

EXPLANATORY MEMORANDUM TO
THE NHS BODIES AND LOCAL AUTHORITIES (PARTNERSHIP
ARRANGEMENTS, CARE TRUSTS, PUBLIC HEALTH AND LOCAL
HEALTHWATCH) REGULATIONS 2012

2012 No. 3094

1. This explanatory memorandum has been prepared by Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument makes provision in relation to partnership arrangements between NHS bodies and local authorities (including the designation of certain NHS bodies as Care Trusts), the public health functions of local authorities and Local Healthwatch organisations.
 - 2.2 Part 2 makes amendments to the NHS Bodies and Local Authorities Partnerships Arrangements Regulations 2000 to reflect changes made by the Health and Social Care 2012 Act (“the 2012 Act”), including amendments made to the NHS Act 2006 (“the 2006 Act”) by the 2012 Act. This instrument makes provisions which are consequential to the 2012 Act, including the abolition of Primary Care Trusts (PCTs) and the creation of Clinical Commissioning Groups (CCGs) and the NHS Commissioning Board. They also make provision in relation to the process for the designation of a CCG, NHS trust or NHS foundation trust as a Care Trust. They reflect the amendments made by section 200 of the 2012 Act to the provisions in the 2006 Act for Care Trusts; in particular, that CCGs and NHS foundation trusts could become Care Trusts, and that designation is a matter for the local authority and NHS body involved, rather than the Secretary of State.
 - 2.3 Part 3 provides for certain additional local authority functions to be the responsibility of each authority’s Director of Public Health. The regulations relate to local authority functions conferred by amendments of the Licensing Act 2003 (relating to the licensing of premises for sale of alcohol etc) made by the 2012 Act. The amendments provided that a local authority with the public health improvement duty is as a “responsible authority” which must be consulted on certain licensing policy statements, and is able to make representations in relation to licensing applications etc.
 - 2.4. Part 4 requires local authorities with the public health functions to undertake two dental public health functions: to conduct oral health promotion programmes and to undertake surveys of their populations’ oral health.

- 2.5 Part 5 sets out the procedures for local authority handling of complaints about their exercise of the public health functions of local authorities provided for in the 2012 Act.
- 2.6 Part 6 sets criteria to be satisfied by bodies (to be known as Local Healthwatch organisations), in order to be contracted by local authorities to carry out activities relating to patient and public involvement in health and social care services. It sets out requirements for certain provisions to be included in arrangements between local authorities and Local Healthwatch organisations. It imposes duties on certain providers and commissioners of health and social care services (certain NHS bodies and local authorities) to respond to reports and recommendations from Local Healthwatch organisations or their representatives (“Local Healthwatch contractors¹”). It also sets out the time by which an overview and scrutiny committee of a local authority must acknowledge receipt of a referral of a social care matter by a Local Healthwatch organisation or a Local Healthwatch contractor.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

4. Legislative Context

Care Trusts and miscellaneous amendments

- 4.1 Section 75 of the 2006 Act provides for regulations which enable NHS bodies and local authorities to enter “partnership arrangements”, under which an NHS body may delegate NHS functions to a local authority, or a local authority may delegate health-related local authority functions to an NHS body. The existing regulations are the NHS Bodies and Local Authorities Partnerships Arrangements Regulations 2000 (“the 2000 Regulations”). Section 77 provide for certain NHS bodies which enter such arrangements to be designated by the Secretary of State as a Care Trust.
- 4.2 The 2012 Act abolishes NHS trusts and PCTs and provides for the establishment of CCGs. NHS Foundation Trusts will remain in existence. The 2012 Act also makes provision for the establishment of the NHS Commissioning Board and the renaming of the ‘Independent Regulator of NHS foundation trusts’ to ‘Monitor’.
- 4.3 The amendments made by the 2012 Act to the 2006 Act have the effect that regulations under section 75 may provide for CCGs and the NHS Commissioning Board to enter partnership arrangements. Part 2 of

¹ These are persons with whom Local Healthwatch organisations make arrangements to assist them to carry on activities or to carry on activities on their behalf.

these Regulations makes the necessary consequential amendments to the 2000 Regulations.

