

Draft Regulations laid before Parliament under section 272(6) of the National Health Service Act 2006 and section 240(6) of the Local Government and Public Involvement in Health Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. XXXX

**NATIONAL HEALTH SERVICE, ENGLAND
SOCIAL CARE, ENGLAND
PUBLIC HEALTH, ENGLAND**

**The Local Authorities (Public Health
Functions and Entry to Premises by Local
Healthwatch Representatives) Regulations 2012**

Made - - - -

XXX

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 6C(1) to (3), 186A(4)(b) and 272(7) and (8) of the National Health Service Act 2006(1) and sections 225(1) to (3) and (7)(e), 229(2) and 240(10) of the Local Government and Public Involvement in Health Act 2007(2).

A draft of these Regulations was laid before Parliament in accordance with section 272(6)(3) of the National Health Service Act 2006 and section 240(6) of the Local Government and Public Involvement in Health Act 2007, and was approved by a resolution of each House of Parliament.

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- (1) [2006 c.41](#). Section 6C of the National Health Service Act 2006 (“the 2006 Act”) is inserted by section 18(1) of the Health and Social Care Act [2012 \(c.7\)](#) (“the 2012 Act”); section 186A is inserted by section 50(1) of the 2012 Act. *See* section 275(1) of the 2006 Act for the definitions of “prescribed” and “regulations”. The powers conferred by the 2006 Act exercised in making these Regulations are exercisable by the Secretary of State only in relation to England by virtue of section 271(1) of the 2006 Act.
- (2) [2007 c.28](#). Section 225(2) is amended by section 186(6) and (7) of the 2012 Act; section 225(7) is amended by paragraphs 148 and 151 of Schedule 5 to the 2012 Act, and by paragraphs 103 and 106 of Schedule 14 to that Act.
- (3) Section 272(6) of the 2006 Act is amended (so far as is relevant for these Regulations) by sections 18(2) and 50(2) of the 2012 Act.

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2012.

(2) These Regulations come into force as follows—

- (a) Part 2 comes into force on the date that section 18 of the Health and Social Care Act 2012 (“the 2012 Act”) comes fully into force⁽⁴⁾;
- (b) Part 3 comes into force on the date that section 50 of the 2012 Act comes fully into force⁽⁵⁾;
- (c) Part 4 comes into force on the date that section 186 of the 2012 Act comes fully into force⁽⁶⁾; and
- (d) Part 1 comes into force on whichever of the dates specified in paragraphs (a) to (c) is the earliest.

(3) In these Regulations, “the Act” means the National Health Service Act 2006.

PART 2

PUBLIC HEALTH FUNCTIONS

Public health functions of the Secretary of State

2. Where a local authority is required to exercise a public health function of the Secretary of State pursuant to regulation 6(1)(a) or regulation 7(3)(a), the authority may exercise the functions of the Secretary of State under section 2 (general power) and section 12 (arrangements with other bodies) of the Act⁽⁷⁾ in connection with those functions.

Weighing and measuring of children

3.—(1) In the exercise of its functions under paragraph 7A(1) and (2) of Schedule 1 to the Act⁽⁸⁾ (weighing and measuring of children), each local authority must so far as reasonably practicable and in accordance with paragraph (4), provide for the weighing and measuring of the children to whom this regulation applies.

(2) This regulation applies to any child who—

- (a) is a relevant child within the meaning of paragraph (3); and
- (b) is a registered pupil at—
 - (i) a maintained school which is in the local authority’s area,
 - (ii) an Academy school which is in the local authority’s area, or

⁽⁴⁾ 2012 c.7; section 18 of the 2012 Act is commenced for limited purposes by virtue of section 306(1)(d) of that Act.

⁽⁵⁾ Section 50 of the 2012 Act is commenced for limited purposes by virtue of section 306(1)(d) of that Act.

⁽⁶⁾ Section 186 of the 2012 Act is commenced for limited purposes by virtue of section 306(1)(d) of that Act.

