

# CARE ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 3 - Health

#### *Chapter 1 - Health Education England*

#### Local functions

#### *Section 103 – Local Education and Training Boards*

618. This section provides for HEE's appointment of committees, known as Local Education and Training Boards (LETBs), to exercise HEE's functions on its behalf in so far as they are exercisable in respect of the local area. LETBs will plan and commission education and training and quality assure the education and training that has been commissioned for their areas. The LETB, as a committee of HEE, will work within the national framework set by HEE, but within that will address local priorities for education and training and be a forum for local workforce development in the NHS and public health system.
619. *Subsection (3)* confirms that the LETB should represent the interests of all providers of NHS and public health services in the area of the LETB. It is important that the LETB acts on behalf of all providers, for example, across primary care, secondary care and the public health system.
620. *Subsection (4)* ensures that the duties imposed on HEE by section 99 (1), (2) and (4) (quality improvement in education and training etc.) also apply to LETBs.
621. *Subsection (5)* provides that LETBs may co-operate with each other and two or more LETBs may exercise their functions jointly. LETBs may also be required to work closely together on specific elements of workforce planning or education provision, for example, where a healthcare provider has a presence in two or more LETBs.
622. *Subsection (6)* permits HEE to attend any LETB meetings about a matter of concern to HEE. This may be required where HEE has serious concerns about delivery of national workforce priorities, objectives and outcomes.

#### *Section 104 – LETBs: appointment etc.*

623. This section deals with the process by which HEE appoints LETBs. LETBs will be supported by operational staff who will be employed by HEE. These will include staff from the former Strategic Health Authorities and postgraduate medical and dental deaneries.
624. HEE will appoint LETBs, where a group of persons, which must include local healthcare providers for the area, persons who have clinical experience of a type specified in regulations and a person who will represent the interests of patients, come together and fulfil the requirements of the appointment criteria. HEE will set appointment criteria will be contained in a document that will primarily assess potential

LETB's potential to carry out HEE's functions at a local level. They will assess the LETBs capacity and capability to carry out those functions, their ability to secure financial control and the proposed local governance arrangements. Schedule 6 makes further detailed provision about the area of LETBs, the appointment criteria and the exercise of HEE's functions.

625. HEE will assess potential LETB applicants and there will be three possible outcomes from the application process. Firstly, as set out in *subsection (1)* the applicants may meet all the criteria set by HEE and HEE is therefore satisfied that the LETB is capable of taking on all functions delegated to it. In this case the LETB will be appointed without any further conditions. Secondly, as set out in *subsection (2)* the applicants may meet some of the criteria set by HEE and HEE is satisfied that they are capable of taking on some, but not all of the functions delegated to them. In this case, the LETB will be appointed with conditions attached to their appointment. The third outcome is that the applicants meet some of the criteria but not all, and HEE is not satisfied that they can take on functions delegated to them, or that they do not meet any of the criteria. In this case, the LETB will not be appointed. In such circumstances HEE may, under *subsection (8)*, appoint its own employees as members of the LETB to take on responsibility for the education and training functions in that area until an application meets sufficient criteria.
626. *Subsections (3) to (8)* provide more detail on eligibility for LETB membership and the required composition of its membership. *Subsection (3)* sets out types of person who must be represented on a LETB. *Subsection (4)* specifies that regulations may set out the required numbers of persons with clinical expertise. *Subsection (5)* confirms that persons involved in the provision of education and training may also be members of a LETB and *subsection (5)(b)* allows HEE to specify other persons who are eligible to be appointed. *Subsection (6)* confirms that non-executive and executive members of HEE are not eligible for membership. *Subsection (7)* confirms that the majority of the members of the LETB must be drawn from providers of NHS and public health services in the LETB geographical area. This is important. Whilst LETBs will rightly include other partners as members, for example, from the education sector or commissioning organisations, their primary purpose is to plan and commission on behalf of local healthcare providers.
627. *Subsection (9)* requires HEE to appoint the chair of the LETB. The chair may not be a provider of NHS or public health services in the LETB's geographical area or a representative from a further or higher education institution in the LETB's geographical area.
628. *Subsection (10)* requires HEE to notify applicants in writing of the outcome of its decision, and any reasons for rejection. HEE will then publish the decision as set out in *subsection (11)*.
629. *Subsection (12)* provides that the members of the LETB must not use information obtained in that capacity for any other purposes.
630. *Subsection (13)* gives the Secretary of State a regulation making power to make further provision on the appointment of members of the LETB, the removal by HEE of members of a LETB and the suspension by HEE of members of a LETB.