- 4.4 The amendments made by the 2012 Act to the 2006 Act allow for NHS foundation trusts or CCGs, which are exercising health-related local authority functions under “partnership arrangements” under section 75 of the 2006 Act, to form Care Trusts, if the NHS body and authority in question can demonstrate that this would promote the effective use of those functions alongside NHS functions. The amendments also removes the direct role of the Secretary of State in the forming or removing (the designation) of a Care Trust.

Responsibilities of Directors of Public Health

- 4.5 Section 73A of the 2006 Act, inserted by section 30 of the 2012 Act, requires certain local authorities to appoint a director of public health (DPH) and defines the DPH’s role. Section 73A(1) makes a DPH responsible for the exercise by the employing local authority of its new public health functions, as listed in that section. This reflects the policy objective of a role for DsPH that involves the delivery of all the public health functions of their local authority. Section 73B provides for the Secretary of State to issue guidance and other documents in relation to the exercise of those functions by local authorities.
- 4.6 Sections 73A(1)(f) and 73B(2)(e) include in the list of public health functions of a local authority ‘such other functions relating to public health as may be prescribed’. The intention is to ensure that, if the local authorities are given additional statutory public health functions, the statutory responsibilities of the DPH (and the power of the Secretary of State to issue guidance) can be extended by regulations so that they continue to match those of the local authority.

Dental Public Health functions of local authorities

- 4.7 The dental public health regulations are being made under section 111 of the 2006 Act, which provides for PCTs to exercise dental public health functions prescribed in regulations. Section 111 is amended by section 29 of the 2012 Act to substitute local authority for Primary Care Trust. The regulations are consequential upon this change and confer the existing functions on local authorities.

Complaints about public health functions of local authorities

- 4.8 Section 32 of the 2012 Act inserts new section 73C into the 2006 Act, which gives the Secretary of State powers to make regulations setting up procedures for dealing with complaints about the exercise of public health functions by local authorities in England. These powers are similar to the powers relating to NHS and social care complaints in sections 113 and 114 of the Health and Social Care (Community Health and Standards) Act 2003, and Part 3 of these Regulations

contain provisions very similar to the existing regulations for NHS and social care complaints (the Local Authority Social Services and National Health Service Complaints Regulations 2009 (“the 2009 Regulations”)) (S.I. 2009/309).

Local Healthwatch – criteria, local authority arrangements, duty to respond to reports, referrals to overview and scrutiny committees

- 4.9 The instrument implements certain changes made to Part 14 of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) by Part 5 of the 2012 Act. Part 14 of the 2007 Act imposes a duty on local authorities to make arrangements for the involvement of people in the commissioning, provision and scrutiny of health services and social care services. It provides for such activities to be carried on by Local Involvement Networks (LINKs).
- 4.10 Part 5 of the 2012 Act makes various amendments to Part 14 of the 2007 Act. This includes provision for the activities currently carried on by LINKs to be carried on by social enterprises, known as Local Healthwatch organisations, which satisfy criteria prescribed by regulations and for LINKs to be abolished. The instrument sets out such criteria. The amendments to Part 14 also include new activities to be carried on by Local Healthwatch organisations, in addition to those carried on by LINKs.
- 4.11 Section 222(8) of the 2007 Act, as amended, sets out that a body is a social enterprise for these purposes if it could reasonably be considered to act for the benefit of the community in England and it satisfies any criteria prescribed by regulations. The instrument sets out such criteria.
- 4.12 Section 223 of the 2007 Act, as amended, requires the Secretary of State to make regulations which provide that contractual arrangements made by local authorities with Local Healthwatch organisations under section 221(1) of that Act must include prescribed provision. The instrument makes provision accordingly.
- 4.13 Section 224 of the 2007 Act, as amended, enables regulations to impose on certain commissioners and providers of health and social care services (“responsible persons”) duties to respond to information requests made by Local Healthwatch organisations or Local Healthwatch contractors and to deal with reports or recommendations that are made by such organisations or contractors or referred by other responsible persons. The instrument imposes duties on responsible persons to deal with such reports or recommendations.
- 4.14 Section 226 of the 2007 Act, as amended, imposes certain duties on local authority Overview and Scrutiny Committees where Local Healthwatch organisations or contractors refer social care matters to them. This includes a duty to acknowledge receipt of the referral. Section 226(6) enables regulations to set the time by which the duty to