⁽⁷⁾ Section 2 was substituted by paragraph 1(1) of Part 1 of Schedule 4 to the 2012 Act; and section 12 was amended by paragraph 8 of Part 1 of Schedule 4 to the 2012 Act.

⁽⁸⁾ Paragraph 7A of Schedule 1 to the 2006 Act was inserted by section 143(1) of the Health and Social Care Act 2008 (c.14) and is amended by section 17(2) and (7) of the 2012 Act.

- (iii) a school known as a city technology college or as a city college for the technology of the arts⁽⁹⁾ which is in the local authority's area.
- (3) A relevant child is a child who at the beginning of the school year is—
- (a) in the school year in which the majority of children are aged either 4 or 5 years; or
 - (b) in the school year in which the majority of children are aged either 10 or 11 years.
- (4) Each local authority must ensure that a child to which this regulation applies is weighed and measured at least once during the school year in which that child is a relevant child.
- (5) In this regulation—
- “Academy school” has the meaning given by section 1A of the Academies Act 2010⁽¹⁰⁾ (Academy schools), except that it does not include a school which is specially organised to make special educational provision for pupils with special educational needs⁽¹¹⁾;
 - “maintained school” has the meaning given by section 20(7) of the School Standards and Framework Act 1998⁽¹²⁾ (new categories of maintained schools), except that it does not include a community special school or a foundation special school⁽¹³⁾;
 - “registered pupil” has the meaning given by section 434 of the Education Act 1996⁽¹⁴⁾ (registration of pupils) and “pupil” has the meaning given by section 3 of that Act (definition of pupil etc); and
 - “school year” has the meaning given by section 579(1) of the Education Act 1996 (general interpretation).
- (6) The duty in paragraph (1) does not apply in relation to any relevant child who has been weighed and measured during the school year in which the child is a relevant child, where the weighing and measuring was done between 1st September 2012 and the date that this Part comes into force, pursuant to arrangements made by a Primary Care Trust.

Health check assessment

- 4.—(1) In the exercise of its functions under section 2B of the Act⁽¹⁵⁾ (functions of local authorities and Secretary of State as to improvement of public health), each local authority shall provide, or shall make arrangements to secure the provision of, health checks to be offered to eligible persons in its area.
- (2) Subject to paragraph (5), in this regulation, an eligible person is a person in the local authority's area who is aged from 40 to 74 years.
- (3) Each eligible person shall be offered a health check once in every relevant period.
- (4) For the purposes of this regulation, the relevant period is—
- (a) in the case of a person who is an eligible person on the date that this Part comes into force,
 - (i) the period of five years starting with that date, and
 - (ii) each subsequent period of five years starting on the date on which the previous health check was offered;

⁽⁹⁾ Schools known as city technology colleges and as city colleges for the technology of the arts were originally established under agreements under section 482 of the Education Act 1996 (c.56), which has since been repealed.

⁽¹⁰⁾ 2010 c.32. Section 1A was inserted by section 53(7) of the Education Act 2011 (c.21) (“the Education Act”).

⁽¹¹⁾ See section 1A(2) of the Academies Act 2010 as inserted by section 53(7) of the Education Act.

⁽¹²⁾ 1998 c.31.

⁽¹³⁾ See section 20(7) of the School Standards and Framework Act 1998.

⁽¹⁴⁾ 1996 c.56. Section 3 was amended (so far as is relevant for these Regulations) by paragraph 9 of Schedule 7 to the Education Act 1997 (c.44) and by paragraph 34 of Schedule 21 to the Education Act 2002 (c.32).

⁽¹⁵⁾ Section 2B of the 2006 Act is inserted by section 12 of the 2012 Act.

