for the first financial year to which the plan relates.
- (4) The Board may revise the plan.
- (5) The Board must publish any revised plan.

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### 13U Annual report

- (1) As soon as practicable after the end of each financial year, the Board must publish an annual report on how it has exercised its functions during the year.
- (2) The annual report must, in particular, contain an assessment of—
  - (a) the extent to which it met any objectives or requirements specified in the mandate for that year,
  - (b) the extent to which it gave effect to the proposals for that year in its business plan, and
  - (c) how effectively it discharged its duties under sections 13E, 13G and 13Q.
- (3) The Board must—
  - (a) lay the annual report before Parliament, and
  - (b) once it has done so, send a copy of it to the Secretary of State.
- (4) The Secretary of State must, having considered the annual report, set out in a letter to the Board the Secretary of State's assessment of the Board's performance of its functions in the financial year in question.
- (5) The letter must, in particular, contain the Secretary of State's assessment of the matters mentioned in subsection (2)(a) to (c).
- (6) The Secretary of State must—
  - (a) publish the letter to the Board, and
  - (b) lay it before Parliament.

#### *Additional powers*

### 13V Establishment of pooled funds

- (1) The Board and one or more clinical commissioning groups may establish and maintain a pooled fund.
- (2) A pooled fund is a fund—
  - (a) which is made up of contributions by the bodies which established it, and
  - (b) out of which payments may be made, with the agreement of those bodies, towards expenditure incurred in the discharge of any of their commissioning functions.
- (3) In this section, “commissioning functions” means functions in arranging for the provision of services as part of the health service.

### 13W Board's power to generate income, etc.

- (1) The Board has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services, etc.) for the purpose of making additional income available for improving the health service.

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- (2) The Board may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the Board of its functions.

### 13X Power to make grants etc.

- (1) The Board may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the Board has functions.
- (2) The payments may be made subject to such terms and conditions as the Board considers appropriate.

### 13Y Board's incidental powers: further provision

The power conferred on the Board by section 2 includes, in particular, power to—

- (a) enter into agreements,
- (b) acquire and dispose of property, and
- (c) accept gifts (including property to be held on trust for the purposes of the Board).

### *Exercise of functions of Board*

### 13Z Exercise of functions

- (1) This section applies to functions exercisable by the Board under or by virtue of this Act or any prescribed provision of any other Act.
- (2) The Board may arrange for any such function to be exercised by or jointly with—
  - (a) a Special Health Authority,
  - (b) a clinical commissioning group, or
  - (c) such other body as may be prescribed.
- (3) Regulations may provide that the power in subsection (2) does not apply in relation to a function of a prescribed description.
- (4) Where any functions are (by virtue of subsection (2)) exercisable jointly by the Board and another body, they may be exercised by a joint committee of the Board and the other body.
- (5) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the other party to the arrangements.
- (6) Arrangements made under this section do not affect the liability of the Board for the exercise of any of its functions.

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### *Power to confer additional functions*

#### **13Z1 Power to confer additional functions on the Board**

- (1) Regulations may provide that the Board is to have such additional functions in relation to the health service as may be specified in the regulations.
- (2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of the Board.

### *Intervention powers*

#### **13Z2 Failure by the Board to discharge any of its functions**

- (1) The Secretary of State may give a direction to the Board if the Secretary of State considers that—
  - (a) the Board—
    - (i) is failing or has failed to discharge any of its functions, or
    - (ii) is failing or has failed properly to discharge any of its functions, and
  - (b) the failure is significant.
- (2) A direction under subsection (1) may direct the Board to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
- (3) If the Board fails to comply with a direction under subsection (1), the Secretary of State may—
  - (a) discharge the functions to which it relates, or
  - (b) make arrangements for any other person to discharge them on the Secretary of State's behalf.
- (4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.
- (5) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

### *Disclosure of information*

#### **13Z3 Permitted disclosures of information**

- (1) The Board may disclose information obtained by it in the exercise of its functions if—
  - (a) the information has previously been lawfully disclosed to the public,
  - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),

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- (c) the disclosure is made in accordance with any enactment or court order,
  - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
  - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,
  - (f) the disclosure is made for the purpose of facilitating the exercise of any of the Board's functions,
  - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
  - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

### *Interpretation*

#### **13Z4 Interpretation**

- (1) In this Chapter—
- “the health service” means the health service in England;
  - “health services” means services provided as part of the health service and, in sections 13O and 13Q, also includes services that are to be provided as part of the health service.
- (2) Any reference (however expressed) in the following provisions of this Act to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—
- section 6E(7) and (10)(b),
  - section 13A(2),
  - section 13C(1),
  - section 13D,
  - section 13E(1),
  - section 13F,
  - section 13G,
  - section 13H,
  - section 13I,
  - section 13J,
  - section 13K(1),
  - section 13L,
  - section 13M,
  - section 13N(1) and (2),
  - section 13O(2),
  - section 13Q(1),
  - section 13T(1),

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section 13U(1) and (4),  
 section 13W(2),  
 section 13X(1),  
 section 13Z2(1),  
 section 13Z3(1),  
 section 72(1),  
 section 75(1)(a) and (2),  
 section 82,  
 section 223C(2)(a),  
 in Schedule A1, paragraph 13.

- (3) Any reference (however expressed) in the following provisions of other Acts to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),  
 section 197(6) of the Health and Social Care Act 2012 (participation of the Board in work of Health and Wellbeing Boards),  
 section 199(4) of that Act (supply of information to Health and Wellbeing Boards),  
 section 290(1) and (2) of that Act (duties to co-operate),  
 section 291(2)(d) of that Act (breaches of duties to co-operate).

- (4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).”

- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (za) insert—

“(zb) regulations under section 13Z1,”.

#### **Commencement Information**

**I16** S. 23 partly in force; s. 23 in force for specified purposes at Royal Assent, see s. 306(1)(d)

**I17** S. 23 in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#) (with [art. 4](#))

## **24 Financial arrangements for the Board**

Before the cross-heading preceding section 224 of the National Health Service Act 2006 insert—

*“The Board*

### **223B Funding of the Board**

- (1) The Secretary of State must pay to the Board in respect of each financial year sums not exceeding the amount allotted for that year by the Secretary of State towards meeting the expenditure of the Board which is attributable to the performance by it of its functions in that year.

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- (2) An amount is allotted to the Board for a financial year under this section when the Board is notified in writing by the Secretary of State that the amount is allotted to it for that year.
- (3) The Secretary of State may make a new allotment under this section increasing or reducing the allotment previously so made only if—
  - (a) the Board agrees to the change,
  - (b) a parliamentary general election takes place, or
  - (c) the Secretary of State considers that there are exceptional circumstances that make a new allotment necessary.
- (4) The Secretary of State may give directions to the Board with respect to the payment of sums by it to the Secretary of State in respect of charges or other sums referable to the valuation or disposal of assets.
- (5) Sums falling to be paid to the Board under this section are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may determine.

#### **223C Financial duties of the Board: expenditure**

- (1) The Board must ensure that total health expenditure in respect of each financial year does not exceed the aggregate of—
  - (a) the amount allotted to the Board for that year under section 223B,
  - (b) any sums received by the Board or clinical commissioning groups in that year under any provision of this Act (other than sums received by the Board under section 223B or by clinical commissioning groups under section 223G), and
  - (c) any sums received by the Board or clinical commissioning groups in that year otherwise than under this Act for the purpose of enabling it or them to defray such expenditure.
- (2) In this section, “total health expenditure”, in relation to a financial year, means—
  - (a) expenditure which is attributable to the performance by the Board of its functions in that year, other than sums paid by it under section 223G, and
  - (b) expenditure which is attributable to the performance by clinical commissioning groups of their functions in that year.
- (3) The Secretary of State may by directions determine whether expenditure by the Board or a clinical commissioning group which is of a description specified in the directions must, or must not, be treated for the purposes of this section as part of total health expenditure.
- (4) The Secretary of State may by directions determine the extent to which, and the circumstances in which, sums received by the Board or a clinical commissioning group under section 223B or (as the case may be) 223G but not yet spent must be treated for the purposes of this section as part of total health expenditure, and to which financial year's expenditure they must be attributed.
- (5) The Secretary of State may by directions require the Board to use banking facilities specified in the directions for any purposes so specified.

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### **223D Financial duties of the Board: controls on total resource use**

- (1) In this Chapter—
  - “total capital resource use”, in relation to a financial year, means the use of capital resources in that year by the Board and clinical commissioning groups (taken together);
  - “total revenue resource use”, in relation to a financial year, means the use of revenue resources in that year by the Board and clinical commissioning groups (taken together).
- (2) The Board must ensure that total capital resource use in a financial year does not exceed the amount specified by the Secretary of State.
- (3) The Board must ensure that total revenue resource use in a financial year does not exceed the amount specified by the Secretary of State.
- (4) The Secretary of State may give directions, in relation to a financial year, specifying descriptions of resources which must, or must not, be treated as capital resources or revenue resources for the purposes of this Chapter.
- (5) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must not be taken into account for the purposes of this Chapter.
- (6) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must be taken into account for the purposes of this section.
- (7) The amount specified for the purposes of subsection (2) or (3) may be varied only if—
  - (a) the Board agrees to the change,
  - (b) a parliamentary general election takes place, or
  - (c) the Secretary of State considers that there are exceptional circumstances which make the variation necessary.
- (8) Any reference in this Chapter to the use of capital resources or revenue resources is a reference to their expenditure, consumption or reduction in value.

### **223E Financial duties of the Board: additional controls on resource use**

- (1) The Secretary of State may direct the Board to ensure that total capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.
- (2) The Secretary of State may direct the Board to ensure that total revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.
- (3) The Secretary of State may direct the Board to ensure —
  - (a) that total revenue resource use in a financial year which is attributable to such prescribed matters relating to administration as are specified in the direction does not exceed an amount so specified;



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- (b) that the Board's use of revenue resources in a financial year which is attributable to such prescribed matters relating to administration as are specified in the direction does not exceed an amount so specified.
- (4) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of subsection (1) or (as the case may be) subsection (2) or (3).
- (5) The Secretary of State may not give a direction under subsection (1) or (2) unless the direction is for the purpose of complying with a limit imposed by the Treasury.

### 223F Power to establish contingency fund

- (1) The Board may use a proportion of the sums paid to it under section 223B to establish a contingency fund.
- (2) The Board may make a payment out of the fund where the payment is necessary in order to enable—
  - (a) the Board to discharge any of its commissioning functions, or
  - (b) a clinical commissioning group to discharge any of its functions.
- (3) The Board must publish guidance as to how it proposes to exercise its powers to make payments out of the contingency fund.
- (4) In this section, “commissioning functions” means functions in arranging for the provision of services as part of the health service.”

#### Commencement Information

**118** S. 24 partly in force; s. 24 in force for specified purposes at Royal Assent, see s. 306(1)(d)

**119** S. 24 in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#)

### *Further provision about clinical commissioning groups*

## 25 Clinical commissioning groups: establishment etc.

- (1) After Chapter A1 of Part 2 of the National Health Service Act 2006 insert—

### “CHAPTER A2

#### CLINICAL COMMISSIONING GROUPS

### *Establishment of clinical commissioning groups*

#### 14A General duties of Board in relation to clinical commissioning groups

- (1) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day specified by order of the Secretary of State for the

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purposes of this section each provider of primary medical services is a member of a clinical commissioning group.

- (2) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day so specified the areas specified in the constitutions of clinical commissioning groups—
  - (a) together cover the whole of England, and
  - (b) do not coincide or overlap.
- (3) For the purposes of this Chapter, “provider of primary medical services” means a person who is a party to an arrangement mentioned in subsection (4).
- (4) The arrangements mentioned in this subsection are—
  - (a) a general medical services contract to provide primary medical services of a prescribed description,
  - (b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description,
  - (c) section 92 arrangements for the provision of primary medical services of a prescribed description.
- (5) Where a person who is a provider of primary medical services is a party to more than one arrangement mentioned in subsection (4), the person is to be treated for the purposes of this Chapter as a separate provider of primary medical services in respect of each of those arrangements.
- (6) Where two or more individuals practising in partnership are parties to an arrangement mentioned in subsection (4), the partnership is to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).
- (7) Where two or more individuals are parties to an arrangement mentioned in subsection (4) but are not practising in partnership, those persons collectively are to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

#### **14B Applications for the establishment of clinical commissioning groups**

- (1) An application for the establishment of a clinical commissioning group may be made to the Board.
- (2) The application may be made by any two or more persons each of whom—
  - (a) is or wishes to be a provider of primary medical services, and
  - (b) wishes to be a member of the clinical commissioning group.
- (3) The application must be accompanied by—
  - (a) a copy of the proposed constitution of the clinical commissioning group,
  - (b) the name of the person whom the group wishes the Board to appoint as its accountable officer (as to which see paragraph 12 of Schedule 1A), and
  - (c) such other information as the Board may specify in a document published for the purposes of this section.
- (4) At any time before the Board determines the application—

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- (a) a person who is or wishes to be a provider of primary medical services (and wishes to be a member of the clinical commissioning group) may become a party to the application, with the agreement of the Board and the existing applicants;
  - (b) any of the applicants may withdraw.
- (5) At any time before the Board determines the application, the applicants may modify the proposed constitution with the agreement of the Board.
- (6) Part 1 of Schedule 1A makes provision about the constitution of a clinical commissioning group.

