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STATUTORY INSTRUMENTS

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**2013 No. 218**

**The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013**

**PART 4**

**HEALTH SCRUTINY BY LOCAL AUTHORITIES**

**Interpretation**

**20.**—(1) In this Part—

“the 2000 Act” means the Local Government Act 2000;

“a responsible person” means a relevant NHS body or a relevant health service provider<sup>(1)</sup>;

“joint overview and scrutiny committee”, except in regulation 34, means an overview and scrutiny committee appointed under regulation 30;

“joint scrutiny arrangements” means arrangements made under regulation 30(1) or (5);

“local authority” includes—

- (a) the Council of the Isles of Scilly and,
- (b) in regulations 22(5), 28(1)(b), 30(1), 31 and 32, a council for a district in a county for which there is a county council<sup>(2)</sup>;

“relevant functions” means functions under regulations 21 to 23, 26 and 27;

“the Board” means the National Health Service Commissioning Board<sup>(3)</sup>.

(2) For the purposes of the definition of “relevant NHS body” in section 244(3) of the 2006 Act, the NHS bodies<sup>(4)</sup> prescribed in relation to a local authority are—

- (a) the Board;
- (b) a clinical commissioning group which arranges the provision of services to persons residing in the area of the authority; or
- (c) an NHS trust or NHS foundation trust which provides services to persons residing in the area of the authority.

(3) For the purposes of paragraph (b) of the definition of “relevant health service provider” in section 244(3) of the 2006 Act, the description of body or person prescribed, in relation to a local authority, is a body or person, other than an NHS trust or NHS foundation trust, which provides any relevant services to persons residing in the area of the local authority.

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(1) See section 244(3) of the 2006 Act for the meaning of “relevant NHS body” and “relevant health service provider”. Subsection (3) is substituted by section 190(1) and (4) of the 2012 Act.

(2) See section 275 of the 2006 Act for the meaning of “local authority”. See also S.I. 1981/1473 which had the effect of extending the 2006 Act to the Isles of Scilly and has effect in part as if made under section 278 of the 2006 Act by virtue of paragraph 1 of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

(3) The Board is established by section 1H of the 2006 Act. Section 1H is inserted by section 9(1) of the 2012 Act.

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

(4) In paragraph (3), “relevant services” means the services referred to in paragraph (a) of the definition of “relevant health service provider” in section 244(3) of the 2006 Act.

### Review and scrutiny

**21.**—(1) A local authority may review and scrutinise any matter relating to the planning, provision and operation of the health service(5) in its area.

(2) In carrying out the review and scrutiny of a particular matter, the local authority must—

- (a) invite interested parties to comment on the matter; and
- (b) take account of relevant information available to it and, in particular, relevant information provided to it by a Local Healthwatch organisation(6) or Local Healthwatch contractor (“a referrer”) when that referrer refers a matter falling within paragraph (1) to the authority.

(3) Where a matter falling within paragraph (1) is referred to the local authority by a referrer, the local authority must—

- (a) acknowledge receipt of the referral within 20 working days beginning with the date on which the referral was made; and
- (b) keep the referrer informed of any action taken in relation to the matter.

(4) Otherwise, the procedure of review and scrutiny is to be determined by the local authority.

(5) For the purposes of this regulation, a matter is referred by a referrer if it is referred in the carrying-on of activities specified in section 221(2) of the 2007 Act(7) (patient and public involvement in health and social care) under arrangements made under section 221(1) of that Act (health and social services: Local Healthwatch) or Local Healthwatch arrangements.

(6) In this regulation—

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007(8);

“Local Healthwatch arrangements” has the meaning given by section 222 of the 2007 Act(9) (arrangements under section 221(1): Local Healthwatch organisations);

“Local Healthwatch contractor” has the meaning given by section 223 of the 2007 Act(10) (prescribed provision to be included in arrangements under section 221(1));

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking and Financial Dealings Act 1971(11).

### Reports and recommendations

**22.**—(1) A local authority (“A”) may make reports and recommendations to a responsible person on any matter it has reviewed or scrutinised under regulation 21.