- (b) in the case of a person who becomes an eligible person (whether or not that person has ever previously been an eligible person) on a date after the date that this Part comes into force,
 - (i) the period of five years starting with the date on which the person becomes an eligible person, and
 - (ii) each subsequent period of five years starting on the date on which the previous health check was offered.
- (5) Any person of a description specified in this paragraph shall not be an eligible person for the purposes of this regulation—
- (a) a person who has been diagnosed with any of the following—
 - (i) coronary heart disease,
 - (ii) chronic kidney disease (CKD), being CKD which has been classified as stage 3, 4 or 5 CKD within the meaning of the National Institute for Health and Clinical Excellence clinical guideline 73 on Chronic Kidney Disease, published September 2008⁽¹⁶⁾,
 - (iii) diabetes,
 - (iv) hypertension,
 - (v) atrial fibrillation,
 - (vi) transient ischaemic attack,
 - (vii) hypercholesterolaemia,
 - (viii) heart failure,
 - (ix) peripheral arterial disease,
 - (x) stroke;
 - (b) a person who is being prescribed statins for the purpose of lowering cholesterol;
 - (c) a person who has been assessed, either through a previous NHS health check or through any other check undertaken through the health service in England, as having a twenty per cent or higher risk of having a cardiovascular event during the ten years following the check.
- (6) In discharging the requirement under paragraph (1), the local authority shall act with a view to securing continuous improvement in the percentage of eligible persons in its area participating in the health checks.

Conduct of health checks

5.—(1) Each local authority shall make arrangements to secure that the health checks offered to eligible persons in its area pursuant to regulation 4 are conducted, and that information related to each check is recorded and processed, in accordance with this regulation.

(2) Every person aged from 65 to 74 years who is undergoing a health check shall be given information at the time of the health check designed to raise their awareness of dementia and of the availability of memory services which offer further advice and assistance to people who may be experiencing memory difficulties, including making a diagnosis of dementia.

(3) Subject to paragraph (4), the following information relating to the person undergoing a health check shall be recorded at the time of the health check in relation to that person—

- (a) age of the person;

⁽¹⁶⁾ Published by the National Institute for Health and Clinical Excellence, a Special Health Authority established under section 28 of the 2006 Act, at London, England. Copies are available from <http://www.nice.org.uk>.

- (b) gender (being the person’s reported or phenotypical gender);
 - (c) smoking status;
 - (d) family history of coronary heart disease in any parent or sibling when the parent or sibling was aged under sixty years;
 - (e) ethnicity;
 - (f) body mass index;
 - (g) cholesterol level;
 - (h) blood pressure;
 - (i) physical activity levels, being categorised as inactive, moderately inactive, moderately active or active;
 - (j) cardiovascular risk score;
 - (k) AUDIT score.
- (4) The duty in paragraph (3) does not apply in respect of any information which cannot be obtained because the person undergoing the check—
- (a) is unable, or refuses, to provide the information, or
 - (b) does not consent to any test or procedure necessary to obtain that information.
- (5) In this regulation—
- “AUDIT score” means a score categorising the level of risk associated with the person’s alcohol consumption;
- “cardiovascular risk score” means a score relating to the person’s risk of having a cardiovascular event during the ten years following the health check;
- “health professional” means 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⁽¹⁷⁾.
- (6) The cardiovascular risk score shall be calculated—
- (a) using the information recorded under sub-paragraphs (a) to (h) of paragraph (3); and
 - (b) using an appropriate risk engine, being a software programme which will predict cardiovascular risk based on the population mix within the local authority’s area.
- (7) The AUDIT score shall be derived from the administration of the World Health Organisation Alcohol Use Disorders Identification Test, Guidelines for Use in Primary Care, Second Edition⁽¹⁸⁾.
- (8) The following information relating to the person undergoing the health check shall be communicated to that person as soon as reasonably practicable after the test has taken place—
- (a) body mass index;
 - (b) cholesterol level;
 - (c) blood pressure;
 - (d) cardiovascular risk score;
 - (e) AUDIT score.

⁽¹⁷⁾ 2002 c.17; section 25(3) was amended by paragraph 17 of Schedule 10 to the Health and Social Care Act 2008 (c.14), by paragraph 56(b) of Schedule 17 to the 2012 Act, and by S.I. 2010/231.