acknowledge receipt is to be performed. The instrument makes provision accordingly.

- 4.15 Section 225 of the 2007 Act, as amended, requires the Secretary of State to make regulations to impose on certain providers of health and social care services a duty to allow representatives of Local Healthwatch organisations or Local Healthwatch contractors to enter and view premises they own or control, and to observe the carrying-on of activities on, those premises. The draft Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2012 make provision accordingly and have been laid in draft before Parliament on 10 December 2012. If approved by both Houses of Parliament they will be made and it is intended that they would come into force on 1 April 2013.

5. Territorial Extent and Application

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Care Trusts and miscellaneous amendments

- 7.1 The separation of commissioner and provider functions as well as the establishment of CCGs is central to the Government's arrangements for clinically-led, autonomous commissioning for the NHS. The intention is that all CCGs will be fully operational, and that all PCTs will have been abolished on 1 April 2013. The instrument amends the 2000 Regulations to reflect the abolition of PCTs, and the establishment of CCGs and the NHS Commissioning Board. The establishment of CCGs is central to the Government's arrangements for clinically-led, autonomous commissioning for the NHS.
- 7.2. Section 75 of the 2006 Act, as amended by the 2012 Act, makes provision for partnership arrangements and pooling of funding between prescribed NHS bodies and local authorities within the new system architecture. Section 75 allows for funding to flow from between prescribed local authorities and NHS bodies. Section 77 of the 2006 Act as amended by the 2012 Act makes provision for Care Trusts to continue to exist and be established within the new NHS architecture.
- 7.3 This will ensure that in the new NHS architecture:

- CCGs and local authorities can continue to use the 2006 Act flexibilities, for joint investment in health, social care, public health and wider wellbeing services.
- Arrangements are in place for the pooling of funds, lead commissioning and integrated provision to further joint working.
- Joint working with public health services where local authorities will have the flexibility to use the ring-fenced public health grant for pooling if there will be a significant effect on public health.

7.4 Health and Wellbeing Boards must encourage integrated working between commissioners of health and social care services for the purpose of advancing the health and wellbeing of the local population. In particular they must provide advice, assistance or other support as they think appropriate for the purpose of encouraging the making of arrangements under section 75 of the 2006 Act in connection with the provision of health and social care services. CCGs and the NHS Commissioning Board also have duties to consider the use of such arrangements where this will promote joint working.

7.5 Care Trusts are integrated health and social care organisations. The Health Select Committee recommended that the Government should allow communities the option of retaining Care Trusts as commissioners of health, housing and social care. The 2012 Act includes provisions which ensures that Care Trusts can continue to exist and be established in the new architecture. In particular, section 200 amends section 77 of the 2006 Act to provide a legal framework for Care Trusts to continue and for new Care Trusts to be established. Furthermore, the amendments reflect the separation of commissioner and provider functions, and transfers the power of the designation or revocation of Care Trust from the Secretary of State to local bodies.