#### **14C Determination of applications**

- (1) The Board must grant an application under section 14B if it is satisfied as to the following matters.
- (2) Those matters are—
- (a) that the constitution complies with the requirements of Part 1 of Schedule 1A and is otherwise appropriate,
  - (b) that each of the members specified in the constitution will be a provider of primary medical services on the date the clinical commissioning group is established,
  - (c) that the area specified in the constitution is appropriate,
  - (d) that it would be appropriate for the Board to appoint, as the accountable officer of the group, the person named by the group under section 14B(3)(b),
  - (e) that the applicants have made appropriate arrangements to ensure that the clinical commissioning group will be able to discharge its functions,
  - (f) that the applicants have made appropriate arrangements to ensure that the group will have a governing body which satisfies any requirements imposed by or under this Act and is otherwise appropriate, and
  - (g) such other matters as may be prescribed.
- (3) Regulations may make provision—
- (a) as to factors which the Board must or may take into account in deciding whether it is satisfied as to the matters mentioned in subsection (2);
  - (b) as to the procedure for the making and determination of applications under section 14B.

#### **14D Effect of grant of application**

- (1) If the Board grants an application under section 14B—
- (a) a clinical commissioning group is established, and
  - (b) the proposed constitution has effect as the clinical commissioning group's constitution.
- (2) Part 2 of Schedule 1A makes further provision about clinical commissioning groups.

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### *Variation of constitution*

#### **14E Applications for variation of constitution**

- (1) A clinical commissioning group may apply to the Board to vary its constitution (including doing so by varying its area or its list of members).
- (2) If the Board grants the application, the constitution of the clinical commissioning group has effect subject to the variation.
- (3) Regulations may make provision—
  - (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
  - (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
  - (c) as to the procedure for the making and determination of such applications.

#### **14F Variation of constitution otherwise than on application**

- (1) The Board may vary the area specified in the constitution of a clinical commissioning group.
- (2) The Board may—
  - (a) add any person who is a provider of primary medical services to the list of members specified in the constitution of a clinical commissioning group;
  - (b) remove any person from such a list.
- (3) The power conferred by subsection (1) or (2) is exercisable if—
  - (a) the clinical commissioning group consents to the variation, or
  - (b) the Board considers that the variation is necessary for the purpose of discharging any of its duties under section 14A.
- (4) Before varying the constitution of a clinical commissioning group under subsection (1) or (2), the Board must consult—
  - (a) that group, and
  - (b) any other clinical commissioning group that the Board thinks might be affected by the variation.
- (5) Regulations may—
  - (a) confer powers on the Board to vary the constitution of a clinical commissioning group;
  - (b) make provision as to the circumstances in which those powers are exercisable and the procedure to be followed before they are exercised.

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### *Mergers, dissolution etc.*

#### **14G Mergers**

- (1) Two or more clinical commissioning groups may apply to the Board for—
  - (a) those groups to be dissolved, and
  - (b) another clinical commissioning group to be established under this section.
- (2) An application under this section must be accompanied by—
  - (a) a copy of the proposed constitution of the clinical commissioning group,
  - (b) the name of the person whom the group wishes the Board to appoint as its accountable officer, and
  - (c) such other information as the Board may specify in a document published for the purposes of this section.
- (3) The applicants may, with the agreement of the Board, modify the application or the proposed constitution at any time before the Board determines the application.
- (4) Sections 14C and 14D(1) apply in relation to an application under this section as they apply in relation to an application under section 14B.

#### **14H Dissolution**

- (1) A clinical commissioning group may apply to the Board for the group to be dissolved.
- (2) Regulations may make provision—
  - (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
  - (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
  - (c) as to the procedure for the making and determination of such applications.

*Supplemental provision about applications, variation, mergers etc.*

#### **14I Transfers in connection with variation, merger, dissolution etc.**

- (1) The Board may make a property transfer scheme or a staff transfer scheme in connection with—
  - (a) the variation of the constitution of a clinical commissioning group under section 14E or 14F, or
  - (b) the dissolution of a clinical commissioning group under section 14G or 14H.
- (2) A property transfer scheme is a scheme for the transfer from the clinical commissioning group of any property, rights or liabilities, other than rights or

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liabilities under or in connection with a contract of employment, to the Board or another clinical commissioning group.

- (3) A staff transfer scheme is a scheme for the transfer from the clinical commissioning group of any rights or liabilities under or in connection with a contract of employment to the Board or another clinical commissioning group.
- (4) Part 3 of Schedule 1A makes further provision about property transfer schemes and staff transfer schemes.

#### **14J Publication of constitution of clinical commissioning groups**

- (1) A clinical commissioning group must publish its constitution.
- (2) If the constitution of a clinical commissioning group is varied under section 14E or 14F, the group must publish the constitution as so varied.

#### **14K Guidance about the establishment of clinical commissioning groups etc.**

The Board may publish guidance as to—

- (a) the making of applications under section 14B for the establishment of a clinical commissioning group, including guidance on the form, content or publication of the proposed constitution;
- (b) the making of applications under section 14E, 14G or 14H;
- (c) the publication of the constitutions of clinical commissioning groups under section 14J.

#### *Governing bodies of clinical commissioning groups*

#### **14L Governing bodies of clinical commissioning groups**

- (1) A clinical commissioning group must have a governing body.
- (2) The main function of the governing body is to ensure that the group has made appropriate arrangements for ensuring that it complies with—
  - (a) its obligations under section 14Q, and
  - (b) such generally accepted principles of good governance as are relevant to it.
- (3) The governing body also has—
  - (a) the function of determining the remuneration, fees and allowances payable to the employees of the clinical commissioning group or to other persons providing services to it,
  - (b) the function of determining the allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A, and
  - (c) such other functions connected with the exercise of its main function as may be specified in the group's constitution or by regulations.
- (4) Only the following may be members of the governing body—
  - (a) a member of the group who is an individual;
  - (b) an individual appointed by virtue of regulations under section 14N(2);

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- (c) an individual of a description specified in the constitution of the group.
- (5) Regulations may make provision requiring a clinical commissioning group to obtain the approval of its governing body before exercising any functions specified in the regulations.
- (6) Regulations may make provision requiring governing bodies of clinical commissioning groups to publish, in accordance with the regulations, prescribed information relating to determinations made under subsection (3) (a) or (b).
- (7) The Board may publish guidance for governing bodies on the exercise of their functions under subsection (3)(a) or (b).

#### **14M Audit and remuneration committees of governing bodies**

- (1) The governing body of a clinical commissioning group must have an audit committee and a remuneration committee.
- (2) The audit committee has—
  - (a) such functions in relation to the financial duties of the clinical commissioning group as the governing body considers appropriate for the purpose of assisting it in discharging its function under section 14L(2), and
  - (b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.
- (3) The remuneration committee has—
  - (a) the function of making recommendations to the governing body as to the discharge of its functions under section 14L(3)(a) and (b), and
  - (b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

#### **14N Regulations as to governing bodies of clinical commissioning groups**

- (1) Regulations may make provision specifying the minimum number of members of governing bodies of clinical commissioning groups.
- (2) Regulations may—
  - (a) provide that the members of governing bodies must include the accountable officer of the clinical commissioning group;
  - (b) provide that the members of governing bodies, or their audit or remuneration committees, must include—
    - (i) individuals who are health care professionals of a prescribed description;
    - (ii) individuals who are lay persons;
    - (iii) individuals of any other description which is prescribed;
  - (c) in relation to any description of individuals mentioned in regulations by virtue of paragraph (b), specify—

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- (i) the minimum number of individuals of that description who must be appointed;
  - (ii) the maximum number of such individuals who may be appointed;
  - (d) provide that the descriptions specified for the purposes of section 14L(4)(c) may not include prescribed descriptions.
- (3) Regulations may make provision as to—
- (a) qualification and disqualification for membership of governing bodies or their audit or remuneration committees;
  - (b) how members are to be appointed;
  - (c) the tenure of members (including the circumstances in which a member ceases to hold office or may be removed or suspended from office);
  - (d) eligibility for re-appointment.
- (4) Regulations may make provision for the appointment of chairs and deputy chairs of governing bodies or their audit or remuneration committees, including provision as to—
- (a) qualification and disqualification for appointment;
  - (b) tenure of office (including the circumstances in which the chair or deputy chair ceases to hold office or may be removed or suspended from office);
  - (c) eligibility for re-appointment.
- (5) Regulations may—
- (a) make provision as to the matters which must be included in the constitutions of clinical commissioning groups under paragraph 8 of Schedule 1A;
  - (b) make such other provision about the procedure of governing bodies or their audit or remuneration committees as the Secretary of State considers appropriate, including provision about the frequency of meetings.
- (6) In this section—
- “health care professional” means an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;
- “lay person” means an individual who is not—
- (a) a member of the clinical commissioning group,
  - (b) a health care professional, or
  - (c) an individual of a prescribed description.

### *Conflicts of interest*

#### 14O **Registers of interests and management of conflicts of interest**

- (1) Each clinical commissioning group must maintain one or more registers of the interests of—



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- (a) the members of the group,
    - (b) the members of its governing body,
    - (c) the members of its committees or sub-committees or of committees or sub-committees of its governing body, and
    - (d) its employees.
  - (2) Each clinical commissioning group must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.
  - (3) Each clinical commissioning group must make arrangements to ensure—
    - (a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the group,
    - (b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days, and
    - (c) that any such declaration is included in the registers maintained under subsection (1).
  - (4) Each clinical commissioning group must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making processes.
  - (5) The Board must publish guidance for clinical commissioning groups on the discharge of their functions under this section.
  - (6) Each clinical commissioning group must have regard to guidance published under subsection (5).
  - (7) For the purposes of this section, the commissioning functions of a clinical commissioning group are the functions of the group in arranging for the provision of services as part of the health service.”
- (2) After Schedule 1 to the National Health Service Act 2006 insert the Schedule set out in Schedule 2 to this Act.

#### Commencement Information

- I20** S. 25 partly in force; s. 25 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I21** S. 25(1) in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), **art. 2(2)** (with **art. 5**)
- I22** S. 25(2) in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), **art. 2(2)**

## 26 Clinical commissioning groups: general duties etc.

After section 140 of the National Health Service Act 2006 insert—

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### *“General duties of clinical commissioning groups*

#### **14P Duty to promote NHS Constitution**

- (1) Each clinical commissioning group must, in the exercise of its functions—
  - (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
  - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

#### **14Q Duty as to effectiveness, efficiency etc.**

Each clinical commissioning group must exercise its functions effectively, efficiently and economically.

#### **14R Duty as to improvement in quality of services**

- (1) Each clinical commissioning group must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness.
- (2) In discharging its duty under subsection (1), a clinical commissioning group must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
  - (a) the effectiveness of the services,
  - (b) the safety of the services, and
  - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), a clinical commissioning group must have regard to any guidance published under section 14Z8.

#### **14S Duty in relation to quality of primary medical services**

Each clinical commissioning group must assist and support the Board in discharging its duty under section 13E so far as relating to securing continuous improvement in the quality of primary medical services.

#### **14T Duties as to reducing inequalities**

Each clinical commissioning group must, in the exercise of its functions, have regard to the need to—

- (a) reduce inequalities between patients with respect to their ability to access health services, and

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- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

#### **14U Duty to promote involvement of each patient**

- (1) Each clinical commissioning group must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—
  - (a) the prevention or diagnosis of illness in the patients, or
  - (b) their care or treatment.
- (2) The Board must publish guidance for clinical commissioning groups on the discharge of their duties under this section.
- (3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

#### **14V Duty as to patient choice**

Each clinical commissioning group must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

#### **14W Duty to obtain appropriate advice**

- (1) Each clinical commissioning group must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—
  - (a) the prevention, diagnosis or treatment of illness, and
  - (b) the protection or improvement of public health.
- (2) The Board may publish guidance for clinical commissioning groups on the discharge of their duties under subsection (1).
- (3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

#### **14X Duty to promote innovation**

Each clinical commissioning group must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

#### **14Y Duty in respect of research**

Each clinical commissioning group must, in the exercise of its functions, promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

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### **14Z Duty as to promoting education and training**

Each clinical commissioning group must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

### **14Z1 Duty as to promoting integration**

- (1) Each clinical commissioning group must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
  - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) Each clinical commissioning group must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—
  - (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (3) In this section—
 

“health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

### *Public involvement*

### **14Z2 Public involvement and consultation by clinical commissioning groups**

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a clinical commissioning group in the exercise of its functions (“commissioning arrangements”).
- (2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

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- (a) in the planning of the commissioning arrangements by the group,
  - (b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
  - (c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) The clinical commissioning group must include in its constitution—
- (a) a description of the arrangements made by it under subsection (2), and
  - (b) a statement of the principles which it will follow in implementing those arrangements.
- (4) The Board may publish guidance for clinical commissioning groups on the discharge of their functions under this section.
- (5) A clinical commissioning group must have regard to any guidance published by the Board under subsection (4).
- (6) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

#### *Arrangements with others*

### **14Z3 Arrangements by clinical commissioning groups in respect of the exercise of functions**

- (1) Any two or more clinical commissioning groups may make arrangements under this section.
- (2) The arrangements may provide for—
- (a) one of the clinical commissioning groups to exercise any of the commissioning functions of another on its behalf, or
  - (b) all the clinical commissioning groups to exercise any of their commissioning functions jointly.
- (3) For the purposes of the arrangements a clinical commissioning group may—
- (a) make payments to another clinical commissioning group, or
  - (b) make the services of its employees or any other resources available to another clinical commissioning group.
- (4) For the purposes of the arrangements, all the clinical commissioning groups may establish and maintain a pooled fund.
- (5) A pooled fund is a fund—
- (a) which is made up of contributions by all the groups, and
  - (b) out of which payments may be made towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.