(2) Where A has made arrangements for the discharge of relevant functions of A by a body specified in paragraph (3), that body may, in addition to making reports and recommendations under paragraph (1), make reports and recommendations to the local authority or local authorities which appointed that body, on any matter it has reviewed or scrutinised under regulation 21.

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(5) See sections 244(4) and 275 of the 2006 Act for the meaning of “the health service” in this Part of the Regulations.

(6) See section 222 of the 2007 Act as to Local Healthwatch organisations. Section 222 is amended by section 183 of the 2012 Act.

(7) Section 221(2) is amended by section 182(1) to (4) of the 2012 Act.

(8) 2007 c.28 (“the 2007 Act”).

(9) See section 222(2B) which is substituted by section 183(2) of the 2012 Act, and the definition of “local authority” in section 229(1) of the 2007 Act.

(10) Section 223 is amended by section 184 of the 2012 Act. The definition of “Local Healthwatch contractor” is inserted by section 184(1) and (6) of that Act – see section 223(3).

(11) 1971 c.80.

- (3) The bodies specified for the purposes of paragraph (2) are—
- (a) an overview and scrutiny committee of A;
  - (b) a joint overview and scrutiny committee appointed by A and one or more other local authorities;
  - (c) a committee or sub-committee of A.
- (4) Where a committee of A has made arrangements for the discharge of relevant functions of A by a sub-committee, that sub-committee may, in addition to making reports and recommendations under paragraph (1), make reports and recommendations to A and to the committee which appointed that sub-committee, on any matter it has reviewed or scrutinised under regulation 21.
- (5) Where A has made arrangements for the discharge of its relevant functions by—
- (a) another local authority (“B”) pursuant to arrangements made under section 101(1)(b) of the 1972 Act (arrangements for discharge of functions by local authorities), or
  - (b) an overview or scrutiny committee of B pursuant to regulation 28(1)(b),
- B or that committee may, in addition to making reports and recommendations under paragraph (1), make reports and recommendations to A on any matter it has reviewed or scrutinised under regulation 21.
- (6) Reports and recommendations made under this regulation must include—
- (a) an explanation of the matter reviewed or scrutinised;
  - (b) a summary of the evidence considered;
  - (c) a list of the participants involved in the review or scrutiny; and
  - (d) an explanation of any recommendations on the matter reviewed or scrutinised.
- (7) Where a local authority requests a response from a responsible person to whom it has made a report or recommendation, that person must respond in writing within 28 days of the request.

### **Consultation by responsible persons**

**23.**—(1) Subject to paragraphs (2) and (12) and regulation 24, where a responsible person (“R”) has under consideration any proposal for a substantial development of the health service in the area of a local authority (“the authority”), or for a substantial variation in the provision of such service, R must—

- (a) consult the authority;
  - (b) when consulting, provide the authority with—
    - (i) the proposed date by which R intends to make a decision as to whether to proceed with the proposal; and
    - (ii) the date by which R requires the authority to provide any comments under paragraph (4);
  - (c) inform the authority of any change to the dates provided under paragraph (b); and
  - (d) publish those dates, including any change to those dates.
- (2) Paragraph (1) does not apply to any proposals on which R is satisfied that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff.
- (3) In a case such as is referred to in paragraph (2), R must notify the authority immediately of the decision taken and the reason why no consultation has taken place.
- (4) Subject to regulation 30(5) (joint committees) and any directions under regulation 32 (directions as to arrangements for discharge of health scrutiny functions), the authority may

make comments on the proposal consulted on by the date or changed date provided by R under paragraph (1)(b)(ii) or (c).

(5) Where the authority's comments under paragraph (4) include a recommendation to R and R disagrees with that recommendation—

- (a) R must notify the authority of the disagreement;
- (b) R and the authority must take such steps as are reasonably practicable to try to reach agreement in relation to the subject of the recommendation; and
- (c) in a case where the duties of R under this regulation are being discharged by the responsible commissioner pursuant to paragraph (12), the authority and the responsible commissioner must involve R in the steps specified in sub-paragraph (b).