⁽¹⁸⁾ Thomas F. Babor, John C. Higgins-Biddle, John B. Saunders, Maristela G. Monteiro, “The Alcohol Use Disorders Identification Test”, Guidelines for Use in Primary Care, Second Edition, WHO/MSD//MSB/01.6a; World Health Organization, 2001. Copies are available from <http://www.who.int/>.

(9) In any case where the health check has not been conducted by a health professional who is providing the person undergoing the health check with primary medical services⁽¹⁹⁾, a record of the health check containing the information which is required to be recorded under paragraph (3) shall be forwarded to such a health professional.

Sexual health services

6.—(1) Subject to paragraphs (4) and (5), each local authority shall provide, or shall make arrangements to secure the provision of, open access sexual health services in its area—

- (a) by exercising the public health functions of the Secretary of State to make arrangements for contraceptive services under paragraph 8 of Schedule 1 to the Act (further provision about the Secretary of State and services); and
- (b) by exercising its functions under section 2B of the Act—
 - (i) for preventing the spread of sexually transmitted infections;
 - (ii) for treating, testing and caring for people with such infections; and
 - (iii) for notifying sexual partners of people with such infections.

(2) In paragraph (1), references to the provision of open access services shall be construed to mean services that are available for the benefit of all people present in the local authority's area.

(3) In exercising the functions in relation to the provision of contraceptive services under paragraph (1)(a), each local authority shall ensure that the following is made available—

- (a) advice on, and reasonable access to, a broad range of contraceptive substances and appliances; and
- (b) advice on preventing unintended pregnancy.

(4) The duty of the local authority under paragraph (1)(a) does not include a requirement to offer to any person services relating to a procedure for sterilisation or vasectomy, other than the giving of preliminary advice on the availability of those procedures as an appropriate method of contraception for the person concerned.

(5) The duty of the local authority under paragraph (1)(b) does not include a requirement to offer services for treating or caring for people infected with Human Immunodeficiency Virus.

Public health advice service

7.—(1) Each local authority shall provide, or shall make arrangements to secure the provision of, a public health advice service to any clinical commissioning group whose area falls wholly or partly within the authority's area.

(2) A public health advice service is a service which consists of the provision of such information and advice to a clinical commissioning group as the local authority considers necessary or appropriate, with a view to protecting and improving the health of the people in the authority's area.

(3) In discharging the requirement under paragraph (1), the local authority shall exercise—

- (a) the public health functions of the Secretary of State pursuant to section 2A of the Act, to the extent that the public health advice service relates to the protection of the health of the people in its area; and
- (b) its public health functions pursuant to section 2B of the Act where the public health advice service relates to the improvement of the health of the people in the authority's area.

⁽¹⁹⁾ See section 83 of the 2006 Act for the meaning of primary medical services.

(4) The purpose of the public health advice service shall be to assist clinical commissioning groups in relation to—

- (a) their duties to arrange for the provision of health services under section 3 of the Act⁽²⁰⁾ (duties of clinical commissioning groups as to commissioning certain health services); and
- (b) their power to arrange for the provision of services or facilities for the purposes of the health service under section 3A of the Act⁽²¹⁾ (power of clinical commissioning groups to commission certain health services).

(5) The range of matters which is to be covered by the public health advice service shall be kept under review by the local authority and shall be determined—

- (a) having regard to the needs of the people in the local authority's area; and
- (b) by agreement between the local authority and any clinical commissioning group (whether acting alone or jointly with another clinical commissioning group) to which the advice service is required to be provided, or in default of such agreement, by the local authority.

(6) The range of matters which is to be covered by the public health advice service may in particular include the following—

- (a) the creation of a summary of the overall health of the people in the local authority's area which is designed to guide clinical commissioning groups in the commissioning of appropriate health services for persons for whom a clinical commissioning group has responsibility under section 3 of the 2006 Act⁽²²⁾;
- (b) the provision of assessments of the health needs of groups of individuals within the local authority's area with particular conditions or diseases;
- (c) advice on the development of plans for the anticipated care needs of persons for whom a clinical commissioning group is responsible under section 3 of the 2006 Act, to improve the outcomes achieved for those persons by the provision of health services;
- (d) advice on how to meet the duty on each clinical commissioning group under section 14T of the Act⁽²³⁾ (duties as to reducing inequalities).