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- (6) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.
- (7) In this section, “commissioning functions” means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (including the function of making a request to the Board for the purposes of section 14Z9).

#### **14Z4 Joint exercise of functions with Local Health Boards**

- (1) Regulations may provide for any prescribed functions of a clinical commissioning group to be exercised jointly with a Local Health Board.
- (2) Regulations may provide for any functions that are (by virtue of subsection (1)) exercisable jointly by a clinical commissioning group and a Local Health Board to be exercised by a joint committee of the group and the Local Health Board.
- (3) Arrangements made by virtue of this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

#### *Additional powers of clinical commissioning groups*

#### **14Z5 Raising additional income**

- (1) A clinical commissioning group has power to do anything specified in section 7(2)(a), (b) and (e) to (h) of the Health and Medicines Act 1988 (provision of goods etc.) for the purpose of making additional income available for improving the health service.
- (2) A clinical commissioning group may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the group of its functions.

#### **14Z6 Power to make grants**

- (1) A clinical commissioning group may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the group has functions.
- (2) The payments may be made subject to such terms and conditions as the group considers appropriate.

#### *Board's functions in relation to clinical commissioning groups*

#### **14Z7 Responsibility for payments to providers**

- (1) The Board may publish a document specifying—
  - (a) circumstances in which a clinical commissioning group is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another clinical

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- commissioning group in the discharge of its commissioning functions,  
and
- (b) how the amount of any such payment is to be determined.
- (2) A clinical commissioning group is required to make payments in accordance with any document published under subsection (1).
- (3) Where a clinical commissioning group is required to make a payment by virtue of subsection (2), no other clinical commissioning group is liable to make it.
- (4) Accordingly, any obligation of another clinical commissioning group to make the payment ceases to have effect.
- (5) Any sums payable by virtue of subsection (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).
- (6) The Board may publish guidance for clinical commissioning groups for the purpose of assisting them in understanding and applying any document published under subsection (1).
- (7) In this section and section 14Z8, “commissioning functions” means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service.

#### **14Z8 Guidance on commissioning by the Board**

- (1) The Board must publish guidance for clinical commissioning groups on the discharge of their commissioning functions.
- (2) Each clinical commissioning group must have regard to guidance under this section.
- (3) The Board must consult the Healthwatch England committee of the Care Quality Commission—
- (a) before it first publishes guidance under this section, and
  - (b) before it publishes any revised guidance containing changes that are, in the opinion of the Board, significant.

#### **14Z9 Exercise of functions by the Board**

- (1) The Board may, at the request of a clinical commissioning group, exercise on behalf of the group—
- (a) any of its functions under section 3 or 3A which are specified in the request, and
  - (b) any other functions of the group which are related to the exercise of those functions.
- (2) Regulations may provide that the power in subsection (1) does not apply in relation to functions of a prescribed description.
- (3) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the clinical commissioning group.

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- (4) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

#### **14Z10 Power of Board to provide assistance or support**

- (1) The Board may provide assistance or support to a clinical commissioning group.
- (2) The assistance that may be provided includes—
- (a) financial assistance, and
  - (b) making the services of the Board's employees or any other resources of the Board available to the clinical commissioning group.
- (3) Assistance or support provided under this section may be provided on such terms and conditions, including terms as to payment, as the Board considers appropriate.
- (4) The Board may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this section.
- (5) A clinical commissioning group must comply with any restrictions imposed under subsection (4).

#### *Commissioning plans and reports*

#### **14Z11 Commissioning plan**

- (1) Before the start of each relevant period, a clinical commissioning group must prepare a plan setting out how it proposes to exercise its functions in that period.
- (2) In subsection (1), “relevant period”, in relation to a clinical commissioning group, means—
- (a) the period which —
    - (i) begins on such day during the first financial year of the group as the Board may direct, and
    - (ii) ends at the end of that financial year, and
  - (b) each subsequent financial year.
- (3) The plan must, in particular, explain how the group proposes to discharge its duties under—
- (a) sections 14R, 14T and 14Z2, and
  - (b) sections 223H to 223J.
- (4) The clinical commissioning group must publish the plan.
- (5) The clinical commissioning group must give a copy of the plan to the Board before the date specified by the Board in a direction.
- (6) The clinical commissioning group must give a copy of the plan to each relevant Health and Wellbeing Board.



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- (7) The Board may publish guidance for clinical commissioning groups on the discharge of their functions by virtue of this section and sections 14Z12 and 14Z13.
- (8) A clinical commissioning group must have regard to any guidance published by the Board under subsection (7).
- (9) In this Chapter, “relevant Health and Wellbeing Board”, in relation to a clinical commissioning group, means a Health and Wellbeing Board established by a local authority whose area coincides with, or includes the whole or any part of, the area of the group.

#### **14Z12 Revision of commissioning plans**

- (1) A clinical commissioning group may revise a plan published by it under section 14Z11.
- (2) If the clinical commissioning group revises the plan in a way which it considers to be significant—
  - (a) the group must publish the revised plan, and
  - (b) subsections (5) and (6) of section 14Z11 apply in relation to the revised plan as they apply in relation to the original plan.
- (3) If the clinical commissioning group revises the plan in any other way, the group must—
  - (a) publish a document setting out the changes it has made to the plan, and
  - (b) give a copy of the document to the Board and each relevant Health and Wellbeing Board.

#### **14Z13 Consultation about commissioning plans**

- (1) This section applies where a clinical commissioning group is—
  - (a) preparing a plan under section 14Z11, or
  - (b) revising a plan under section 14Z12 in a way which it considers to be significant.
- (2) The clinical commissioning group must consult individuals for whom it has responsibility for the purposes of section 3.
- (3) The clinical commissioning group must involve each relevant Health and Wellbeing Board in preparing or revising the plan.
- (4) The clinical commissioning group must, in particular—
  - (a) give each relevant Health and Wellbeing Board a draft of the plan or (as the case may be) the plan as revised, and
  - (b) consult each such Board on whether the draft takes proper account of each joint health and wellbeing strategy published by it which relates to the period (or any part of the period) to which the plan relates.
- (5) Where a Health and Wellbeing Board is consulted under subsection (4)(b), the Health and Wellbeing Board must give the clinical commissioning group its opinion on the matter mentioned in that subsection.

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- (6) Where a Health and Wellbeing Board is consulted under subsection (4)(b)—
  - (a) it may also give the Board its opinion on the matter mentioned in that subsection, and
  - (b) if it does so, it must give the clinical commissioning group a copy of its opinion.
- (7) If a clinical commissioning group revises or further revises a draft after it has been given to each relevant Health and Wellbeing Board under subsection (4), subsections (4) to (6) apply in relation to the revised draft as they apply in relation to the original draft.
- (8) A clinical commissioning group must include in a plan published under section 14Z11(4) or 14Z12(2)—
  - (a) a summary of the views expressed by individuals consulted under subsection (2),
  - (b) an explanation of how the group took account of those views, and
  - (c) a statement of the final opinion of each relevant Health and Wellbeing Board consulted in relation to the plan under subsection (4).
- (9) In this section, “joint health and wellbeing strategy” means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007 which is prepared and published by a Health and Wellbeing Board by virtue of section 196 of the Health and Social Care Act 2012.

#### **14Z14 Opinion of Health and Wellbeing Boards on commissioning plans**

- (1) A relevant Health and Wellbeing Board—
  - (a) may give the Board its opinion on whether a plan published by a clinical commissioning group under section 14Z11(4) or 14Z12(2) takes proper account of each joint health and wellbeing strategy published by the Health and Wellbeing Board which relates to the period (or any part of the period) to which the plan relates, and
  - (b) if it does so, must give the clinical commissioning group a copy of its opinion.
- (2) In this section, “joint health and wellbeing strategy” has the same meaning as in section 14Z13.

#### **14Z15 Reports by clinical commissioning groups**

- (1) In each financial year other than its first financial year, a clinical commissioning group must prepare a report (an “annual report”) on how it has discharged its functions in the previous financial year.
- (2) An annual report must, in particular—
  - (a) explain how the clinical commissioning group has discharged its duties under sections 14R, 14T and 14Z2, and
  - (b) review the extent to which the group has contributed to the delivery of any joint health and wellbeing strategy to which it was required to have regard under section 116B(1)(b) of the Local Government and Public Involvement in Health Act 2007.

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- (3) In preparing the review required by subsection (2)(b), the clinical commissioning group must consult each relevant Health and Wellbeing Board.
- (4) The Board may give directions to clinical commissioning groups as to the form and content of an annual report.
- (5) A clinical commissioning group must give a copy of its annual report to the Board before the date specified by the Board in a direction.
- (6) A clinical commissioning group must—
  - (a) publish its annual report, and
  - (b) hold a meeting for the purpose of presenting the report to members of the public.

#### *Performance assessment of clinical commissioning groups*

##### **14Z16 Performance assessment of clinical commissioning groups**

- (1) The Board must conduct a performance assessment of each clinical commissioning group in respect of each financial year.
- (2) A performance assessment is an assessment of how well the clinical commissioning group has discharged its functions during that year.
- (3) The assessment must, in particular, include an assessment of how well the group has discharged its duties under—
  - (a) sections 14R, 14T, 14W and 14Z2,
  - (b) sections 223H to 223J, and
  - (c) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).
- (4) In conducting a performance assessment, the Board must consult each relevant Health and Wellbeing Board as to its views on the clinical commissioning group's contribution to the delivery of any joint health and wellbeing strategy to which the group was required to have regard under section 116B(1)(b) of that Act of 2007.
- (5) The Board must, in particular, have regard to—
  - (a) any document published by the Secretary of State for the purposes of this section, and
  - (b) any guidance published under section 14Z8.
- (6) The Board must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by the Board in respect of that year.

#### *Powers to require information etc.*

##### **14Z17 Circumstances in which powers in sections 14Z18 and 14Z19 apply**

- (1) Sections 14Z18 and 14Z19 apply where the Board has reason to believe—

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- (a) that the area of a clinical commissioning group is no longer appropriate, or
  - (b) that a clinical commissioning group might have failed, might be failing or might fail to discharge any of its functions.
- (2) For the purposes of this section—
- (a) a failure to discharge a function includes a failure to discharge it properly, and
  - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

#### **14Z18 Power to require documents and information etc.**

- (1) Where this section applies, the Board may require a person mentioned in subsection (2) to provide to the Board any information, documents, records or other items that the Board considers it necessary or expedient to have for the purposes of any of its functions in relation to the clinical commissioning group.
- (2) The persons mentioned in this subsection are—
  - (a) the clinical commissioning group if it has possession or control of the item in question;
  - (b) any member or employee of the group who has possession or control of the item in question.
- (3) A person must comply with a requirement imposed under subsection (1).
- (4) The power conferred by subsection (1) includes power to require that any information, documents or records kept by means of a computer be provided in legible form.
- (5) The power conferred by subsection (1) does not include power to require the provision of personal records.
- (6) In subsection (5), “personal records” has the meaning given by section 12 of the Police and Criminal Evidence Act 1984.

#### **14Z19 Power to require explanation**

- (1) Where this section applies, the Board may require the clinical commissioning group to provide it with an explanation of any matter which relates to the exercise by the group of any of its functions, including an explanation of how the group is proposing to exercise any of its functions.
- (2) The Board may require the explanation to be given—
  - (a) orally at such time and place as the Board may specify, or
  - (b) in writing.
- (3) The clinical commissioning group must comply with a requirement imposed under subsection (1).

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## **14Z20 Use of information**

Any information, documents, records or other items that are obtained by the Board in pursuance of section 14Z18 or 14Z19 may be used by the Board in connection with any of its functions in relation to clinical commissioning groups.

### *Intervention powers*

## **14Z21 Power to give directions, dissolve clinical commissioning groups etc.**

- (1) This section applies if the Board is satisfied that—
  - (a) a clinical commissioning group is failing or has failed to discharge any of its functions, or
  - (b) there is a significant risk that a clinical commissioning group will fail to do so.
- (2) The Board may direct the clinical commissioning group to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
- (3) The Board may direct—
  - (a) the clinical commissioning group, or
  - (b) the accountable officer of the group,to cease to perform any functions for such period or periods as may be specified in the direction.
- (4) The Board may—
  - (a) terminate the appointment of the clinical commissioning group's accountable officer, and
  - (b) appoint another person to be its accountable officer.
- (5) Paragraph 12(4) of Schedule 1A does not apply to an appointment under subsection (4)(b).
- (6) The Board may vary the constitution of the clinical commissioning group, including doing so by—
  - (a) varying its area,
  - (b) adding any person who is a provider of primary medical services to the list of members, or
  - (c) removing any person from that list.
- (7) The Board may dissolve the clinical commissioning group.
- (8) Where a direction is given under subsection (3) the Board may—
  - (a) exercise any of the functions that are the subject of the direction on behalf of the clinical commissioning group or (as the case may be) the accountable officer;
  - (b) direct another clinical commissioning group or (as the case may be) the accountable officer of another clinical commissioning group to perform any of those functions on behalf of the group or (as the case

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may be) the accountable officer, in such manner and within such period or periods as may be specified in the directions.