(6) This paragraph applies where—

- (a) the authority has not exercised the power in paragraph (4); or
- (b) the authority's comments under paragraph (4) do not include a recommendation.

(7) Where paragraph (6) applies, the authority must inform R of—

- (a) its decision as to whether to exercise its power under paragraph (9) and, if applicable, the date by which it proposes to exercise that power; or
- (b) the date by which it proposes to make a decision as to whether to exercise that power.

(8) Where the authority has informed R of a date under paragraph (7)(b), the authority must, by that date, make the decision referred to in that paragraph and inform R of that decision.

(9) Subject to paragraph (10), the authority may report to the Secretary of State in writing where—

- (a) the authority is not satisfied that consultation on any proposal referred to in paragraph (1) has been adequate in relation to content or time allowed;
- (b) in a case where paragraph (2) applies, the authority is not satisfied that the reasons given by R are adequate; or
- (c) the authority considers that the proposal would not be in the interests of the health service in its area.

(10) The authority may not make a report under paragraph (9)—

- (a) in a case falling within paragraph (5), unless the authority is satisfied that—
  - (i) the steps specified in paragraph (5)(a) to (c) have been taken, but agreement has not been reached in relation to the subject of the recommendation within a reasonable period of time;
  - (ii) R has failed to comply with its duty under paragraph (5)(b) within a reasonable period of time; or
- (b) in a case to which paragraph (6) applies, unless the authority has complied with the duty in paragraph (7) and, where applicable, paragraph (8).

(11) A report made under paragraph (9) must include—

- (a) an explanation of the proposal to which the report relates;
- (b) in the case of a report under paragraph (9)(a) or (b), the reasons why the authority is not satisfied of the matters set out in paragraph (9)(a) or (b);
- (c) in the case of a report under paragraph (9)(c), a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area of the authority;
- (d) an explanation of any steps the authority has taken to try to reach agreement with R in relation to the proposal or the matters set out in paragraph (9)(a) or (b);

- (e) in a case falling within paragraph (10), evidence to demonstrate that the authority has complied with the applicable condition in that paragraph;
- (f) an explanation of the reasons for the making of the report; and
- (g) any evidence in support of those reasons.

(12) In a case where R is a service provider and the proposal relates to services which a clinical commissioning group or the Board is responsible for arranging the provision of—

- (a) the functions of R under this regulation must be discharged by the responsible commissioner on behalf of R; and
- (b) references to R in this regulation (other than in paragraph (5)(c)) are to be treated as references to the responsible commissioner.

(13) Where the functions of R under this regulation fall to be discharged by more than one body under paragraph (12)(a), the duties of those bodies under that paragraph may be discharged by those bodies jointly or by one or more of those bodies on behalf of those bodies.

(14) In this regulation—

“service provider” means an NHS trust, an NHS foundation trust or a relevant health service provider;

“the responsible commissioner” means the clinical commissioning group or groups or the Board, as the case may be, responsible for arranging the provision of the services to which the proposal relates.

### **Exemptions from duty to consult**

**24.** Regulation 23 does not apply to—

- (a) any proposal to establish or dissolve an NHS trust or clinical commissioning group, or to vary the constitution of such a group (unless the establishment, dissolution or variation involves a substantial development or variation as referred to in regulation 23(1)); or
- (b) any proposals contained in—
  - (i) a trust special administrator’s report or draft report under section 65F or 65I of the 2006 Act(12) (trust special administrators: reports and draft reports); or
  - (ii) recommendations by a health special administrator on the action which should be taken in relation to a company subject to a health special administration order under section 128 of the 2012 Act (health special administration orders).

### **Decisions and directions by Secretary of State or the Board**

**25.—**(1) Where a local authority has reported to the Secretary of State under regulation 23(9) in relation to a proposal, the Secretary of State may—

- (a) in the case of a referral under regulation 23(9)(a) or (b), make a decision in relation to the subject matter of the referral;
- (b) in the case of a referral under regulation 23(9)(c), make a final decision on the proposal; and
- (c) in the case of a referral under regulation 23(9), give directions to the Board, including directions as to the exercise of its power under paragraph (2), in relation to the proposal.