Responsibilities of Directors of Public Health

7.6 Schedule 5 of the 2012 Act amended the Licensing Act 2003. The effect of these amendments is to add local authorities with public health functions under the amendments made by the 2012 Act to the lists of ‘responsible authorities’. DsPH will carry out this function in practice. Responsible authorities must be consulted by licensing authorities on certain issues relating to the supply of alcohol and can make representations in relation to licence applications or a statement of licence policy, for example. A local authority may be a responsible authority when exercising other functions, for example, when acting as local planning authority, but an authority would make separate representations in each capacity. Guidance issued by the Home Office can be found at the following link:

www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/alcohol-supporting-guidance/health-responsible-authority

Dental Public Health functions of local authorities

- 7.7 The transfer of dental public health functions to local authorities will ensure that a democratically elected body responsive to local needs will take decisions on the priority to be awarded to oral health promotion in the light of the findings of the surveys.

Complaints about public health functions of local authorities

- 7.8 New section 73C into the 2006 Act gives the Secretary of State powers to make regulations setting up procedures for dealing with complaints about the exercise of public health functions by local authorities in England, including the new local authority duty to take such steps as it considers appropriate to improve the health of its local population (new section 2B of the 2006 Act).
- 7.9 The 2009 Regulations aligned adult social care and NHS complaints processes into a single set of arrangements and, when they came into force, covered also complaints about public health services. The 2009 Regulations were themselves subject to scrutiny by the House of Lords Committee on the Merits of Statutory Instruments.
- 7.10 They require the complainant to be involved in the way in which the complaint is handled by requiring the body dealing with the complaint to offer to discuss this with the complainant. They also provided greater flexibility around the timescale to be followed in terms of investigating a complaint; less prescription around timescales allows organisations to assess and deal appropriately with all complaints, allowing these arrangements to meet the needs of the individual case and for proper consideration of learning and service development issues. Part 3 of these Regulations makes provision for complaints relating to local authority public health functions which are similar to the 2009 Regulations.

Local Healthwatch – criteria, local authority arrangements, duty to respond to reports, referrals to overview and scrutiny committees

- 7.11 One of the key policy objectives of the 2012 Act is to put patients and the public at the heart of care. The White Paper *Equity and Excellence: Liberating the NHS*, published in July 2010, outlined the Government’s intention to “put patients and the public first” by creating a new Healthwatch – to strengthen the collective voice of patients and the public. A copy of the white paper can be found at the following link:
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_117353
- 7.12 The White Paper set out the following proposal: “We will strengthen the collective voice of patients, and we will bring forward provisions in the forthcoming Health Bill to create Healthwatch England, a new

independent consumer champion within the Care Quality Commission. Local Involvement Networks (LINKs) will become the Local Healthwatch, creating a strong local infrastructure, and we will enhance the role of local authorities in promoting choice, through the Healthwatch arrangements they commission.”

- 7.13 The 2012 Act proposes that Healthwatch will be the new consumer champion for both health and social care. It will exist in two distinct forms – Local Healthwatch, at local level, and Healthwatch England, at national level.
- 7.14 Local Healthwatch goes to the heart of the government’s ambition for a health and care service that is centred around patients and users. Local Healthwatch will gather people’s (whether current users of services or not) views on, and experiences of, the health and social care system. In this way, community views will have real influence with those who commission and provide services about what users, carers and citizens need and want from them. This can help them to be more responsive to what matters to service users and the public, and to design services around their needs.
- 7.15 Local Healthwatch organisations will be social enterprises which satisfy the community interest test and other criteria. There is no single definition of a social enterprise and there are several legal forms. However, a general description would be 'businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community'.
- 7.16 Thus, Local Healthwatch organisations will satisfy the community interest test if they might reasonably be considered to act for the benefit of the community in England. For this purpose, political activities will not be treated as being carried on for the benefit of the community unless they can be regarded as incidental to other activities carried on for the benefit of the community.
- 7.17 Additionally, a Local Healthwatch organisation’s constitution will have to contain a statement or condition that it is carrying on activities for the benefit of the community, a statement or provisions as to the distribution of profits and certain provisions as to the distribution of assets on dissolution or winding up. These provisions are intended to ensure that Local Healthwatch organisations are businesses with primarily social objectives, which reinvest their surpluses or profits into the community, or into a service with social benefits.
- 7.18 Additionally, a Local Healthwatch organisation will need to demonstrate that its governance arrangements include provision for the involvement of lay people and volunteers in its governance. This will ensure that it can be an effective voice for the public. This is supported by provisions in the instrument requiring local authorities to include certain provisions in their arrangements with Local Healthwatch