- (9) A clinical commissioning group to which a direction is given under subsection (3) must—
- (a) where the Board exercises a function of the group under subsection (8) (a), co-operate with the Board, and
  - (b) where a direction is given under subsection (8)(b) to another clinical commissioning group or to the accountable officer of another clinical commissioning group, co-operate with the other group or (as the case may be) the accountable officer.
- (10) Before exercising the power conferred by subsection (8)(b) the Board must consult the clinical commissioning group to which it is proposing to give the direction.
- (11) Where the Board exercises a power conferred by subsection (6) or (7), the Board may make a property transfer scheme or a staff transfer scheme.
- (12) In subsection (11), “property transfer scheme” and “staff transfer scheme” have the same meaning as in section 14I.
- (13) Part 3 of Schedule 1A applies in relation to a property transfer scheme or a staff transfer scheme under subsection (11) as it applies in relation to a property transfer scheme or (as the case may be) a staff transfer scheme under section 14I(1).
- (14) For the purposes of this section—
- (a) a failure to discharge a function includes a failure to discharge it properly, and
  - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

*Procedural requirements in connection with certain powers*

**14Z22 Procedural requirements in connection with certain powers**

- (1) Before exercising the power to dissolve a clinical commissioning group under section 14Z21(7) the Board must consult the following persons—
- (a) the clinical commissioning group,
  - (b) relevant local authorities, and
  - (c) any other persons the Board considers it appropriate to consult.
- (2) For that purpose, the Board must provide those persons with a statement—
- (a) explaining that it is proposing to exercise the power, and
  - (b) giving its reasons for doing so.
- (3) After consulting those persons (and before exercising the power), the Board must publish a report containing its response to the consultation.
- (4) If the Board decides to exercise the power, the report must, in particular, explain its reasons for doing so.

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- (5) Regulations may make provision as to the procedure to be followed by the Board before the exercise of the powers conferred by sections 14Z18, 14Z19 and 14Z21.
- (6) The Board must publish guidance as to how it proposes to exercise the powers conferred by those sections.
- (7) For the purposes of subsection (1) a local authority is a relevant local authority if its area coincides with, or includes the whole or any part of, the area of the clinical commissioning group.

### *Disclosure of information*

#### **14Z23 Permitted disclosures of information**

- (1) A clinical commissioning group may disclose information obtained by it in the exercise of its functions if—
  - (a) the information has previously been lawfully disclosed to the public,
  - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),
  - (c) the disclosure is made in accordance with any enactment or court order,
  - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
  - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,
  - (f) the disclosure is made for the purpose of facilitating the exercise of any of the clinical commissioning group's functions,
  - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
  - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

### *Interpretation*

#### **14Z24 Interpretation**

- (1) In this Chapter—
  - “financial year”, in relation to a clinical commissioning group, includes the period which begins on the day the group is established and ends on the following 31 March;
  - “the health service” means the health service in England;
  - “health services” means services provided as part of the health service and, in section 14Z2, also includes services that are to be provided as part of the health service;

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“relevant Health and Wellbeing Board”, in relation to a clinical commissioning group, has the meaning given by section 14Z11(9).

- (2) Any reference (however expressed) in the following provisions of this Act to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),  
 section 14C(2)(e),  
 section 14P,  
 section 14Q,  
 section 14T,  
 section 14U(1),  
 section 14V,  
 section 14W(1),  
 section 14X,  
 section 14Y,  
 section 14Z,  
 section 14Z1(1) and (2),  
 section 14Z2(1),  
 section 14Z4(1),  
 section 14Z5(2),  
 section 14Z6(1),  
 section 14Z7(7),  
 section 14Z11(1),  
 section 14Z15(1),  
 section 14Z16(2),  
 sections 14Z17(1), 14Z19(1) and 14Z21(1) and (3),  
 section 14Z23(1),  
 section 72(1),  
 section 75(1)(a) and (2),  
 section 77(1)(b),  
 section 82,  
 section 89(1A)(d),  
 section 94(3A)(d),  
 section 223C(2)(b),  
 section 223H(1),  
 in Schedule 1A, paragraphs 3(1) and (3), 6, 12(9)(b) and 16(3).

- (3) Any reference (however expressed) in the following provisions of other Acts to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),  
 section 199(4) of the Health and Social Care Act 2012 (supply of information to Health and Wellbeing Boards),  
 section 291(2)(d) of that Act (breaches of duties to co-operate),



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in Schedule 6 to that Act, paragraph 8(4).

- (4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).”

#### Commencement Information

- I23** S. 26 partly in force; s. 26 in force for specified purposes at Royal Assent, see s. 306(1)(d)  
**I24** S. 26 in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#) (with [art. 6](#))

## 27 Financial arrangements for clinical commissioning groups

After section 223F of the National Health Service Act 2006 insert—

### *“Clinical commissioning groups*

#### **223G Means of meeting expenditure of clinical commissioning groups out of public funds**

- (1) The Board must pay in respect of each financial year to each clinical commissioning group sums not exceeding the amount allotted for that year by the Board to the group towards meeting the expenditure of the group which is attributable to the performance by it of its functions in that year.
- (2) In determining the amount to be allotted to a clinical commissioning group for any year, the Board may take into account—
  - (a) the expenditure of the clinical commissioning group during any previous financial year, and
  - (b) the amount that it proposes to hold, during the year to which the allotment relates, in any contingency fund established under section 223F.
- (3) An amount is allotted to a clinical commissioning group for a year under this section when the group is notified in writing by the Board that the amount is allotted to it for that year.
- (4) The Board may make a new allotment under this section increasing or reducing an allotment previously so made.
- (5) Where the Board allots an amount to a clinical commissioning group or makes a new allotment under subsection (4), it must notify the Secretary of State.
- (6) The Board may give directions to a clinical commissioning group with respect to—
  - (a) the application of sums paid to it by virtue of a new allotment increasing an allotment previously so made, and
  - (b) the payment of sums by it to the Board in respect of charges or other sums referable to the valuation or disposal of assets.
- (7) Sums falling to be paid to clinical commissioning groups under this section are payable subject to such conditions as to records, certificates or otherwise as the Board may determine.

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- (8) In this section and sections 223H to 223K “financial year” includes the period which begins on the day the clinical commissioning group is established and ends on the following 31 March.

**223H Financial duties of clinical commissioning groups: expenditure**

- (1) Each clinical commissioning group must, in respect of each financial year, perform its functions so as to ensure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of—
- (a) the amount allotted to it for that year under section 223G,
  - (b) any sums received by it in that year under any provision of this Act (other than sums received by it under section 223G), and
  - (c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray such expenditure.
- (2) The Board may by directions determine—
- (a) whether specified sums must, or must not, be treated for the purposes of this section as received by a specified clinical commissioning group,
  - (b) whether specified expenditure must, or must not, be treated for those purposes as expenditure within subsection (1) of a specified clinical commissioning group, or
  - (c) the extent to which, and the circumstances in which, sums received by a clinical commissioning group under section 223G but not yet spent must be treated for the purposes of this section as part of the expenditure of the group, and to which financial year's expenditure they must be attributed.
- (3) The Secretary of State may by directions require a clinical commissioning group to use specified banking facilities for any specified purposes.
- (4) In this section, “specified” means specified in the directions.

**223I Financial duties of clinical commissioning groups: use of resources**

- (1) For the purposes of this section and section 223J—
- (a) a clinical commissioning group's capital resource use, in relation to a financial year, means the group's use of capital resources in that year, and
  - (b) a clinical commissioning group's revenue resource use, in relation to a financial year, means the group's use of revenue resources in that year.
- (2) A clinical commissioning group must ensure that its capital resource use in a financial year does not exceed the amount specified by direction of the Board.
- (3) A clinical commissioning group must ensure that its revenue resource use in a financial year does not exceed the amount specified by direction of the Board.
- (4) Any directions given in relation to a financial year under subsection (6) of section 223D apply (in relation to that year) for the purposes of this section as they apply for the purposes of that section.

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- (5) The Board may by directions make provision for determining to which clinical commissioning group a use of capital resources or revenue resources is to be attributed for the purposes of this section or section 223J.
- (6) Where the Board gives a direction under subsection (2) or (3), it must notify the Secretary of State.

### **223J Financial duties of clinical commissioning groups: additional controls on resource use**

- (1) The Board may direct a clinical commissioning group to ensure that its capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.
- (2) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.
- (3) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to prescribed matters relating to administration does not exceed an amount specified in the direction.
- (4) The Board may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of subsection (1) or (as the case may be) subsection (2) or (3).
- (5) The Board may not exercise the power conferred by subsection (1) or (2) in relation to particular matters unless the Secretary of State has given a direction in relation to those matters under subsection (1) of section 223E or (as the case may be) subsection (2) of that section.
- (6) The Board may not exercise the power conferred by subsection (3) in relation to prescribed matters relating to administration unless the Secretary of State has given a direction in relation to those matters under subsection (3)(a) of section 223E.

### **223K Payments in respect of quality**

- (1) The Board may, after the end of a financial year, make a payment to a clinical commissioning group.
- (2) For the purpose of determining whether to make a payment under subsection (1) and (if so) the amount of the payment, the Board must take into account at least one of the following factors—
  - (a) the quality of relevant services provided during the financial year;
  - (b) any improvement in the quality of relevant services provided during that year (in comparison to the quality of relevant services provided during previous financial years);
  - (c) the outcomes identified during the financial year as having been achieved from the provision at any time of relevant services;

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- (d) any improvement in the outcomes identified during that financial year as having been so achieved (in comparison to the outcomes identified during previous financial years as having been so achieved).
- (3) For that purpose, the Board may also take into account either or both of the following factors—
  - (a) relevant inequalities identified during that year;
  - (b) any reduction in relevant inequalities identified during that year (in comparison to relevant inequalities identified during previous financial years).
- (4) Regulations may make provision as to the principles or other matters that the Board must or may take into account in assessing any factor mentioned in subsection (2) or (3).
- (5) Regulations may provide that, in prescribed circumstances, the Board may, if it considers it appropriate to do so—
  - (a) not make a payment that would otherwise be made to a clinical commissioning group under subsection (1), or
  - (b) reduce the amount of such a payment.
- (6) Regulations may make provision as to how payments under subsection (1) may be spent (which may include provision as to circumstances in which the whole or part of any such payments may be distributed to members of the clinical commissioning group).
- (7) A clinical commissioning group must publish an explanation of how the group has spent any payment made to it under subsection (1).
- (8) In this section—
  - “relevant services” means services provided in pursuance of arrangements made by the clinical commissioning group—
    - (a) under section 3 or 3A or Schedule 1, or
    - (b) by virtue of section 7A;
  - “relevant inequalities” means inequalities between the persons for whose benefit relevant services are at any time provided with respect to—
    - (a) their ability to access the services, or
    - (b) the outcomes achieved for them by their provision.”

#### **Commencement Information**

**I25** S. 27 partly in force; s. 27 in force for specified purposes at Royal Assent, see s. 306(1)(d)

**I26** S. 27 in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#)

## **28 Requirement for primary medical services provider to belong to clinical commissioning group**

- (1) In section 89 of the National Health Service Act 2006 (general medical services contracts: required terms), after subsection (1) insert—

“(1A) Regulations under subsection (1) may, in particular, make provision—

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- (a) for requiring a contractor who provides services of a prescribed description (a “relevant contractor”) to be a member of a clinical commissioning group;
  - (b) as to arrangements for securing that a relevant contractor appoints one individual to act on its behalf in the dealings between it and the clinical commissioning group to which it belongs;
  - (c) for imposing requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);
  - (d) for requiring a relevant contractor, in doing anything pursuant to the contract, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).
- (1B) Provision by virtue of subsection (1A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.
- (1C) In the case of a contract entered into by two or more individuals practising in partnership—
- (a) regulations making provision under subsection (1A)(a) may make provision for requiring each partner to secure that the partnership is a member of the clinical commissioning group;
  - (b) regulations making provision under subsection (1A)(b) may make provision as to arrangements for securing that the partners make the appointment;
  - (c) regulations making provision under subsection (1A)(d) may make provision for requiring each partner to act as mentioned there.
- (1D) Regulations making provision under subsection (1A) for the case of a contract entered into by two or more individuals practising in partnership may make provision as to the effect of a change in the membership of the partnership.
- (1E) The regulations may require an individual appointed for the purposes of subsection (1A)(b)—
- (a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and
  - (b) to meet such other conditions as may be prescribed.”
- (2) In section 94 of that Act (regulations about arrangements under section 92 of that Act for provision of primary medical services), after subsection (3) insert—
- “(3A) Regulations under subsection (3)(d) may—
- (a) require a person who provides services of a prescribed description in accordance with section 92 arrangements (a “relevant provider”) to be a member of a clinical commissioning group;
  - (b) make provision as to arrangements for securing that a relevant provider appoints one individual to act on its behalf in dealings between it and the clinical commissioning group to which it belongs;
  - (c) impose requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);
  - (d) require a relevant provider, in doing anything pursuant to section 92 arrangements, to act with a view to enabling the clinical

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- commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).
- (3B) Provision by virtue of subsection (3A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.
- (3C) In the case of an agreement made with two or more persons—
- (a) regulations making provision under subsection (3A)(a) may require each person to secure that the persons collectively are a member of the clinical commissioning group;
  - (b) regulations making provision under subsection (3A)(b) may make provision as to arrangements for securing that the persons collectively make the appointment;
  - (c) regulations making provision under subsection (3A)(d) may require each person to act as mentioned there.
- (3D) Regulations making provision under subsection (3A) for the case of an agreement made with two or more persons may make provision as to the effect of a change in the composition of the group of persons involved.
- (3E) The regulations may require an individual appointed for the purposes of subsection (3A)(b)—
- (a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and
  - (b) to meet such other conditions as may be prescribed.”