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(12) Sections 65F and 65I were inserted by section 16 of the Health Act 2009 (c.21). Section 65F was amended by section 176(1) and (2) of, and paragraphs 1 and 15 of Schedule 14 to, the 2012 Act. Section 65I was amended by section 176(8) of, and paragraphs 1 and 18 of Schedule 14 to, the 2012 Act.

(2) Where a local authority has reported to the Secretary of State under regulation 23(9) in relation to a proposal, and the Secretary of State has made a decision pursuant to paragraph (1)(a) or (b), the Board may, subject to any directions under paragraph (1)(c), give directions to a clinical commissioning group in relation to the proposal.

(3) The powers conferred by paragraphs (1)(c) and (2) include powers to require the person to whom the direction is given—

- (a) to consult (or consult further) with the authority in relation to the proposal;
- (b) to determine the matter in a particular way;
- (c) to take, or not to take, any other steps in relation to the matter.

### **Information to be provided by responsible person**

**26.**—(1) Subject to paragraphs (3) and (7), a responsible person must provide a local authority with such information about the planning, provision and operation of health services in the area of that authority as the authority may reasonably require in order to discharge its relevant functions.

(2) Where a responsible person provides, or arranges for the provision of, services to persons residing within the area of several local authorities, its duty under paragraph (1) will be satisfied if it provides information to the joint overview and scrutiny committee of those authorities.

(3) Nothing in paragraph (1) requires the provision of—

- (a) confidential information which relates to and identifies a living individual, unless at least one of the conditions specified in paragraph (4) applies; or
- (b) any other information the disclosure of which is prohibited by or under any enactment, unless paragraph (5) applies.

(4) The conditions referred to in paragraph (3)(a) are—

- (a) the information is or can be disclosed in a form from which the identity of the individual cannot be ascertained; or
- (b) the individual consents to the information being disclosed.

(5) This paragraph applies where—

- (a) the prohibition on the disclosure of information arises because the information is capable of identifying an individual; and
- (b) the information is or can be disclosed in a form from which the identity of the individual cannot be ascertained.

(6) In a case where the disclosure of information is prohibited by paragraph (3), the local authority may require the person holding the information to put the information in a form from which the identity of the individual concerned cannot be identified in order that the information may be disclosed.

(7) Paragraph (1) does not apply in relation to—

- (a) information contained in, or relating to, a trust special administrator's report or draft report under sections 65F or 65I of the 2006 Act;
- (b) information contained in, or relating to, recommendations by a health special administrator on the action which should be taken in relation to a company subject to a health special administration order under section 128 of the 2012 Act.

### Obtaining information and explanations

27.—(1) Subject to paragraph (5), a local authority may require any member(13) or employee(14) of a responsible person to attend before the authority to answer such questions as appear to the authority to be necessary for discharging its relevant functions.

(2) Subject to paragraphs (3) and (4), it is the duty of any such member or employee to comply with any such requirement.

(3) The local authority may not require a person to attend in accordance with paragraph (1) unless reasonable notice of the intended date of attendance has been given to that person.

(4) Nothing in paragraph (1) requires any person to answer any question put to that person by the local authority—

- (a) to the extent that the answer requires the provision of information of a type specified in regulation 26(3) (unless within an exception under regulation 26(4) or (5)); or
- (b) if that person would be entitled to refuse to answer in, or for the purposes of, proceedings in a court in England and Wales.

(5) A local authority may not require a member or employee of a responsible person to attend before it to answer questions in relation to—

- (a) a trust special administrator’s report or draft report under sections 65F or 65I of the 2006 Act;
- (b) a health special administration order under section 128 of the 2012 Act, or recommendations by a health special administrator on the action which should be taken in relation to a company subject to such an order.

### Discharge of health scrutiny functions by overview and scrutiny committees

28.—(1) A local authority (“A”) may arrange for its relevant functions to be discharged by—

- (a) an overview and scrutiny committee of A;
- (b) in the circumstances set out in paragraph (2), an overview and scrutiny committee of another local authority (“B”).

