

# HEALTH AND SOCIAL CARE ACT 2012

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8 – The National Institute for Health and Care Excellence**

##### **Functions: advice, guidance etc.**

##### *Section 237 – Advice, guidance, information and recommendations*

1382. This section describes how, as well as preparing quality standards, NICE may be able, under regulations, to give advice or guidance, or provide information or make recommendations on matters relating to the provision of NHS services, public health services or social care in England. The guidance provided for in regulations could include guidance on new and existing medicines, treatments and procedures and treating and caring for people with specific diseases and conditions or with particular social care needs. Regulations might also provide for NICE to be able to publish or disseminate advice, guidance, information or recommendations to the NHS, local authorities or other organisations in the public, private, voluntary or community sectors on how to improve people's health and prevent illness and disease.
1383. The section gives the Secretary of State a regulation-making power to enable him to confer additional functions on NICE. *Subsections (2) and (3)* enable provision to be made for functions conferred on NICE by regulations to be exercisable only on or subject to directions of the Secretary of State or the NHS Commissioning Board in relation to NHS services, or the Secretary of State in relation to public health services or social care. The direction-giving powers ensure that either the Secretary of State or the Board will have the flexibility to commission work from NICE. However, neither will be able to direct NICE as to the substance of its advice, guidance or information or recommendations (*subsection (4)*). *Subsection (5)* describes the additional provision that such regulations might make, such as for the persons or bodies that may commission work from NICE or matters relating to the publication or other dissemination of NICE products. *Subsections (5)(c) and (6)* enable such regulations to make provision for NICE to impose charges in connection with such giving of advice or guidance, provision of information or making of recommendations. *Subsection (7)* requires such regulations to make provision for NICE to set up, through consultation, processes for the development of such advice, guidance, information or recommendations.
1384. *Subsections (8) and (9)* allow regulations to require specified public bodies to have regard to NICE advice or guidance, or to comply with NICE's recommendations. The provision allows replication of the effect of an existing funding direction requiring commissioners to make funding available within three months for treatments recommended by NICE's technology appraisal guidance, so they are made normally available. *Subsection (10)* states that such regulations may only apply to local authorities in relation to their public health functions.

***Section 238 – NICE recommendations: appeals***

1385. This section allows the Secretary of State to include in regulations under section 237 arrangements for appeals against NICE recommendations.

***Section 239 - Training***

1386. This section allows the Secretary of State to make regulations setting out the arrangements under which NICE could provide or facilitate the provision of training, and when it could charge for these services. NICE currently delivers education, training and development on evidence-based therapeutics and medicines management to healthcare professionals, and regulations made under this section would enable this work to continue.

***Section 240 - Advisory services***

1387. This section allows the Secretary of State to make regulations setting out the arrangements under which NICE could provide advisory services to other persons, such as the devolved administrations and pharmaceutical companies. The Department anticipates that any work carried out by NICE on behalf of the devolved administrations will be on a cost-recovery basis only.

***Section 241 - Commissioning guidance***

1388. This section provides for the NHS Commissioning Board to be able to direct NICE to prepare commissioning guidance on its behalf or carry out any other of the NHS Commissioning Board's functions in relation to preparation of commissioning guidance. Commissioning guidance will provide CCGs with practical advice on contracting for the provision of health services with a view to improving the quality of such services. If requested, NICE must provide the NHS Commissioning Board with advice or information on matters connected with the Board's functions as regards commissioning guidance. NICE may also be required by the Board to disseminate the commissioning guidance.