#### **Commencement Information**

**I27** S. 28 partly in force; s. 28 in force for specified purposes at Royal Assent, see s. 306(1)(d)

#### *Further provision about local authorities' role in the health service*

VALID FROM 01/04/2013

#### **29 Other health service functions of local authorities under the 2006 Act**

- (1) The National Health Service Act 2006 (c. 41) is amended as follows.
- (2) In section 111 (dental public health)—
- (a) in subsection (1) for “A Primary Care Trust” substitute “A local authority”,
  - (b) in subsection (2)—
    - (i) for “Primary Care Trust” (in each place where it occurs) substitute “local authority”, and
    - (ii) in paragraph (b) for “other Primary Care Trusts” substitute “other local authorities”, and
  - (c) after subsection (2) insert—
 

“(3) In this section, “local authority” has the same meaning as in section 2B.”

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- (3) In section 249 (joint working with the prison service) after subsection (4) insert—
- “(4A) For the purposes of this section, each local authority (within the meaning of section 2B) is to be treated as an NHS body.”

### **30 Appointment of directors of public health**

In Part 3 of the National Health Service Act 2006 (local authorities and the NHS) before section 74 insert—

#### **“73A Appointment of directors of public health**

- (1) Each local authority must, acting jointly with the Secretary of State, appoint an individual to have responsibility for —
- (a) the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1,
  - (b) the exercise by the authority of its functions by virtue of section 6C(1) or (3),
  - (c) anything done by the authority in pursuance of arrangements under section 7A,
  - (d) the exercise by the authority of any of its functions that relate to planning for, or responding to, emergencies involving a risk to public health,
  - (e) the functions of the authority under section 325 of the Criminal Justice Act 2003, and
  - (f) such other functions relating to public health as may be prescribed.
- (2) The individual so appointed is to be an officer of the local authority and is to be known as its director of public health.
- (3) Subsection (4) applies if the Secretary of State—
- (a) considers that the director has failed or might have failed to discharge (or to discharge properly) the responsibilities of the director under—
    - (i) subsection (1)(b), or
    - (ii) subsection (1)(c) where the arrangements relate to the Secretary of State's functions under section 2A, and
  - (b) has consulted the local authority.
- (4) The Secretary of State may direct the local authority to—
- (a) review how the director has discharged the responsibilities mentioned in subsection (3)(a);
  - (b) investigate whether the director has failed to discharge (or to discharge properly) those responsibilities;
  - (c) consider taking any steps specified in the direction;
  - (d) report to the Secretary of State on the action it has taken in pursuance of a direction given under any of the preceding paragraphs.
- (5) A local authority may terminate the appointment of its director of public health.
- (6) Before terminating the appointment of its director of public health, a local authority must consult the Secretary of State.

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- (7) A local authority must have regard to any guidance given by the Secretary of State in relation to its director of public health, including guidance as to appointment and termination of appointment, terms and conditions and management.
- (8) In this section, “local authority” has the same meaning as in section 2B.”

#### **Commencement Information**

**I28** S. 30 partly in force; s. 30 in force for specified purposes at Royal Assent, see s. 306(1)(d)

VALID FROM 01/04/2013

### **31 Exercise of public health functions of local authorities**

In Part 3 of the National Health Service Act 2006 after section 73A insert—

#### **“73B Exercise of public health functions of local authorities: further provision**

- (1) A local authority must, in the exercise of any functions mentioned in subsection (2), have regard to any document published by the Secretary of State for the purposes of this section.
- (2) The functions mentioned in this subsection are—
- (a) the exercise by the authority of its functions under section 2B, 111 or 249 or Schedule 1,
  - (b) the exercise by the authority of its functions by virtue of section 6C(1) or (3),
  - (c) anything done by the authority in pursuance of arrangements under section 7A,
  - (d) the functions of the authority under section 325 of the Criminal Justice Act 2003, and
  - (e) such other functions relating to public health as may be prescribed.
- (3) The Secretary of State may give guidance to local authorities as to the exercise of any functions mentioned in subsection (2).
- (4) A document published under subsection (1), and guidance given under subsection (3), may include guidance as to the appointment of officers of the local authority to discharge any functions mentioned in subsection (2), and as to their terms and conditions, management and dismissal.
- (5) The director of public health for a local authority must prepare an annual report on the health of the people in the area of the local authority.
- (6) The local authority must publish the report.
- (7) In this section, “local authority” has the same meaning as in section 2B.”



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## 32 Complaints about exercise of public health functions by local authorities

In Part 3 of the National Health Service Act 2006 (local authorities and the NHS) after section 73B insert—

### “73C Complaints about exercise of public health functions by local authorities

- (1) Regulations may make provision about the handling and consideration of complaints made under the regulations about —
  - (a) the exercise by a local authority of any of its public health functions;
  - (b) the exercise by a local authority of its functions by virtue of section 6C(1) or (3);
  - (c) anything done by a local authority in pursuance of arrangements made under section 7A;
  - (d) the exercise by a local authority of any of its other functions—
    - (i) which relate to public health, and
    - (ii) for which its director of public health has responsibility;
  - (e) the provision of services by another person in pursuance of arrangements made by a local authority in the exercise of any function mentioned in paragraphs (a) to (d).
- (2) The regulations may provide for a complaint to be considered by one or more of the following—
  - (a) the local authority in respect of whose functions the complaint is made;
  - (b) an independent panel established under the regulations;
  - (c) any other person or body.
- (3) The regulations may provide for a complaint or any matter raised by a complaint—
  - (a) to be referred to a Local Commissioner under Part 3 of the Local Government Act 1974 for the Commissioner to consider whether to investigate the complaint or matter under that Part;
  - (b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.
- (4) Where the regulations make provision under subsection (3)(a) they may also provide for the complaint to be treated as satisfying sections 26A and 26B of the Act of 1974.
- (5) Section 115 of the Health and Social Care (Community Health and Standards) Act 2003 (health care and social services complaints regulations: supplementary) applies in relation to regulations under this section as it applies in relation to regulations under subsection (1) of section 113 of that Act.
- (6) In this section, “local authority” has the same meaning as in section 2B.”

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#### Commencement Information

**I29** S. 32 partly in force; s. 32 in force for specified purposes at Royal Assent, see s. 306(1)(d)

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VALID FROM 01/04/2013

*Abolition of Strategic Health Authorities and Primary Care Trusts*

**33 Abolition of Strategic Health Authorities**

- (1) The Strategic Health Authorities continued in existence or established under section 13 of the National Health Service Act 2006 are abolished.
- (2) Chapter 1 of Part 2 of that Act (Strategic Health Authorities) is repealed.

**34 Abolition of Primary Care Trusts**

- (1) The Primary Care Trusts continued in existence or established under section 18 of the National Health Service Act 2006 are abolished.
- (2) Chapter 2 of Part 2 of that Act (Primary Care Trusts) is repealed.

*Functions relating to fluoridation of water*

VALID FROM 01/04/2013

**35 Fluoridation of water supplies**

- (1) Chapter 4 of Part 3 of the Water Industry Act 1991 (fluoridation), as amended by the Water Act 2003, is amended as follows.
- (2) In section 87 (fluoridation of water supplies at request of relevant authorities), in subsection (3)(a) for sub-paragraph (i) substitute—
  - “(i) in relation to areas in England, are to the Secretary of State;”.
- (3) After subsection (3) of that section insert—
  - “(3A) The Secretary of State may make a request under subsection (1) only if the Secretary of State is required to do so by section 88G(2) (following the making of a fluoridation proposal in accordance with section 88B).”
- (4) In subsection (4) of that section, for paragraph (a) substitute—
  - “(a) in relation to England, such area as the Secretary of State considers appropriate for the purpose of complying with section 88G(2);”.
- (5) After subsection (7) of that section insert—
  - “(7A) The Secretary of State must, in relation to the terms to be included in any arrangements under this section, consult any local authority whose area includes, coincides with or is wholly or partly within the specified area.
  - (7B) In this section and the following provisions of this Chapter “local authority” means—
    - (a) a county council in England;

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- (b) a district council in England, other than a council for a district in a county for which there is a county council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London.”
- (6) After subsection (7B) of that section (as inserted by subsection (5) above) insert—
  - “(7C) If the Secretary of State and the Welsh Ministers request a particular water undertaker to enter into arrangements in respect of adjoining areas—
    - (a) they must co-operate with each other so as to secure that the arrangements (taken together) are operable and efficient; and
    - (b) if suitable terms are not agreed for all the arrangements, a combined reference may be made by them under section 87B below to enable the terms of each set of arrangements to be determined so that they are consistent.
  - (7D) If the Secretary of State requests a water undertaker to vary arrangements for an area which adjoins an area in respect of which the Welsh Ministers have made arrangements with the same water undertaker, the Secretary of State must co-operate with the Welsh Ministers so as to secure that following the variation the arrangements (taken together) will be operable and efficient.
  - (7E) If the Welsh Ministers request a water undertaker to vary arrangements for an area which adjoins an area in respect of which the Secretary of State has made arrangements with the same water undertaker, the Welsh Ministers must co-operate with the Secretary of State so as to secure that following the variation the arrangements (taken together) will be operable and efficient.
  - (7F) If suitable terms are not agreed for a variation to which subsection (7D) or (7E) applies, a combined reference may be made by the Secretary of State and the Welsh Ministers under section 87B below so that (following the variation) both sets of arrangements are consistent.”
- (7) Omit subsections (8) to (10) of that section.
- (8) In subsection (11) of that section for “a relevant authority” substitute “the Welsh Ministers”.
- (9) In section 87A (target concentration of fluoridation), after subsection (3) insert—
  - “(3A) If the Secretary of State proposes to—
    - (a) make arrangements which provide for the concentration in the specified area (or any part of it) to be lower than the general target concentration, or
    - (b) vary existing arrangements so that they so provide,the Secretary of State shall consult any local authority whose area includes, coincides with or is wholly or partly within the specified area.”
- (10) In section 87B (fluoridation arrangements: determination of terms), in subsection (2) —
  - (a) for paragraph (a) substitute—
    - “(a) the Secretary of State may—
      - (i) determine the terms of the arrangements as the Secretary of State sees fit; or

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- (ii) refer the matter for determination by such other person as the Secretary of State considers appropriate; and”, and”
- (b) omit paragraph (b).
- (11) In that section, in subsection (4) for the words from the beginning to “section 87(8) (b) or (10)” substitute “Where a combined reference is made under section 87(7C) (b) or 87(7F)”.
- (12) In section 87C (fluoridation arrangements: compliance), omit subsection (8).
- (13) In section 89—
- (a) in the heading, after “Consultation” insert “:Wales”,
  - (b) in subsections (1) and (4) for “a relevant authority” substitute “the Welsh Ministers”,
  - (c) in subsection (1) for “the appropriate authority” (in each place where it occurs) substitute “the Welsh Ministers”,
  - (d) in subsection (3), in paragraph (a) for “relevant authorities” substitute “the Welsh Ministers”,
  - (e) in subsection (4) for “the appropriate authority so directs” substitute “the Welsh Ministers so direct”, and
  - (f) omit subsection (5).
- (14) In section 90A (review of fluoridation) after subsection (5) insert—
- “(5A) The relevant authority must, in exercising its functions under subsection (1) —
- (a) consult any local authority affected by the arrangements at such times as the relevant authority considers appropriate, and
  - (b) in particular, consult any such local authority before it publishes a report under paragraph (b) of that subsection.”

### 36 Procedural requirements in connection with fluoridation of water supplies

After section 88A of the Water Industry Act 1991 insert—

#### “88B Requirement for fluoridation proposal: England

- (1) The Secretary of State may not request a water undertaker to enter into arrangements under section 87(1) unless a fluoridation proposal is made to the Secretary of State.
- (2) A fluoridation proposal is a proposal that the Secretary of State enter into arrangements with one or more water undertakers to increase the fluoride content of the water supplied by the undertaker or undertakers to premises within such area or areas in England as may be specified in the proposal.
- (3) A fluoridation proposal may be made by one or more local authorities in England.
- (4) A local authority may not make a fluoridation proposal unless its area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.

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- (5) In the following provisions of this Chapter, “proposer”, in relation to a fluoridation proposal, means the local authority or authorities which made the proposal.
- (6) Any reference in the following provisions of this Chapter to a local authority affected by a fluoridation proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.

### **88C Initial consultation etc. on fluoridation proposal**

- (1) This section applies if a fluoridation proposal is made.
- (2) The proposer must consult the Secretary of State as to whether the arrangements which would result from implementing the proposal would be operable and efficient.
- (3) The proposer must consult each water undertaker who supplies water to premises within the area or areas specified in the proposal as to whether the arrangements which would result from implementing the proposal, insofar as they might affect the undertaker, would be operable and efficient.
- (4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.
- (5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (3).
- (6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements would not be operable and efficient, no further steps may be taken in relation to the proposal.