- 7.19 The instrument also requires local authorities to include other provisions in their arrangements with Local Healthwatch organisations, including provisions relating to governance. Local authorities must require the organisations to have procedures in place for making certain key decisions. The procedures must be published. Those decisions and the reasons for them must likewise be made public. This is to ensure that Local Healthwatch organisations operate in a consistent and transparent way and to help those organisations to demonstrate accountability to the public.
- 7.20 Local authorities must also require Local Healthwatch organisations to include certain provisions in their arrangements with Local Healthwatch contractors including that the contractors must have procedures in place in relation to the making of certain decisions.
- 7.21 The instrument requires local authorities to include provision in their arrangements with Local Healthwatch organisations that they must comply with certain requirements in relation to the authorising of representatives for the purposes of entering and viewing the premises of certain providers of health and social care services. Local authorities must require Local Healthwatch organisations to include similar provision in their arrangements with Local Healthwatch contractors. These requirements are to ensure that Local Healthwatch organisations and contractors follow a consistent, transparent process for authorising representatives and that providers of services can be sure that individuals seeking to enter and view premises and observe the carrying-on of activities on those premises have been properly authorised for that purpose.
- 7.22 The instrument also requires local authorities to include provision in their arrangements with Local Healthwatch organisations that the organisations must apply to the Care Quality Commission for a licence to use a trade mark owned by the Commission and must use that trade mark in relation to the carrying-on of activities under the arrangements. These requirements are aimed at creating an established brand for Healthwatch which people can know and recognise, making it easier for them to access Healthwatch.
- 7.23 The instrument also imposes a duty on certain commissioners and providers of health and social care services to respond in writing within 20 working days (or within 30 working days for more complex matters) to reports and recommendations, from Local Healthwatch organisations or contractors. This is to ensure that Local Healthwatch organisations can expect a formal response to reports within a reasonable timeframe. The instrument also makes provision in respect

of reports and recommendations made by LINKs prior to commencement of the instrument to which a response was outstanding as at the date of commencement.

- 7.24 The instrument also places a duty on Overview and Scrutiny Committees to acknowledge referrals from Local Healthwatch organisations that concern social care matters within 20 working days. This is believed to be a reasonable time frame in which Local Healthwatch organisations should be able to expect a response from Overview and Scrutiny Committees.

8. Consultation outcome

Care Trusts and miscellaneous amendments

- 8.1 These amendments are consequential to changes in the law made by the 2012 Act and therefore there was no consultation.

Responsibilities of Directors of Public Health

- 8.2 There was no specific consultation but this has been agreed with the Home Office and the Department for Communities and Local Government.

Dental Public Health functions of local authorities

- 8.3 As the dental public health consultations are entirely consequential upon the policy changes in the 2012 Act, a consultation was not considered necessary.

Complaints about public health functions of local authorities

- 8.4 There has been no specific consultation. However, the fundamental principles underpinning the NHS and adult social care complaints arrangements, upon which these arrangements are closely based, were the subject of a substantial public consultation exercise in 2007/08. At the time of that consultation, public health services were included within those complaints arrangements. Both the Local Government and Health Service Ombudsman were in agreement with the underlying principles. We believe it is consistent, given the local authority role in the new arrangements for public health, for those principles to apply also to complaints about public health.