### ***Schedule 6 – Local Education and Training Boards***

#### **The area for which a LETB is appointed**

631. *Paragraph 1* makes provision for the geographical area covered by the LETB. *Sub-paragraph (1)* requires HEE to ensure that the areas covered by all LETBs together cover the whole of England and do not overlap or coincide geographically.

632. Sub-paragraph (2) gives HEE a power to vary the area of a LETB. This may be required if there are changes in the area of neighbouring LETBs which lead to part of England being unrepresented by a LETB. HEE must also keep an up to date record of the geographical areas and publish that record.

### **Assessment of whether the members of LETBs meet the appointment criteria**

633. *Paragraph 2* requires HEE to continue to assess LETBs to ensure they are compliant with the appointment criteria set by HEE. If a LETB in question is not meeting the criteria HEE must assess whether it is still able to exercise its functions. HEE will undertake such an assessment whenever it considers this appropriate. Sub-paragraph (2) requires HEE to notify the LETB of the outcome of the assessment and where HEE is not satisfied that it meets the appointment criteria HEE is required to give the reasons for this and publish these.
634. Sub-paragraph (3) provides that where a LETB is continuing to meet some but not all appointment criteria and HEE determines that it can still exercise its functions, HEE may impose conditions on the LETB relating to its operation.
635. Sub-paragraph (4) stipulates that where a LETB fails to meet sufficient appointment criteria to enable it to exercise its functions, HEE may do one or more of the following: appoint new members of the LETB; exercise the functions on behalf of the LETB; arrange for another LETB to take responsibility for the area.
636. Sub-paragraph (5) requires HEE to notify the LETB of the conditions it proposes to impose or action it proposes to take, and the reasons for doing so, before it may impose the conditions at sub-paragraph (3) or take actions described under sub-paragraph (4).
637. Sub-paragraph (6) requires HEE to publish the details of these conditions and the reasons for imposing them or taking that action.
638. Sub-paragraph (7) requires HEE to obtain the approval of a LETB before asking it to take on another LETB's functions as described in sub-paragraph (4)(c).
639. Sub-paragraph (8) provides that regulations must require specified commissioners of health services to include in the arrangements under the National Health Service Act 2006 for the provision of such services terms to ensure that the provider complies with requirements mentioned in sub-paragraphs (8)(a) and (b). Sub-paragraph (8)(a) states that providers must co-operate with any LETB which represents that provider because it has been appointed by HEE to represent it by virtue of sub-paragraph (4)(c). This obliges providers to co-operate with any LETB that represents both its interests and the interests of providers from a different geographical area that the LETB originally represented before it was appointed to additionally represent the interests of another LETB. Sub-paragraph (8)(b) states that providers must provide LETBs with such information as they may request.
640. Sub-paragraph (9) allows the Secretary of State to make regulations specifying other circumstances where HEE may intervene in the operation of the LETB.

### **Publication and review of the appointment criteria**

641. Sub-paragraph (1) requires HEE to publish the appointment criteria that persons applying to be appointed as a LETB must meet. HEE is required to obtain the approval of the Secretary of State before publishing this criteria. Sub-paragraph (2) requires HEE to keep the appointment criteria under review and make any necessary revisions. HEE is required to obtain the approval of the Secretary of State for any revisions that HEE considers significant.

## **Exercise of functions**

- 642. *Paragraph 4* enables the Secretary of State, through regulations, to give the LETBs additional functions relating to education and training and impose requirements about how those functions should be exercised.
- 643. Sub-paragraph (2) allows a LETB to do anything which it considers necessary or desirable to enable it to carry out its functions.
- 644. Sub-paragraph (3) provides that where HEE considers that a LETB is failing to exercise one or more of its functions, or there is a significant risk that it may do so, HEE must direct the LETB on the exercise of such functions.
- 645. Sub-paragraph (4) stipulates that where a LETB fails to comply with the direction under sub-paragraph (3), HEE may intervene as described under paragraph 2(4) of this Schedule, which means that HEE may appoint new members of the LETB, exercise functions on behalf of the LETB, or arrange for another LETB to represent providers of services in the area.