### **88D Additional requirements where other local authorities affected**

- (1) This section applies where—
  - (a) a fluoridation proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,
  - (c) one or more local authorities other than the proposer are affected by the proposal, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must notify any other local authority which is affected by the proposal.
- (3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.
- (4) The Secretary of State must by regulations—
  - (a) make provision as to the arrangements which must be made for the purposes of subsection (3), and

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- (b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

### **88E Decision on fluoridation proposal**

- (1) This section applies where—
  - (a) a fluoridation proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,
  - (c) in a case where section 88D applies, the conditions prescribed under subsection (4)(b) of that section are satisfied, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.
- (3) The proposer may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.
- (4) But the proposal may not be modified so as to extend the boundary of any area to which it relates, or to add another area, except in circumstances prescribed in regulations by the Secretary of State.
- (5) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to make such requests under section 87(1) as are necessary to implement the proposal.
- (6) The Secretary of State may by regulations make provision—
  - (a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (5);
  - (b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (5).

### **88F Decision-making procedure: exercise of functions by committee**

- (1) This section applies in relation to the exercise of functions under or by virtue of section 88E(2) to (5) (“the fluoridation functions”) except where the proposer is a single local authority and either—
  - (a) no other local authorities are affected by the proposal, or
  - (b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the fluoridation functions.
- (2) The local authorities affected by the proposal must—
  - (a) arrange for an existing joint committee of the authorities to exercise the fluoridation functions,
  - (b) establish a joint committee of the authorities for that purpose, or

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- (c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the fluoridation functions.
- (3) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the fluoridation functions.
- (4) The Secretary of State may by regulations make provision—
- (a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;
  - (b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);
  - (c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (3);
  - (d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the fluoridation functions.

#### **88G Secretary of State's duty in relation to fluoridation proposal**

- (1) This section applies if the Secretary of State is requested to make such requests under section 87(1) as are necessary to implement a fluoridation proposal.
- (2) The Secretary of State must comply with the request if the Secretary of State is satisfied that the requirements imposed by sections 88B to 88F have been met in relation to the proposal.
- (3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88C(2) or (3), 88D(4) or 88E(2).

#### **88H Payments by local authorities towards fluoridation costs**

- (1) This section applies where a water undertaker enters into arrangements with the Secretary of State under section 87(1).
- (2) The Secretary of State may require all local authorities affected by the arrangements to make payments to the Secretary of State to meet any costs incurred by the Secretary of State under the terms of the arrangements.
- (3) The amount to be paid by each of the affected local authorities is to be determined—
- (a) where a joint committee, or a joint sub-committee of Health and Wellbeing Boards, has exercised the fluoridation functions of the authorities in relation to the proposal which resulted in the arrangements being made and the committee or sub-committee continues to exist at the time when the Secretary of State exercises

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- the power conferred by subsection (2), by that committee or sub-committee;
- (b) in any other case, by agreement between the local authorities.
- (4) If the amount to be paid by the affected local authorities is not determined as mentioned in subsection (3), the Secretary of State may—
- (a) determine the amount to be paid, or
- (b) refer the matter for determination by such other person as the Secretary of State considers appropriate.
- (5) The amount determined in accordance with subsection (3) may, at the request of one or more of the affected local authorities, be varied with the agreement of all of them.
- (6) If the affected local authorities fail to reach agreement for the purposes of subsection (5), the Secretary of State may—
- (a) determine whether to vary the amount (and, if so, how), or
- (b) refer the matter for determination by such other person as the Secretary of State considers appropriate.
- (7) Any reference in this section to a local authority affected by arrangements under section 87(1) is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.

### **88I Variation or termination of arrangements under section 87(1)**

- (1) The Secretary of State may not request a water undertaker to vary arrangements entered into by the water undertaker under section 87(1) unless a proposal (“a variation proposal”) is made to the Secretary of State for a variation in the arrangements.
- (2) The Secretary of State may not give notice to a water undertaker under section 87C(7) to terminate arrangements entered into by the water undertaker under section 87(1) unless a proposal (“a termination proposal”) is made to the Secretary of State for the termination of the arrangements.
- (3) Subsection (1) does not apply in relation to a variation to provide for the concentration of fluoride in the area specified in the arrangements (or any part of it) to be lower than the general target concentration.
- (4) The Secretary of State may by regulations provide that subsection (1) or (2) does not apply in prescribed circumstances.
- (5) A variation or termination proposal may be made by one or more of the local authorities affected by the arrangements.
- (6) The Secretary of State may by regulations provide that, where a termination proposal is made in relation to arrangements under section 87(1), no further termination proposal may be made in relation to the arrangements until the end of such period as may be specified in the regulations.
- (7) In the following provisions of this Chapter, “proposer”, in relation to a variation or termination proposal, means the local authority or authorities which made the proposal.



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- (8) Any reference in this section and in the following provisions of this Chapter to a local authority affected by a variation or termination proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.
- (9) In relation to a proposal for the variation of the area specified in arrangements under section 87(1), any reference in this section and in the following provisions of this Chapter to a local authority affected by the proposal also includes a reference to a local authority whose area would include, coincide with or be wholly or partly within the area specified in the arrangements if the variation were made.

### **88J Initial consultation etc. on variation or termination proposal**

- (1) This section applies if a variation or termination proposal is made.
- (2) In the case of a variation proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether the arrangements as varied in accordance with the proposal would be operable and efficient.
- (3) In the case of a termination proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether it would be reasonably practicable to terminate the arrangements.
- (4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.
- (5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (2) or (3).
- (6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements as varied would not be operable and efficient or (as the case may be) that it would not be reasonably practicable to terminate the arrangements, no further steps may be taken in relation to the proposal.

### **88K Additional requirements where other local authorities affected**

- (1) This section applies where—
  - (a) a variation or termination proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements as varied would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,
  - (c) one or more local authorities other than the proposer are affected by the proposal, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must notify any other local authority which is affected by the proposal.
- (3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.

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- (4) The duty in subsection (3) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (5) The Secretary of State may by regulations provide that the duty in subsection (3) does not apply in prescribed circumstances.
- (6) The Secretary of State must by regulations—
  - (a) make provision as to the arrangements which must be made for the purposes of subsection (3), and
  - (b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

### **88L Decision on variation or termination proposal**

- (1) This section applies where—
  - (a) a variation or termination proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,
  - (c) in a case where the duty in section 88K(3) applies, the conditions prescribed under subsection (6)(b) of that section are satisfied, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.
- (3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.
- (5) The proposer of a variation proposal may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.
- (6) But, except in circumstances prescribed in regulations by the Secretary of State, the proposal may not be modified so as to propose the extension of the boundary of the area specified in the arrangements or, if the proposal is that the arrangements be varied so as to extend the boundary, may not be modified so as to propose a further extension of it.
- (7) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to request the water undertaker to vary the arrangements or (as the case may be) to give notice under section 87C(7) to the water undertaker to terminate the arrangements.
- (8) The Secretary of State may by regulations may make provision—
  - (a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (7);

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- (b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (7).

### **88M Decision-making procedure: exercise of functions by committee**

- (1) This section applies in relation to the exercise of functions under or by virtue of section 88L(2) to (7) (“the relevant functions”) except where the proposer is a single local authority and either—
  - (a) no other local authorities are affected by the proposal, or
  - (b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the functions.
- (2) The local authorities affected by the proposal must—
  - (a) arrange for an existing joint committee of the authorities to exercise the relevant functions,
  - (b) establish a joint committee of the authorities for that purpose, or
  - (c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the relevant functions.
- (3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.
- (5) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the relevant functions.
- (6) The Secretary of State may by regulations make provision—
  - (a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;
  - (b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);
  - (c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (5);
  - (d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the relevant functions.

### **88N Secretary of State's duty in relation to requests for variation or termination**

- (1) This section applies if (following the making of a variation or termination proposal) the Secretary of State is requested—
  - (a) to request a variation of arrangements entered into under section 87(1), or

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*Status: Point in time view as at 01/10/2012. This version of this part contains provisions that are not valid for this point in time.*

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- (b) (as the case may be) to give notice under section 87C(7) to a water undertaker to terminate such arrangements.
- (2) The Secretary of State must comply with the request if satisfied that the requirements imposed by sections 88I to 88M have been met in relation to the proposal.
- (3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88J(2) or (3), 88K(6) or 88L(2).

### **88O Power to make regulations as to maintenance of section 87 arrangements**

- (1) The Secretary of State may by regulations prescribe circumstances in which arrangements must be made in accordance with the regulations—
  - (a) for consulting and ascertaining opinion on whether arrangements under section 87(1) (“section 87(1) arrangements”) should be maintained, and
  - (b) for enabling authorities affected by section 87(1) arrangements to decide whether to propose to the Secretary of State that they be maintained.
- (2) The regulations must make provision requiring the Secretary of State to give notice under section 87C(7) to a water undertaker to terminate section 87(1) arrangements entered into by the undertaker if—
  - (a) the outcome of arrangements made by virtue of subsection (1)(b) is that the affected authorities decide not to propose that the section 87(1) arrangements be maintained, and
  - (b) the Secretary of State is satisfied that any requirements imposed by regulations under subsection (1), as to the arrangements to be made for the purposes mentioned in that subsection, have been met.
- (3) Subsection (2)(b) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed by regulations made under subsection (1).
- (4) The provision that may be made by regulations under subsection (1) (as to the arrangements to be made for the purposes mentioned in that subsection) includes provision corresponding, or similar, to any requirements imposed by or under sections 88K to 88M.”

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#### **Commencement Information**

**I30** S. 36 partly in force; s. 36 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

**Status:** Point in time view as at 01/10/2012. This version of this part contains provisions that are not valid for this point in time.  
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VALID FROM 01/04/2013

### 37 Fluoridation of water supplies: transitional provision

- (1) In relation to any time on or after the commencement of section 35, any relevant arrangements which have effect immediately before its commencement are to be treated for the purposes of Chapter 4 of Part 3 of the Water Industry Act 1991 as if they were arrangements entered into by the water undertaker with the Secretary of State under section 87(1) of that Act.
- (2) In subsection (1) “relevant arrangements” means—
  - (a) any arrangements entered into by a water undertaker with a Strategic Health Authority under section 87(1) of the Water Industry Act 1991, and
  - (b) any arrangements which are treated as arrangements falling within paragraph (a) by virtue of section 91 of that Act (as it had effect immediately before the commencement of this section).
- (3) In its application to arrangements which are treated by virtue of subsection (1) as arrangements entered into by a water undertaker with the Secretary of State under section 87(1) of the Water Industry Act 1991, section 88H of that Act applies as if for subsection (3) there were substituted—

“(3) The amount to be paid by each of the affected local authorities is to be determined by agreement between the local authorities.”.
- (4) Section 91 of the Water Industry Act 1991 (pre-1985 fluoridation schemes) ceases to have effect in relation to arrangements which are (by virtue of subsection (1)) treated as if they were arrangements entered into by a water undertaker with the Secretary of State under section 87(1) of that Act.

### *Functions relating to mental health matters*

VALID FROM 01/04/2013

### 38 Approval functions

- (1) After section 12 of the Mental Health Act 1983 insert—

**“12ZA Agreement for exercise of approval function: England**

  - (1) The Secretary of State may enter into an agreement with another person for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—
    - (a) with that other person, and
    - (b) if a requirement under section 12ZB has effect, with the other person by whom the function is exercisable under that requirement.
  - (2) In this section and sections 12ZB and 12ZC, “approval function” means—
    - (a) the function under section 12(2), or
    - (b) the function of approving persons as approved clinicians.

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- (3) An agreement under this section may, in particular, provide for an approval function to be exercisable by the other party—
  - (a) in all circumstances or only in specified circumstances;
  - (b) in all areas or only in specified areas.
- (4) An agreement under this section may provide for an approval function to be exercisable by the other party—
  - (a) for a period specified in the agreement, or
  - (b) for a period determined in accordance with the agreement.
- (5) The other party to an agreement under this section must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.
- (6) An instruction under subsection (5) may require the other party to cease to exercise the function to such extent as the instruction specifies.
- (7) The agreement may provide for the Secretary of State to pay compensation to the other party in the event of an instruction such as is mentioned in subsection (6) being given.
- (8) An instruction under subsection (5) may be given in such form as the Secretary of State may determine.
- (9) The Secretary of State must publish instructions under subsection (5) in such form as the Secretary of State may determine; but that does not apply to an instruction such as is mentioned in subsection (6).
- (10) An agreement under this section may provide for the Secretary of State to make payments to the other party; and the Secretary of State may make payments to other persons in connection with the exercise of an approval function by virtue of this section.

### **12ZB Requirement to exercise approval functions: England**

- (1) The Secretary of State may impose a requirement on the National Health Service Commissioning Board (“the Board”) or a Special Health Authority for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—
  - (a) with the Board or (as the case may be) Special Health Authority, and
  - (b) if an agreement under section 12ZA has effect, with the other person by whom the function is exercisable under that agreement.
- (2) The Secretary of State may, in particular, require the body concerned to exercise an approval function—
  - (a) in all circumstances or only in specified circumstances;
  - (b) in all areas or only in specified areas.
- (3) The Secretary of State may require the body concerned to exercise an approval function—
  - (a) for a period specified in the requirement, or
  - (b) for a period determined in accordance with the requirement.