Protecting the health of the local population

8.—(1) Each local authority shall provide information and advice to every responsible person and relevant body within, or which exercises functions in relation to, the authority's area, with a view to promoting the preparation of appropriate local health protection arrangements ("health protection arrangements"), or the participation in such arrangements, by that person or body.

(2) In discharging the requirement under paragraph (1), the local authority shall exercise the public health functions of the Secretary of State pursuant to section 2A of the Act⁽²⁴⁾ (Secretary of State's duty as to protection of public health).

(3) In this regulation—

"responsible person" means—

- (a) an NHS body⁽²⁵⁾,
- (b) a Chief Constable of a police force⁽²⁶⁾,

⁽²⁰⁾ Section 3 of the 2006 Act is amended by section 13 of the 2012 Act.

⁽²¹⁾ Section 3A of the 2006 Act is inserted by section 14 of the 2012 Act.

⁽²²⁾ Section 3 is amended by section 13 of the 2012 Act.

⁽²³⁾ Section 14T of the 2006 Act is inserted by section 26 of the 2012 Act.

⁽²⁴⁾ Section 2A of the 2006 Act is inserted by section 11 of the 2012 Act.

⁽²⁵⁾ See section 275(1) of the 2006 Act for the definition of "NHS body". The definition was inserted by paragraph 138 of Schedule 4 to the 2012 Act.

⁽²⁶⁾ See section 2 of the Police Reform and Social Responsibility Act 2011 (c.13).

- (c) a fire and rescue authority⁽²⁷⁾,
- (d) in relation to a county council which is discharging the requirement under paragraph (1), a council for a district in that county, and
- (e) Public Health England, an executive agency of the Department of Health;

“relevant body” means a body whose activities, in the opinion of the local authority, have a significant effect upon, or whose activities may be significantly affected by a threat to, the health of individuals in the local authority’s area and may include—

- (a) the governing body of a school which is a maintained school within the meaning of the School Standards and Framework Act 1998⁽²⁸⁾,
- (b) a body which is the proprietor of a school which is not maintained by the local authority,
- (c) providers of social care services, being 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)⁽²⁹⁾,
- (d) voluntary organisations,
- (e) charities registered under the Charities Act 2011⁽³⁰⁾, and
- (f) businesses.

(4) Local health protection arrangements are arrangements made for the purpose of protecting individuals in the area of the authority from events or occurrences which threaten, or are liable to threaten, their health, and may in particular include—

- (a) arrangements to deal with the matters mentioned in paragraph (6); and
- (b) arrangements of the kind referred to in sub-paragraphs (d) to (g) of paragraph (7).

(5) In discharging the requirement in paragraph (1), each local authority shall—

- (a) consider in relation to each of the responsible persons and relevant bodies concerned what information and advice is necessary effectively to promote the preparation of the health protection arrangements by that person or body and the authority may accordingly provide different information and advice in each case; and
- (b) take such steps as it considers necessary to bring to the attention of the person or body concerned the information and advice which is relevant to that person or body.

(6) The information and advice which a local authority shall provide in relation to health protection arrangements may address any threat to the health of individuals in the authority’s area and, in particular, may concern arrangements to deal with the following—

- (a) infectious disease;
- (b) environmental hazards and contamination; and
- (c) extreme weather events.

(7) The information and advice which is to be provided by the local authority in relation to health protection arrangements shall be determined by the authority having regard to the needs of individuals in the authority’s area and may include information and advice relating to the following—

- (a) the appropriate co-ordination of roles and responsibilities between any responsible or relevant bodies;
- (b) effective testing by the responsible and relevant bodies of the health protection arrangements;

⁽²⁷⁾ See section 1 of the Fire and Rescue Authorities Act 2004 (c.21).

⁽²⁸⁾ See section 20(7) of the School Standards and Framework Act 1998 for the meaning of “maintained school”.

