



Health and Social Care Act 2012

2012 CHAPTER 7

PART 5

PUBLIC INVOLVEMENT AND LOCAL GOVERNMENT

CHAPTER 2

LOCAL GOVERNMENT

Scrutiny functions of local authorities

190 Scrutiny functions of local authorities

- (1) Section 244 of the National Health Service Act 2006 is amended as follows.
- (2) In subsection (2)—
 - (a) omit “an overview and scrutiny committee of”,
 - (b) for “the committee” (in each place where it occurs) substitute “the authority”,
 - (c) for “local NHS bodies” (in each place where it occurs) substitute “relevant NHS bodies or relevant health service providers”,
 - (d) for “local NHS body” (in each place where it occurs except paragraph (f)) substitute “relevant NHS body or relevant health service provider”,
 - (e) omit the words in brackets in paragraph (c), and
 - (f) in subsection (f) for “any officer of a local NHS body” substitute “any member or employee of a relevant NHS body, or a relevant health service provider or member or employee of a relevant health service provider,”.
- (3) After subsection (2) insert—

“(2ZA) If (by virtue of subsection (2)(c)) regulations make provision as to matters on which relevant NHS bodies or relevant health service providers must consult the authority, the regulations may also make provision—

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- (a) as to circumstances in which the authority may refer any of those matters to the Secretary of State, the regulator or the Board;
 - (b) conferring powers on the Secretary of State to give directions to the Board in relation to a matter referred to the Secretary of State by virtue of regulations under paragraph (a);
 - (c) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter so referred;
 - (d) conferring powers on the Board to give directions to a clinical commissioning group in relation to a matter referred to the Board by virtue of regulations under paragraph (a);
 - (e) conferring powers on the Secretary of State to give directions to the Board as to the exercise of its powers by virtue of regulations under paragraph (c) or (d).
- (2ZB) The powers that may be conferred under any of paragraphs (b) to (d) of subsection (2ZA) include powers to require the person to whom the direction is given—
- (a) to consult (or consult further) with the authority on the matter in question;
 - (b) to determine the matter in a particular way;
 - (c) to take, or not to take, any other steps in relation to the matter.
- (2ZC) If (by virtue of subsection (2ZA)(a)) regulations make provision for an authority to refer a matter to the Secretary of State, the regulator or the Board, the regulations may also provide for any provision of section 101 of the Local Government Act 1972—
- (a) not to apply in relation to the discharge by the authority of that function, or
 - (b) to apply in relation to its discharge with such modifications as may be prescribed.
- (2ZD) Any functions conferred on a local authority by regulations under this section are not to be the responsibility of an executive of the authority under executive arrangements (within the meaning of Part 1A of the Local Government Act 2000).
- (2ZE) Regulations under this section may authorise a local authority to arrange for its functions under the regulations to be discharged by an overview and scrutiny committee of the authority.”
- (4) For subsection (3) substitute—
- “(3) For the purposes of subsections (2) and (2ZA)—
- “relevant NHS body”, in relation to an authority to which this section applies, means an NHS body, other than a Special Health Authority, which is prescribed for those purposes in relation to the authority;
- “relevant health service provider”, in relation to an authority to which this section applies, means a body or person which—
- (a) provides services in pursuance of arrangements made—
 - (i) by the Board or a clinical commissioning group under section 3, 3A, 3B or 4 or Schedule 1,

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- (ii) 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
 - (iii) by the Board, a clinical commissioning group or a local authority by virtue of section 7A, and
 - (b) is prescribed, or is of a description prescribed, for those purposes in relation to the authority.”
- (5) After subsection (3) insert—
 - “(3A) In subsection (2)(f) “member”—
 - (a) in relation to a clinical commissioning group, includes a person who is not a member of the group but is a member of a committee or sub-committee of it;
 - (b) in relation to a relevant health service provider which is a body corporate, includes a person who is not a member of the body but is a director of it;
 - (c) in relation to an NHS trust, means a director of the trust;
 - (d) in relation to an NHS foundation trust, means a director or governor of the trust.
 - (3B) For the purposes of subsection (2)(f)—
 - (a) a member of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as a member of the group or (as the case may be) relevant health service provider, and
 - (b) an employee of a body which is a member of a clinical commissioning group or relevant health service provider is to be treated as an employee of the group or (as the case may be) relevant health service provider.”
- (6) In subsection (5), for “this section, section 245 and section 246” substitute “this section and section 245”.
- (7) For the heading to section 244 substitute “Review and scrutiny by local authorities”.
- (8) For the title to Chapter 3 of Part 12 of the National Health Service Act 2006 substitute “Review and scrutiny by local authorities”.
- (9) Until the coming into force of paragraph 19 of Schedule 3 to the Localism Act 2011, section 21 of the Local Government Act 2000 (overview and scrutiny committees) is amended as follows—
 - (a) in subsection (2)(f)—
 - (i) omit “section 244 of the National Health Service Act 2006 or”,
 - (ii) for “either of those sections” substitute “that section”,
 - (iii) for “the Act concerned” substitute “that Act”, and
 - (iv) for “the section concerned” substitute “that section”,
 - (b) omit subsection (2A)(a) and (b), and
 - (c) in subsection (4) at the end insert “or under section 244(2ZE) of the National Health Service Act 2006.”
- (10) In section 9F of the Local Government Act 2000 (overview and scrutiny committees) (as inserted by Schedule 2 to the Localism Act 2011)—

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- (a) omit subsection (2)(f),
- (b) omit subsection (3)(a) and (b), and
- (c) in subsection (5) omit the word “or” following paragraph (a) and after paragraph (b) insert “or
 - (c) any functions which may be conferred on it by virtue of regulations under section 244(2ZE) of the National Health Service Act 2006 (local authority scrutiny of health matters).”