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- (4) Where a requirement under subsection (1) is imposed, the Board or (as the case may be) Special Health Authority must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.
- (5) An instruction under subsection (4) may be given in such form as the Secretary of State may determine.
- (6) The Secretary of State must publish instructions under subsection (4) in such form as the Secretary of State may determine.
- (7) Where the Board or a Special Health Authority has an approval function by virtue of this section, the function is to be treated for the purposes of the National Health Service Act 2006 as a function that it has under that Act.
- (8) The Secretary of State may make payments in connection with the exercise of an approval function by virtue of this section.

#### **12ZC Provision of information for the purposes of section 12ZA or 12ZB**

- (1) A relevant person may provide another person with such information as the relevant person considers necessary or appropriate for or in connection with—
    - (a) the exercise of an approval function; or
    - (b) the exercise by the Secretary of State of the power—
      - (i) to enter into an agreement under section 12ZA;
      - (ii) to impose a requirement under section 12ZB; or
      - (iii) to give an instruction under section 12ZA(5) or 12ZB(4).
  - (2) The relevant persons are—
    - (a) the Secretary of State;
    - (b) a person who is a party to an agreement under section 12ZA; or
    - (c) if the Secretary of State imposes a requirement under section 12ZB on the National Health Service Commissioning Board or a Special Health Authority, the Board or (as the case may be) Special Health Authority.
  - (3) This section, in so far as it authorises the provision of information by one relevant person to another relevant person, has effect notwithstanding any rule of common law which would otherwise prohibit or restrict the provision.
  - (4) In this section, “information” includes documents and records.”
- (2) In section 54(1) of that Act (requirement for certain medical evidence etc. to be from practitioner approved under section 12 of the Act), after “the Secretary of State” insert “, or by another person by virtue of section 12ZA or 12ZB above,”.
  - (3) In section 139(4) of that Act (protection for acts done in pursuance of the Act: exceptions), at the end insert “or against a person who has functions under this Act by virtue of section 12ZA in so far as the proceedings relate to the exercise of those functions”.

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- (4) In section 145(1) of that Act (interpretation), in the definition of “approved clinician”, after “the Secretary of State” insert “or another person by virtue of section 12ZA or 12ZB above”.
- (5) In each of the following provisions, after “the Secretary of State” insert “, or by another person by virtue of section 12ZA or 12ZB of that Act,”—
- (a) in section 8(2) of the Criminal Procedure (Insanity) Act 1964 (interpretation), in the definition of “duly approved”,
  - (b) in section 51(1) of the Criminal Appeal Act 1968 (interpretation), in the definition of “duly approved”,
  - (c) in section 6(1) of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (interpretation), in the definition of “duly approved”,
  - (d) in section 157(6) of the Criminal Justice Act 2003 (mentally disordered offenders: definition of “medical report”),
  - (e) in section 172(1) of the Armed Forces Act 2006 (fitness to stand trial etc: definition of “duly approved”), and
  - (f) in section 258(5) of that Act (mentally disordered offenders), in the definition of “medical report”.

### 39 Discharge of patients

- (1) In section 23 of the Mental Health Act 1983 (discharge of patients), omit subsections (3) and (3A).
- (2) In section 24 of that Act (visiting and examination of patients), omit subsections (3) and (4).
- (3) In Schedule 1 to that Act (application of certain provisions of that Act to patients subject to hospital and guardianship orders)—
- (a) in Part 1, in paragraph 1, omit “24(3) and (4),” and
  - (b) in Part 2, in paragraph 1, omit “24(3) and (4),”.
- (4) In consequence of the repeals made by this section—
- (a) in the National Health Service and Community Care Act 1990, in Schedule 9—
    - (i) omit paragraph 24(3)(a) and the “and” following it, and
    - (ii) omit paragraph 24(4),
  - (b) in the Health Authorities Act 1995, in Schedule 1, omit paragraph 107(2)(a) and (3),
  - (c) in the Care Standards Act 2000, in Schedule 4, omit paragraph 9(3),
  - (d) in the Health and Social Care (Community Health and Standards) Act 2003, in Schedule 4, omit paragraphs 53(a) and 54,
  - (e) in the Domestic Violence, Crime and Victims Act 2004—
    - (i) omit sections 37A(5), 38A(3), 43A(5) and 44A(3),
    - (ii) in section 37A(7)(a), omit “, (5)”, and
    - (iii) in section 43A(7), omit “, (5)”, and
  - (f) in the Mental Health Act 2007, in Schedule 3, omit paragraphs 10(5) and (6) and 11(3) and (4).



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#### Commencement Information

**I31** S. 39 in force at 1.7.2012 by S.I. 2012/1319, art. 2(3)

## 40 After-care

- (1) Section 117 of the Mental Health Act 1983 (after-care) is amended as follows.
- (2) In subsection (2)—
  - (a) after “duty of the” insert “clinical commissioning group or”,
  - (b) omit “Primary Care Trust or” in each place it appears, and
  - (c) after “such time as the” insert “clinical commissioning group or”.
- (3) After subsection (2C) insert—
  - “(2D) Subsection (2), in its application to the clinical commissioning group, has effect as if for “to provide” there were substituted “to arrange for the provision of”.
  - (2E) The Secretary of State may by regulations provide that the duty imposed on the clinical commissioning group by subsection (2) is, in the circumstances or to the extent prescribed by the regulations, to be imposed instead on another clinical commissioning group or the National Health Service Commissioning Board.
  - (2F) Where regulations under subsection (2E) provide that the duty imposed by subsection (2) is to be imposed on the National Health Service Commissioning Board, subsection (2D) has effect as if the reference to the clinical commissioning group were a reference to the National Health Service Commissioning Board.
  - (2G) Section 272(7) and (8) of the National Health Service Act 2006 applies to the power to make regulations under subsection (2E) as it applies to a power to make regulations under that Act.”
- (4) In subsection (3)—
  - (a) after “section “the” insert “clinical commissioning group or”,
  - (b) omit “Primary Care trust or” in each place it appears, and
  - (c) after “means the”, in the first place it appears, insert “clinical commissioning group or”.
- (5) In section 275 of the National Health Service Act 2006 (interpretation) after subsection (4) insert—
  - “(5) In each of the following, the reference to section 3 includes a reference to section 117 of the Mental Health Act 1983 (after-care)—
    - (a) in section 223K(8), paragraph (a) of the definition of “relevant services”,
    - (b) in section 244(3), paragraph (a)(i) of the definition of “relevant health service provider”,
    - (c) in section 252A(10), the definition of “service arrangements”,
    - (d) section 253(1A)(d)(ii).”

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- (6) In section 48 of the Health and Social Care Act 2008 (special reviews and investigations), in subsection (2)(ba), after “the National Health Service Act 2006” insert “or section 117 of the Mental Health Act 1983 (after-care)”.
- (7) In section 97 of that Act (general interpretation of Part 1), in subsection (2A), after “section 7A of that Act)” insert “or section 117 of the Mental Health Act 1983 (after-care)”.
- (8) In consequence of the repeals made by subsections (2)(b) and (4)(b), omit paragraph 47 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002.

#### Commencement Information

**I32** S. 40 partly in force; s. 40 in force for specified purposes at Royal Assent, see s. 306(1)(d)

VALID FROM 01/04/2013

#### 41 Provision of pocket money for in-patients

- (1) Section 122 of the Mental Health Act 1983 (provision of pocket money for in-patients) is amended as follows.
- (2) In subsection (1)—
  - (a) for “Secretary of State may” substitute “Welsh Ministers may (in relation to Wales)”,
  - (b) for “he thinks fit” substitute “the Welsh Ministers think fit”,
  - (c) for “their” substitute “those persons”,
  - (d) for “him” substitute “the Welsh Ministers”, and
  - (e) for “they” substitute “those persons”.
- (3) In subsection (2)—
  - (a) omit “the National Health Service Act 2006 and”, and
  - (b) for “either of those Acts” substitute “that Act”.
- (4) In section 146 of that Act (application to Scotland), omit “122.”.

#### 42 Transfers to and from special hospitals

- (1) Omit section 123 of the Mental Health Act 1983 (transfers to and from special hospitals).
- (2) In section 68A of that Act (power to reduce periods after which cases must be referred to tribunal), in subsection (4)—
  - (a) after paragraph (c), insert “or”,
  - (b) omit the “or” following paragraph (d), and
  - (c) omit paragraph (e).
- (3) In section 138 of that Act (retaking of patients escaping from custody), in subsection (4)(a), omit “or under section 123 above”.

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- (4) In consequence of the repeal made by subsection (1), omit paragraph 67 of Schedule 4 to the Health Act 1999.
- (5) This section does not affect—
- (a) the authority for the detention of a person who is liable to be detained under the Mental Health Act 1983 before the commencement of this section,
  - (b) that Act in relation to any application, order or direction for admission or removal to a hospital made under that Act before that commencement, or
  - (c) the authority for the retaking of a person who, before that commencement, escapes while being taken to or from a hospital as mentioned in section 138(4)(a) of that Act.

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**Commencement Information**

**I33** S. 42 in force at 1.7.2012 by [S.I. 2012/1319](#), [art. 2\(3\)](#)

VALID FROM 01/04/2013

**43 Independent mental health advocates**

- (1) In section 130A of the Mental Health Act 1983 (independent mental health advocates: England), in subsection (1)—
- (a) for “The Secretary of State” substitute “A local social services authority whose area is in England”, and
  - (b) at the end insert “for whom the authority is responsible for the purposes of this section”.
- (2) In subsection (4) of that section, for “the Secretary of State” substitute “a local social services authority”.
- (3) In section 130C of that Act (provision supplementary to section 130A), after subsection (4) insert—
- “(4A) A local social services authority is responsible for a qualifying patient if—
- (a) in the case of a qualifying patient falling within subsection (2)(a) above, the hospital or registered establishment in which he is liable to be detained is situated in that authority's area;
  - (b) in the case of a qualifying patient falling within subsection (2)(b) above, that authority is the responsible local social services authority within the meaning of section 34(3) above;
  - (c) in the case of a qualifying patient falling within subsection (2)(c), the responsible hospital is situated in that authority's area;
  - (d) in the case of a qualifying patient falling within subsection (3)—
    - (i) in a case where the patient has capacity or is competent to do so, he nominates that authority as responsible for him for the purposes of section 130A above, or
    - (ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in his welfare, nominates that authority on

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his behalf as responsible for him for the purposes of that section.

(4B) In subsection (4A)(d) above—

- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;
- (b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;
- (c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.”

(4) In Schedule 1 to the Local Authority Social Services Act 1970 (social services functions), in the entry for the Mental Health Act 1983, at the appropriate place insert—

“Section 130A

Making arrangements to enable independent mental health advocates to be available to help qualifying patients”.

#### 44 Patients' correspondence

- (1) In section 134 of the Mental Health Act 1983 (patients' correspondence), in subsection (1)—
- (a) before “the approved clinician” insert “or”, and
  - (b) omit “or the Secretary of State”.
- (2) Subsection (1) of this section does not affect the validity of any requests made to the Secretary of State under section 134(1) of that Act and having effect immediately before the commencement of this section.

#### Commencement Information

**I34** S. 44 in force at 1.7.2012 by [S.I. 2012/1319](#), [art. 2\(3\)](#)

VALID FROM 01/04/2013

#### 45 Notification of hospitals having arrangements for special cases

- (1) In section 140 of the Mental Health Act 1983 (notification of hospitals having arrangements for special cases)—
- (a) after “the duty of” insert “every clinical commissioning group and of”,
  - (b) omit “every Primary Care Trust and of”,
  - (c) after “the area of the” insert “clinical commissioning group or”,
  - (d) omit “Primary Care Trust or” in the first place it appears,
  - (e) after “available to the” insert “clinical commissioning group or”, and

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- (f) omit “Primary Care Trust or” in the second place it appears.
- (2) In consequence of the repeals made by this section, in the National Health Service Reform and Health Care Professions Act 2002, in Schedule 2, omit paragraph 48(a) and (c).

### *Emergency powers*

VALID FROM 01/04/2013

#### **46 Role of the Board and clinical commissioning groups in respect of emergencies**

For the cross-heading preceding section 253 of the National Health Service Act 2006 substitute “Emergencies: role of the Secretary of State, the Board and clinical commissioning groups” and after the cross-heading insert—

##### **“252A Role of the Board and clinical commissioning groups in respect of emergencies**

- (1) The Board and each clinical commissioning group must take appropriate steps for securing that it is properly prepared for dealing with a relevant emergency.
- (2) The Board must take such steps as it considers appropriate for securing that each clinical commissioning group is properly prepared for dealing with a relevant emergency.
- (3) The steps taken by the Board under subsection (2) must include monitoring compliance by each clinical commissioning group with its duty under subsection (1).
- (4) The Board must take such steps as it considers appropriate for securing that each relevant service provider is properly prepared for dealing with a relevant emergency.
- (5) The steps taken by the Board under subsection (4) must include monitoring compliance by the service provider with any requirements imposed on it by its service arrangements for the purpose of securing that it is properly prepared for dealing with a relevant emergency.
- (6) The Board may take such steps as it considers appropriate for facilitating a co-ordinated response to an emergency by the clinical commissioning groups and relevant service providers for which it is a relevant emergency.
- (7) The Board may arrange for any body or person to exercise any functions of the Board under subsections (2) to (6).
- (8) Where the Board makes arrangements with another body or person under subsection (7) it may also arrange for that other body or person to exercise any functions that the Board has, by virtue of being a Category 1 responder, under Part 1 of the Civil Contingencies Act 2004.