⁽²⁹⁾ 1970 c.42. See section 1A of the Local Authority Social Services Act 1970 for the meaning of social services functions.

⁽³⁰⁾ See Part 4 of the Charities Act 2011 (c.25).

- (c) appropriate emergency provision to deal with incidents which occur outside the normal working hours of the responsible or relevant bodies;
- (d) arrangements for epidemiological surveillance;
- (e) arrangements for environmental hazard monitoring;
- (f) arrangements with other local authorities for managing incidents which affect the area of more than one authority in an integrated and co-ordinated manner;
- (g) arrangements for stockpiling of medicines and medical supplies.

PART 3

CHARGES IN RESPECT OF LOCAL AUTHORITY FUNCTIONS

Charges in respect of public health functions

9.—(1) Where a local authority exercises its functions under section 2B of the Act, it may make and recover charges in respect of any of the steps which are prescribed under this regulation.

(2) Subject to paragraphs (3) to (5), the following steps are prescribed—

- (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 or participating in the provision of training for persons working or seeking to work in the field of health improvement;
- (d) making available the services of any person or any facilities.

(3) Charges may be made or recovered only where the provision of the information, advice, services, facilities or training in question has been requested by, or agreed with, the person to whom it is provided.

(4) No charges may be recovered from an individual in respect of the provision of a service or facility to that individual, or the taking of any other step in relation to that individual, for the purpose of improving the individual's health.

(5) The steps prescribed under paragraph (2) are so prescribed only to the extent that anything done by the local authority of a description specified in paragraph (2) is not being done pursuant to any requirement in Part 2 of these Regulations.

PART 4

DUTY OF SERVICES-PROVIDERS TO ALLOW ENTRY BY LOCAL HEALTHWATCH REPRESENTATIVES

Interpretation

10. In this Part—

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007; and
“care services” has the meaning given in section 221(6) of the 2007 Act⁽³¹⁾ (local arrangements in relation to health services and social services).

(31) There are no relevant amendments to section 221(6).

Duty of services-providers to allow entry by Local Healthwatch organisations or contractors

11.—(1) In relation to premises that a services-provider⁽³²⁾ owns or controls, that services-provider must allow an authorised representative⁽³³⁾ to—

- (a) enter and view those premises; and
- (b) observe the carrying-on of activities on those premises.

(2) Paragraph (1) does not apply—

- (a) in respect of any premises, or parts of premises, if the presence of an authorised representative on those premises, or those parts of premises, would compromise—
 - (i) the effective provision of care services, or
 - (ii) the privacy or dignity of any person;
- (b) if the authorised representative does not comply with regulation 13;
- (c) in respect of excluded premises;
- (d) to observing the carrying-on of excluded activities;
- (e) to entering and viewing premises, or parts of premises, for the purpose of observing the carrying-on of excluded activities;
- (f) in respect of any premises, or parts of premises, at any time when care services are not being provided on those premises or those parts of premises;
- (g) if, in the opinion of the services-provider, the authorised representative in seeking to enter and view, or observe the carrying-on of activities on, premises is not acting reasonably and proportionately;
- (h) if an authorised representative does not provide the services-provider with evidence that the representative is authorised in accordance with regulation 12.

(3) Where any premises, or parts of premises, are owned by a services-provider and controlled by another services-provider, the duty under paragraph (1) applies only to the services-provider who controls those premises, or those parts of premises.

(4) In this regulation—

“care home” means an establishment which is a care home within the meaning of section 3 of the Care Standards Act 2000⁽³⁴⁾;

“excluded activities” means any activities provided in pursuance of—

- (a) the social services functions of a local authority⁽³⁵⁾ so far as relating to persons aged under 18;
- (b) the functions, in so far as not covered by paragraph (a), conferred on or exercised by a local authority under the Children Act 1989⁽³⁶⁾, the Adoption (Inter-country Aspects) Act 1999⁽³⁷⁾ or the Adoption and Children Act 2002⁽³⁸⁾; or
- (c) the functions, in so far as not covered by paragraph (a), continuing to be exercisable by a local authority under the Adoption Act 1976⁽³⁹⁾;

“excluded premises” means—

⁽³²⁾ See section 225(7) of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) for the definition of “services-provider”.

