



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 5

#### PUBLIC INVOLVEMENT AND LOCAL GOVERNMENT

### CHAPTER 1

#### PUBLIC INVOLVEMENT

#### *Healthwatch England*

#### **181 Healthwatch England**

- (1) The Health and Social Care Act 2008 is amended as follows.
- (2) In Schedule 1 (the Care Quality Commission: constitution, etc.), in paragraph 6, after sub-paragraph (1) insert—
  - “(1A) A committee of the Commission known as “the Healthwatch England committee” is to be appointed in accordance with regulations.
  - (1B) The purpose of the Healthwatch England committee is to provide the Commission or other persons with advice, information or other assistance in accordance with provision made by or under this or any other Act.”
- (3) After sub-paragraph (5) insert—
  - “(5A) Regulations under sub-paragraph (1A) must make provision requiring a person who has power to appoint a member of the Healthwatch England committee to secure that a majority of the members of the committee are not members of the Commission.
  - (5B) Regulations under sub-paragraph (1A) may specify other results which a person who has power to appoint a member of the committee must secure.

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- (5C) Regulations under sub-paragraph (1A) may, in particular, make provision as to—
- (a) eligibility for appointment;
  - (b) procedures for selecting or proposing persons for appointment.
- (5D) Regulations under sub-paragraph (1A) may, in particular, make provision as to—
- (a) the removal or suspension of members of the committee;
  - (b) the payment of remuneration and allowances to members.”
- (4) In Chapter 3 of Part 1 (quality of health and social care), before section 46 and the preceding cross-heading insert—

*“Healthwatch England and Local Healthwatch organisations*

**45A Functions to be exercised by Healthwatch England**

- (1) The Commission has the functions set out in subsections (2) to (5), but must arrange for the Healthwatch England committee to exercise the functions on its behalf.
- (2) The function in this subsection is to provide Local Healthwatch organisations with general advice and assistance in relation to—
  - (a) the making of arrangements under section 221(1) of the Local Government and Public Involvement in Health Act 2007 (local care services);
  - (b) the making of arrangements in pursuance of arrangements made under section 221(1) of that Act (see section 222(2B) of that Act);
  - (c) the carrying-on of activities specified in section 221(2) of that Act.
- (3) The function in this subsection is a power to make recommendations of a general nature to English local authorities about the making of arrangements under section 221(1) of that Act.
- (4) The function in this subsection is a power, where the Healthwatch England committee is of the opinion that the activities specified in section 221(2) of that Act are not being carried on properly in an English local authority’s area, to give the authority concerned written notice of its opinion.
- (5) The function in this subsection is to provide the persons mentioned in subsection (6) with information and advice on—
  - (a) the views of people who use health or social care services and of other members of the public on their needs for and experiences of health and social care services, and
  - (b) the views of Local Healthwatch organisations and of other persons on the standard of provision of health and social care services and on whether or how the standard could or should be improved.
- (6) The persons referred to in subsection (5) are—
  - (a) the Secretary of State;
  - (b) the National Health Service Commissioning Board;
  - (c) Monitor;

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(d) English local authorities.

- (7) A person provided with advice under subsection (5) must inform the Healthwatch England committee in writing of its response or proposed response to the advice.
- (8) The Healthwatch England committee may provide the Commission with information and advice on the matters mentioned in subsection (5)(a) and (b); and the Commission must inform the committee in writing of its response or proposed response to the advice.
- (9) The Commission must publish details of arrangements it makes under subsection (1) (including details of payments of remuneration or other amounts); and inclusion of the details in a report under section 83 is not to be regarded as a discharge of the duty imposed by this subsection.
- (10) In performing functions under this section, the Healthwatch England committee must have regard to such aspects of government policy as the Secretary of State may direct.

#### **45B Conflicts of interest**

- (1) In making arrangements under section 45A(1), the Commission must have regard to any conflicts guidance issued by the Secretary of State.
- (2) In exercising functions on behalf of the Commission, the Healthwatch England committee must have regard to any conflicts guidance issued by the Secretary of State.
- (3) In this section, “conflicts guidance” means guidance about managing conflicts between—
- (a) the exercise of functions by the Commission, and
  - (b) the exercise of functions by the Healthwatch England committee on the Commission’s behalf.

#### **45C Reports**

- (1) As soon as possible after the end of each financial year, the Healthwatch England committee—
- (a) must make a report to the Commission (whether or not in writing) on the matters mentioned in section 45A(5)(a) and (b), and
  - (b) must publish a report on the way in which it has exercised during the year the functions exercisable by it.
- (2) The committee must—
- (a) lay before Parliament a copy of each report made under subsection (1) (b), and
  - (b) send a copy of each such report to the Secretary of State and to every Local Healthwatch organisation.
- (3) The committee may publish other reports at such times, and on such matters relating to health or social care, as it thinks appropriate.

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- (4) Where a recommendation is made to the committee under section 221(2)(h) of the Local Government and Public Involvement in Health Act 2007 (reports under subsection (3)), the committee must have regard to the recommendation.
- (5) Before publishing a report under subsection (1)(b) or (3), the committee must, so far as practicable, exclude any matter which relates to the private affairs of an individual the publication of which, in the committee’s opinion, would or might seriously and prejudicially affect that individual’s interests.
- (6) In this section, “financial year” means—
- (a) the period beginning with the date on which the committee is appointed and ending with the following 31 March, and
  - (b) each successive period of 12 months ending with 31 March.”
- (5) In section 82 (failure by Commission to discharge functions), after subsection (1) insert—
- “(1A) The Secretary of State may give a direction to the Healthwatch England committee if the Secretary of State considers that the committee—
- (a) is failing or has failed to discharge a function under section 45A or any other function it is required to discharge, or
  - (b) is failing or has failed properly to discharge a function under that section or any other function it is required to discharge,
- and that the failure is significant.”
- (6) In subsection (2) of that section—
- (a) after “(1)” insert “or (1A)”, and
  - (b) after “the Commission” insert “or (as the case may be) the committee”.
- (7) In subsection (2A) of that section (inserted by section 294), after “(1)” insert “or (1A)”.
- (8) In subsection (3) of that section—
- (a) after “the Commission” insert “or the committee”, and
  - (b) after “(1)” insert “or (1A)”.
- (9) In subsection (4) of that section (inserted by section 294), after “(1)” insert “, (1A)”.
- (10) For the title to that section substitute “Failure by the Commission or Healthwatch England in discharge of functions”.
- (11) In section 83 (reports for each financial year etc), after subsection (1) insert—
- “(1A) The reference in subsection (1)(a) to the Commission’s functions does not include a reference to its functions under section 45A.”
- (12) After subsection (2) of that section insert—
- “(2A) The reports under subsection (1)(b) and (c) must, in particular, set out (and identify as such) the contents of the report made by the Healthwatch England committee under section 45C(1)(a) in respect of the year concerned.”
- (13) In each of the following provisions, at the end of the entry for the Care Quality Commission insert “and the Healthwatch England committee”—
- (a) Part 2 of Schedule 1 to the Public Records Act 1958,

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- (b) Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, and
  - (c) Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.
- (14) The Healthwatch England committee is to be treated for the purposes of section 2(1) of the Public Bodies (Admission to Meetings) Act 1960 as a body that includes all the members of the Care Quality Commission.