Local Healthwatch – criteria, local authority arrangements, duty to respond to reports, referrals to overview and scrutiny committees

- 8.5 A period of engagement was carried out over a period of 2 months (mid-April to mid-June 2012), with face-to-face and virtual workshop-style sessions held with groups of stakeholders including local authorities, LINKs and representatives from the voluntary and

community sector. This included work with an expert working group of those with expertise in the area of children's social care services. A summary of the findings from the engagement period was published at the end of July:

<http://www.dh.gov.uk/health/2012/07/healthwatch-engagement/>

- 8.6 A further period of consultation was carried out for a 6 week period, from 3 August to 14 September 2012, specifically related to regulations under sections 224 and 225 of the 2007 Act. The results of the consultation will be published as an addendum to the report mentioned above.

9. Guidance

- 9.1 We do not plan to issue any guidance.

10. Impact

Care Trusts and miscellaneous amendments

- 10.1 The impact on business, charities or voluntary bodies is negligible. The impact on the public sector is negligible as Care Trust partnerships are voluntary.
- 10.2 An Impact Assessment has not been prepared for this instrument because no impact on the public, private or voluntary sectors is foreseen.

Responsibilities of Directors of Public Health

- 10.3 There will be no impact on business, charities or voluntary bodies.

Dental Public Health functions of local authorities

- 10.4 The dental public health regulations will have no impact on business, charities or voluntary bodies.

Complaints about public health functions of local authorities

- 10.5 The impact on business, charities or voluntary bodies is minimal. The regulations provide a general framework for complaints handling that enables organisations providing services to determine, in discussion with the complainant, how best to handle an individual case.
- 10.6 The impact on the public sector is minimal.
- 10.7 An Impact Assessment was prepared to support the 2009 regulations and is available at the following link:
http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_096028.pdf

Local Healthwatch – criteria, local authority arrangements, duty to respond to reports, referrals to overview and scrutiny committees

- 10.8 The impact on business, charities or voluntary bodies is negligible.
- 10.9 Annex A (pages 92 to 113) of the combined Health and Social Care Bill Impact Assessment contains a section on Healthwatch, and therefore contains relevant information. The combined Health and Social Care Bill Impact Assessment and coordinating document, and combined Equality analyses, can be found at the following link: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583.

11. Regulating small business

Care Trusts and miscellaneous amendments

- 11.1 The legislation does not apply to small businesses.

Responsibilities of Directors of Public Health

- 11.2 The impact on small business will be negligible.

Dental Public Health functions of local authorities

- 11.3 There will be no impact on small business.

Complaints about public health functions of local authorities

- 11.4 The legislation applies to small business.
- 11.5 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that taken in the 2009 regulations; the legislation makes no attempt to lay down requirements on how an individual complaint should be handled. The aim is encourage organisations to respond to complaints quickly and effectively, to seek to meet the needs of the individual complainant, and so to prevent a complaint escalating. The regulations will apply to all providers of local authority funded public health, including some small business, and so provide a level playing field.
- 11.6 As with the 2009 regulations, the basis for the final decision on what action to take to assist small business was the need to ensure such businesses had the flexibility to develop better complaints handling within a general framework, as described above. The 2009 regulations also provide that the complaints manager need not be an employee of the organisation for whom they act. This allows for greater flexibility for small businesses in establishing appropriate arrangements for complaints handling.

Local Healthwatch – criteria, local authority arrangements, duty to respond to reports, referrals to overview and scrutiny committees

11.7 The legislation does not apply to small business.

12. Monitoring & review

12.1 This instrument will not be specifically monitored. However, the effectiveness of Healthwatch and the prevalence of dental decay as indicated by the surveys of oral health will be kept under review by the Department of Health. The partnerships will be monitored locally by the NHS body and the local authority. For public health complaints the Department of Health will review the new arrangements after three years of implementation. This could include analysis of patient satisfaction surveys, the review of organisations' annual reports on complaints handling and liaison with the Local Government Ombudsman and the Care Quality Commission.

13. Contact

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