⁽³³⁾ See section 225(5) of the 2007 Act for the definition of “authorised representative”. Section 225(5) is amended by section 186(6) and (7) of the 2012 Act.

⁽³⁴⁾ 2000 c.14. Section 3 was amended by paragraphs 1 and 4 of Schedule 5 to the Health and Social Care Act 2008.

⁽³⁵⁾ See section 229(1) of the 2007 Act for the definition of “local authority”.

⁽³⁶⁾ 1989 c.41.

⁽³⁷⁾ 1999 c.18.

⁽³⁸⁾ 2002 c.38.

⁽³⁹⁾ 1976 c.36.

- (a) parts of a care home which are not communal areas;
- (b) premises or parts of premises used as residential accommodation for employees of services-providers;
- (c) premises which are occupied by one or more persons as their home and which at least one of those persons occupies under a tenancy or a licence;

“social services functions”, in relation to a local authority, has the same meaning as in the Local Authority Social Services Act 1970(40).

Authorised representative

12. An individual may be authorised for the purposes of section 225 of the 2007 Act (duties of services-providers to allow entry by Local Healthwatch organisations or contractors) only if that individual is authorised in accordance with arrangements made by a local authority under section 221(1) of the 2007 Act (health and social services: Local Healthwatch) or in accordance with Local Healthwatch arrangements(41).

Viewing and observing activities

13. For the purposes of section 225(4)(b) of the 2007 Act (conditions and restrictions imposed on authorised representatives of Local Healthwatch), whilst an authorised representative is on any premises as a result of a services-provider having complied with a duty imposed under regulation 11(1), the authorised representative must not act in any way that compromises—

- (a) the effective provision of care services; or
- (b) the privacy or dignity of any person.

Services-provider

14. For the purposes of section 225(7)(e) of the 2007 Act, the following persons are prescribed as services-providers—

- (a) a person providing services which are primary medical services(42) for the purposes of the Act;
- (b) a person providing services which are primary dental services(43) for the purposes of the Act;
- (c) a person providing services which are primary ophthalmic services(44) for the purposes of the Act;
- (d) a person providing services which are pharmaceutical services or local pharmaceutical services(45) for the purposes of the Act; and
- (e) a person who owns or controls premises where services referred to in paragraphs (a) to (d) are provided.

(40) 1970 c.42. See section 1A (meaning of “social services functions”), which was inserted by section 102(3) of the Local Government Act 2000 (c.22).

(41) See sections 222 and 225(5A) of the 2007 Act. Section 222 is amended by section 183 of the 2012 Act; section 225(5A) is inserted by section 186(6) and (9) of the 2012 Act. See section 229(1) of the 2007 Act for the definition of “local authority”.

(42) See section 83 of the 2006 Act (primary medical services).

(43) See section 99 of the 2006 Act (primary dental services).

(44) See section 115 of the 2006 Act (primary ophthalmic services).

(45) See section 126(8) of the 2006 Act (meaning of “pharmaceutical services”) and the definition of “local pharmaceutical services” in section 275(1) of that Act.

Revocation

15. The Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008(46) are revoked.

Signed by authority of the Secretary of State for Health

Date

Name
Minister of State for Health
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the steps to be taken by local authorities in exercising certain public health functions and the making and recovering of charges in respect of certain steps taken in the exercise of their public health functions. They also make provision in relation to Local Healthwatch organisations. These organisations are provided for in Part 14 of the Local Government and Public Involvement in Health Act 2007 (c.28) (“the 2007 Act”) as amended by Part 5 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

Part 2 of these Regulations imposes duties on local authorities to exercise prescribed public health functions of the Secretary of the State and to take prescribed steps in exercise of public health functions of their own, including the duty as to the improvement of public health (section 2B of the National Health Service Act 2006 (“the 2006 Act”).