## ***Section 105 – LETBs: co-operation by providers of health services***

- 646. *Subsection (1)* provides that regulations must require specified commissioners of health services to include in the arrangements under the National Health Service Act 2006 (the 2006 Act) for the provision of such services terms to ensure that the provider complies with requirements imposed under paragraphs (a), (b) and (c). Paragraph (a) states that providers must co-operate with any LETB in which it provides services. Paragraph (b) requires providers to provide LETBs with such information as they may request and paragraph (c) requires providers to comply with other obligations that may be specified. The regulations will seek to ensure that providers of NHS and public health services co-operate with the LETB in their area to support the planning, commissioning and provision of education and training. This may include the provision of workforce information to support such activities. Such regulations will support the duty imposed on commissioners by section 1F(2) of the 2006 Act.
- 647. *Subsection (3)* provides that the regulations may specify matters that the LETB must have regard to when considering the reasonableness of requesting a provider to cooperate with it, or to provide it with information.

## ***Section 106 – Education and training plans***

- 648. *Subsection (1)* requires LETBs to publish an education and training plan for each financial year. The education and training plan will set out, amongst other matters, the LETB's proposed investment in their current and future workforce. *Subsection (2)* makes provision for the content of the education and training plan. In developing their plans, the LETB must have regard to national objectives, priorities and outcomes set by the Secretary of State and HEE (under section 100), alongside the local priorities of the NHS and public health providers represented by the LETB.
- 649. *Subsection (3)* lists matters that a LETB must have regard to in the preparation of the plan.
- 650. *Subsection (4)* places a duty on the LETB to involve the providers it represents in the preparation of its education and training plans, along with commissioners of health services, Health and Wellbeing Boards and such other organisations that either it or HEE considers appropriate. It is important that education and training plans are informed by the local needs of the health and public health system.
- 651. *Subsection (5)* requires the LETB to submit its education and training plan to HEE for approval prior to publication. *Subsection (6)* enables HEE to direct LETBs to amend their education and training plans prior to approval. By operation of *subsection (7)*, in the case of LETBs which meet all appointment criteria, HEE's power is restricted to

amendments that HEE considers necessary to ensure that the LETB will achieve the outcomes set by HEE under section 100(4)(b). This is intended to respect the autonomy of the LETB and therefore restricts any amendments to issues linked to nationally agreed priorities, objectives and outcomes. HEE must publish the amendments and the reasons for making them as described in *subsection (8)*.

### ***Section 107 – Commissioning education and training***

652. This section requires each LETB to commission education and training activity that will support their plans for that year. HEE has a duty to allocate appropriate funding to each LETB in order to commission the necessary education and training activity.
653. There may be some circumstances where it is advantageous to have nationally coordinated provision of education and training, rather than leaving it to the discretion of LETBs. For example, some professions and medical specialties may require only very small numbers to be commissioned across England, so national level commissioning may be more appropriate. In such cases, *subsection (2)* gives HEE a power to make arrangements itself for the provision of education and training, or to direct a lead LETB to do so on behalf of itself (but the latter is subject to consultation with the LETB in question (*subsection (3)*)).
654. *Subsection (4)* requires HEE to allocate to the LETB the resources that are required to deliver its education and training plan for that year.
655. *Subsection (5)* requires HEE to take account of any requirements placed on the LETB by section 108 – which requires an LETB to make payments by reference to an approved tariff price or price varied under a specified procedure – when making such an allocation.
656. *Subsection (6)* allows the LETB to arrange for another person to assist in the exercise of its commissioning functions.
657. *Subsection (7)* places a duty on LETBs to keep under review the quality of the education and training provision that it commissions, and imposes a duty on them to report its findings to such bodies that the LETB considers may be interested. This could include, for example, the relevant professional regulatory body.
658. *Subsection (8)* requires the LETB to produce such reports on the commissioning of education and training as HEE may require.