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(9) A relevant service provider must appoint an individual to be responsible for—

- (a) securing that the provider is properly prepared for dealing with a relevant emergency,
- (b) securing that the provider complies with any requirements mentioned in subsection (5), and
- (c) providing the Board with such information as it may require for the purpose of discharging its functions under this section.

(10) In this section—

“relevant emergency”—

- (a) in relation to the Board or a clinical commissioning group, means any emergency which might affect the Board or the group (whether by increasing the need for the services that it may arrange or in any other way);
- (b) in relation to a relevant service provider, means any emergency which might affect the provider (whether by increasing the need for the services that it may provide or in any other way);

“relevant service provider” means any body or person providing services in pursuance of service arrangements;

“service arrangements”, in relation to a relevant service provider, means arrangements made by the Board or a clinical commissioning group under or by virtue of section 3, 3A, 3B, 4 or 7A or Schedule 1.”

#### **47 Secretary of State's emergency powers**

(1) Section 253 of the National Health Service Act 2006 (emergency powers) is amended as follows.

(2) In subsection (1) for the words from “it is necessary” to the end of the subsection substitute “it is appropriate to do so”.

(3) After subsection (1) insert—

“(1A) A direction under this section may be given to—

- (a) an NHS body other than a Local Health Board;
- (b) the National Institute for Health and Care Excellence;
- (c) the Health and Social Care Information Centre;
- (d) any body or person, other than an NHS body, providing services in pursuance of arrangements made—
  - (i) by the Secretary of State under section 12,
  - (ii) by the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1,
  - (iii) by a local authority for the purpose of the exercise of its functions under or by virtue of section 2B or 6C(1) or Schedule 1, or
  - (iv) by the Board, a clinical commissioning group or a local authority by virtue of section 7A.”

(4) For subsection (2) substitute—

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- “(2) In relation to a body within subsection (1A)(a) to (c), the powers conferred by this section may be exercised—
- (a) to give directions to the body about the exercise of any of its functions;
  - (b) to direct the body to cease to exercise any of its functions for a specified period;
  - (c) to direct the body to exercise any of its functions concurrently with another body or person for a specified period;
  - (d) to direct the body to exercise any function conferred on another body or person under or by virtue of this Act for a specified period (whether to the exclusion of, or concurrently with, that body or person).
- (2A) In relation to a body or person within subsection (1A)(d), the powers conferred by this section may be exercised—
- (a) to give directions to the body or person about the provision of any services that it provides in pursuance of arrangements mentioned in subsection (1A)(d);
  - (b) to direct the body or person to cease to provide any of those services for a specified period;
  - (c) to direct the body or person to provide other services for the purposes of the health service for a specified period.”

(5) After subsection (2A) insert—

“(2B) The Secretary of State may direct the Board to exercise the functions of the Secretary of State under this section.

(2C) The Secretary of State may give directions to the Board about its exercise of any functions that are the subject of a direction under subsection (2B).

(2D) In this section, “specified” means specified in the direction.”

(6) Omit subsection (4) (exclusion of NHS foundation trusts from application of emergency powers).

(7) In section 273 of that Act (further provision about orders and directions under the Act), in subsection (4)(c)(ii), for “or 120” substitute “, 120 or 253”.

**Commencement Information**

**I35** S. 47 partly in force; s. 47 in force for specified purposes at Royal Assent, see s. 306(1)(d)

*Miscellaneous*

**48 New Special Health Authorities**

- (1) After section 28 of the National Health Service Act 2006 (special health authorities) insert—



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### **“28A Special Health Authorities: further provision**

- (1) This section applies in relation to an order under section 28 which is made after the coming into force of section 48 of the Health and Social Care Act 2012.
  - (2) The order must include—
    - (a) provision for the abolition of the Special Health Authority on a day specified in the order, and
    - (b) provision as to the transfer of officers, property and liabilities of the Authority on its abolition.
  - (3) The day specified in accordance with subsection (2)(a) must be within the period of 3 years beginning with the day on which the Special Health Authority is established.
  - (4) The power (by virtue of section 273(1)) to vary an order under section 28 includes power to vary the provision mentioned in subsection (2) by—
    - (a) providing for the abolition of the Special Health Authority on a day which is earlier or later than the day for the time being specified in the order;
    - (b) making different provision as to the matters mentioned in subsection (2)(b).
  - (5) If an order is varied to provide for the abolition of the Special Health Authority on a later day, that day must be within the period of 3 years beginning with the day on which the Special Health Authority would (but for the variation) have been abolished.”
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6), after paragraph (zb) insert—
- “(zc) an order under section 28 which varies such an order as mentioned in section 28A(5),”.

#### **Commencement Information**

**I36** S. 48 partly in force; s. 48 in force for specified purposes at Royal Assent, see s. 306(1)(d)

### **49 Primary care services: directions as to exercise of functions**

- (1) After section 98 of the National Health Service Act 2006 insert—

*“Directions*

#### **98A Exercise of functions**

- (1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary medical services.
- (2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.



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- (3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary medical services (including functions which the Board has been directed to exercise under subsection (1)).
  - (4) The Board may direct a clinical commissioning group to exercise any of the Board's functions relating to the provision of primary medical services.
  - (5) The Board may give directions to a clinical commissioning group about the exercise by it of any functions relating to the provision of primary medical services (including functions which the group has been directed to exercise under subsection (4)).
  - (6) Subsection (4) does not apply to such functions, or functions of such descriptions, as may be prescribed.
  - (7) Where the Board gives a direction under subsection (4) or (5), it may disclose to the clinical commissioning group information it has about the provision of the primary medical services in question, if the Board considers it necessary or appropriate to do so in order to enable or assist the group to exercise the function specified in the direction.
  - (8) A clinical commissioning group exercising a function specified in a direction under subsection (4) or (5) must report to the Board on matters arising out of the group's exercise of the function.
  - (9) A report under subsection (8) must be made in such form and manner as the Board may specify.
  - (10) The Board may, in exercising its functions relating to the provision of the primary medical services in question, have regard to a report under subsection (8).”
- (2) After section 114 of that Act insert—

*“Directions*

**114A Exercise of functions**

- (1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary dental services.
  - (2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.
  - (3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary dental services (including functions which the Board has been directed to exercise under subsection (1)).”
- (3) After section 125 of that Act insert—

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*“Directions*

**125A Exercise of functions**

- (1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to the provision of primary ophthalmic services.
  - (2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.
  - (3) The Secretary of State may give directions to the Board about its exercise of any functions relating to the provision of primary ophthalmic services (including functions which the Board has been directed to exercise under subsection (1)).
  - (4) The Board may direct a clinical commissioning group, a Special Health Authority or such other body as may be prescribed to exercise any of the Board's functions relating to the provision of primary ophthalmic services.
  - (5) The Board may give directions to a clinical commissioning group, a Special Health Authority or such other body as may be prescribed about the exercise by the body of any functions relating to the provision of primary ophthalmic services (including functions which it has been directed to exercise under subsection (4)).
  - (6) Subsection (4) does not apply to such functions, or functions of such descriptions, as may be prescribed.
  - (7) Where the Board gives a direction to a body under subsection (4) or (5), it may disclose to the body the information it has about the provision of the primary ophthalmic services in question, if the Board considers it necessary or appropriate to do so in order to enable or assist the body to exercise the function specified in the direction.
  - (8) A body which is given a direction under subsection (4) or (5) must report to the Board on matters arising out of the exercise of the function to which the direction relates.
  - (9) A report under subsection (8) must be made in such form and manner as the Board may specify.
  - (10) The Board may, in exercising its functions relating to the provision of the primary ophthalmic services in question, have regard to a report under subsection (8).”
- (4) After section 168 of that Act insert—

*“Directions*

**168A Exercise of functions**

- (1) The Secretary of State may direct the Board to exercise any of the Secretary of State's functions relating to services that may be provided as pharmaceutical services, or as local pharmaceutical services, under this Part.

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- (2) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.
- (3) The Secretary of State may give directions to the Board about its exercise of any functions relating to pharmaceutical services or to local pharmaceutical services (including functions which the Board has been directed to exercise under subsection (1)).”

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**Commencement Information**

**I37** S. 49 partly in force; s. 49 in force for specified purposes at Royal Assent, see s. 306(1)(d)

**50 Charges in respect of certain public health functions**

- (1) After section 186 of the National Health Service Act 2006 insert—

**“186A Charges in respect of public health functions**

- (1) The Secretary of State may make charges under this subsection in respect of any step taken under section 2A.
  - (2) The power conferred by subsection (1) does not apply in respect of the provision of a service or facility to an individual, or the taking of any other step in relation to an individual, for the purpose of protecting the individual's health.
  - (3) Charges under subsection (1) may be calculated on such basis as the Secretary of State considers appropriate.
  - (4) Regulations may provide for the making and recovery of charges in respect of—
    - (a) the taking of prescribed steps by a local authority under section 2A (by virtue of regulations under section 6C(1)), and
    - (b) the taking of prescribed steps by a local authority under section 2B.
  - (5) Regulations under subsection (4) may make provision as to the calculation of charges authorised by the regulations, including provision prescribing the amount or the maximum amount that may be charged.
  - (6) Nothing in this section affects any other power conferred by or under this Act to make charges.”
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zc) insert—

“(zd) regulations under section 186A(4).”

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**Commencement Information**

**I38** S. 50 partly in force; s. 50 in force for specified purposes at Royal Assent, see s. 306(1)(d)

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VALID FROM 01/04/2013

## 51 Pharmaceutical services expenditure

(1) After section 165 of the National Health Service Act 2006 insert—

### “165A Pharmaceutical remuneration: further provision

- (1) The Board must provide the Secretary of State with such information relating to the remuneration paid by the Board to persons providing pharmaceutical services or local pharmaceutical services as the Secretary of State may require.
- (2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.
- (3) Schedule 12A makes further provision about pharmaceutical remuneration.”

(2) After Schedule 12 to that Act insert the Schedule set out in Schedule 3 to this Act.

VALID FROM 01/04/2013

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

In Part 13 of the National Health Service Act 2006, after section 247B (as inserted by section 60) insert—

### *“Duty to keep under review*

#### **247C Secretary of State's duty to keep health service functions under review**

- (1) The Secretary of State must keep under review the effectiveness of the exercise by the bodies mentioned in subsection (2) of functions in relation to the health service in England.
- (2) The bodies mentioned in this subsection are—
  - (a) the Board;
  - (b) Monitor;
  - (c) the Care Quality Commission and its Healthwatch England committee;
  - (d) the National Institute for Health and Care Excellence;
  - (e) the Health and Social Care Information Centre;
  - (f) Special Health Authorities.
- (3) The Secretary of State may include in an annual report under section 247D the Secretary of State's views on the effectiveness of the exercise by the bodies mentioned in subsection (2) of functions in relation to the health service.”

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VALID FROM 01/04/2013

### 53 Secretary of State's annual report

After section 247C of the National Health Service Act 2006 insert—

*“Annual report*

#### **247D Secretary of State's annual report**

- (1) The Secretary of State must publish an annual report on the performance of the health service in England.
- (2) The report must include the Secretary of State's assessment of the effectiveness of the discharge of the duties under sections 1A and 1C.
- (3) The Secretary of State must lay any report prepared under this section before Parliament.”

VALID FROM 01/04/2013

### 54 Certification of death

- (1) Chapter 2 of Part 1 of the Coroners and Justice Act 2009 (notification, certification and registration of deaths) is amended as follows.
- (2) In section 19 (medical examiners)—
  - (a) in subsection (1) for “Primary Care Trusts” substitute “Local authorities”,
  - (b) in subsection (2) for “Trust” (in each place where it occurs) substitute “local authority”, and
  - (c) in subsection (5) for “a Primary Care Trust” substitute “a local authority”.
- (3) In section 20 (medical certificate of cause of death), in subsection (5) for “Primary Care Trust” substitute “local authority”.

### 55 Amendments related to Part 1 and transitional provision

- (1) Schedule 4 (which makes further amendments of the National Health Service Act 2006 in consequence of the provision made by this Part) has effect.
- (2) Schedule 5 (which makes amendments of other enactments in consequence of the provision made by this Part) has effect.
- (3) Schedule 6 (which makes transitional provision in connection with this Part) has effect.

#### **Commencement Information**

- I39** S. 55(1) in force at 1.7.2012 for specified purposes by [S.I. 2012/1319](#), [art. 2\(3\)](#)  
**I40** S. 55(1) in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#)  
**I41** S. 55(2) in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#)

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| <b>I42</b> | S. 55(3) in force at 1.7.2012 for specified purposes by <a href="#">S.I. 2012/1319</a> , <b>art. 2(3)</b>  |
| <b>I43</b> | S. 55(3) in force at 1.10.2012 for specified purposes by <a href="#">S.I. 2012/1831</a> , <b>art. 2(2)</b> |

**Status:**

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**Changes to legislation:**

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