Regulation 3 requires local authorities to provide for the weighing and measuring of certain children in their area by reference to the age of the children and the type of school which they attend. Each authority is to take those steps in exercise of its power in paragraph 7A of Schedule 1 to the 2006 Act (weighing and measuring of children).

Regulations 4 and 5 relate to the duties of local authorities to provide or make arrangements to provide for health checks to be offered to eligible persons in their area, the relevant criteria being a person’s age and existing health status. Provision is made for the conduct of the health checks, including the dissemination of information about dementia to older persons and the particular information to be recorded for every person at the time of an assessment.

Regulation 6 requires local authorities to provide, or make arrangements to secure the provision of open access sexual health services in their area. The general duty does not extend to offering services (except for preliminary advice) to those persons undergoing sterilisation or vasectomy procedures or for treating or caring for persons infected with Human Immunodeficiency Virus.

Regulation 7 creates a duty on local authorities to provide or make arrangements to secure the provision of a public health advice service to any clinical commissioning groups in their area, the purpose of which is to assist clinical commissioning groups in relation to their powers and duties to commission health services for the persons for whom they have responsibility. The range of matters which the advice service covers is to be kept under review and should be agreed, having regard to the needs of the local population, between the local authorities and the clinical commissioning groups.

Regulation 8 imposes a duty on local authorities to provide information and advice to certain persons and bodies within their area in order to promote the preparation of, or participation in, health protection arrangements against any threat to the health of the local population, including infectious disease, environmental hazards and extreme weather events.

Part 3, regulation 9, makes provision for a local authority to make and recover charges in respect of certain steps taken in the exercise of its duty as to health improvement. Charges are not permitted in respect of things which are not provided at the request of, or with the agreement of the person concerned, or in respect of steps taken to improve an individual’s health. The power also does not apply in respect of anything which the local authority is required to do in exercise of its public health functions under Part 2 of these Regulations.

Part 4 imposes a duty on certain providers of health and social care services (“services-providers”) requiring them to allow authorised representatives of Local Healthwatch organisations or Local

Healthwatch contractors to enter and view certain premises owned or controlled by them and to allow those authorised representatives to observe the carrying-on of certain activities on those premises.

Regulation 11 sets out the duty imposed on services-providers. In particular it sets out that the duty is not to apply—

- if the presence of an authorised representative would compromise the effective provision of care services or the privacy or dignity of any person;
- to activities provided in pursuance of a local authority’s social services functions (as defined in the Local Authority Social Services Act 1970) relating to –
 - (a) children and young persons under the age of 18 under the Children Act 1989; and
 - (b) certain other persons over the age of 18 under that Act and under the Adoption (Intercountry Aspects) Act 1999 and the Adoption and Children Act 2002 (this includes support provided for those leaving care and prospective adopters);
- to non-communal areas of care homes and certain types of residential accommodation;
- to premises or any parts of premises when care services are not being provided on those premises or parts of premises; and
- if in the opinion of the services-provider, the authorised representative in seeking to enter and view the premises or observe the carrying-on of activities is not acting reasonably and proportionately.

Regulation 13 provides that whilst an authorised representative is on premises owned or controlled by a services-provider in accordance with these Regulations, the authorised representative must not compromise the provision of care services or the privacy or dignity of any person.

Section 225(7) of the 2007 Act sets out the meaning of “services-provider”. Regulation 14 sets out additional persons who are to be services-providers for the purposes of section 225 and who will therefore have to comply with the duty to allow authorised representatives to enter and view the premises that they own or control, and to observe activities carried on on those premises.

Regulation 15 revokes the Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008.

An assessment of the impact of Parts 2 and 3 of this instrument on the private sector and civil society organisations has been made. A copy of this impact assessment is available from the libraries of both Houses of Parliament, and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies may also be obtained from the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS.

A full Impact Assessment has not been produced for Part 4 of this instrument as no impact on the private sector or civil society organisations is foreseen. A full impact assessment has been produced in relation to the relevant provisions of the 2012 Act and a copy is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583