(2) The circumstances referred to paragraph (1)(b) are where A considers that the overview and scrutiny committee of B would be better placed than A to undertake A’s relevant functions and B agrees to the discharge of those functions by its committee.

### Restrictions on arrangements for discharge of health scrutiny functions under section 101 of the 1972 Act

29.—(1) Section 101 of the 1972 Act(15) does not apply in relation to the discharge by a local authority of its functions under regulation 23(9) (reports to Secretary of State).

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(13) See section 244(3A) and (3B) of the 2006 Act for the meaning of “member”. Subsections (3A) and (3B) were inserted by section 190(1) and (5) of the 2012 Act.

(14) See section 244(3B) as to an employee of a body which is a member of a clinical commissioning group or relevant health service provider.

(15) Section 101 was amended by section 30 of, and Schedule 10 to, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), sections 84 and 102 of, and Schedules 14 and 17 to, the Local Government Act 1985 (c.51), the Statute Law (Repeals) Act 1986 (c.12), section 237 of, and Schedule 13 to, the Education Reform Act 1988 (c.40), sections 45(5) and 194 of, and Schedule 12 to, the Local Government and Housing Act 1989 (c.42), section 307 of, and Schedules 19 to, the Education Act 1993 (c.35), section 93 of, and Schedule 9 to, the Police and Magistrates’ Courts Act 1994 (c.29), section 66(5) of, and Schedule 15 to, the Local Government (Wales) Act 1994 (c.19), section 120 of, and Schedule 24 to, the Environment Act 1995 (c.25), section 332(1) of the Greater London Authority Act 1999 (c.29), section 198 of, and Schedule 6 to, the Licensing Act 2003 (c.17), section 64 of, and Schedule 5 to, the Children Act 2004 (c.31), section 209 of, and Schedule 13 to, the 2007 Act, section 224 of the Planning Act 2008 (c.29), section 119 of, and Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009 (c.20), section 321 of, and Schedule 22 to, the Marine and

(2) The following provisions of section 101 of the 1972 Act do not apply with respect to the discharge by a local authority of its relevant functions—

- (a) subsection (1)(a) (arrangements for discharge of functions by local authorities), in so far as it relates to an officer of the authority;
- (b) subsection (5) (discharge of functions by two or more local authorities jointly);
- (c) subsection (13)(16) (extended meaning of “local authority”), except in so far as it relates to the Common Council of the City of London.

### Joint committees

**30.**—(1) Subject to paragraph (5), two or more local authorities may appoint a joint committee (“a joint overview and scrutiny committee”) of those authorities and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the joint committee subject to such terms and conditions as the authorities may consider appropriate.

(2) The provisions of section 9FA(1) to (12) of the 2000 Act(17) (overview and scrutiny committees: supplementary) apply to a joint overview and scrutiny committee as they apply to an overview and scrutiny committee within the meaning of section 9F of that Act(18) (overview and scrutiny committees: functions), but subject to the modification that subsection (5) applies as though the words “Subject to any provision made by or under paragraphs 6 to 8 of Schedule A1 and to section 20(6) of the Police and Justice Act 2006,” were omitted.

(3) Section 246 of, and Schedule 17 to, the 2006 Act(19) (overview and scrutiny committees: exempt information) and Schedule 11 to the National Health Service (Wales) Act 2006(20) (exempt information relating to health services) shall apply to a joint overview and scrutiny committee as if it were a committee of each of the local authorities which appointed it.

(4) Where a function under regulation 23(9) in relation to a local authority is exercisable by a joint overview and scrutiny committee by virtue of arrangements under this regulation, the local authority may not discharge that function.

(5) Where a responsible person consults more than one local authority pursuant to regulation 23, those local authorities must appoint a joint overview and scrutiny committee for the purposes of the consultation and only that joint overview and scrutiny committee may—

- (a) make comments on the proposal consulted on pursuant to regulation 23(4);
- (b) require the provision of information about the proposal under regulation 26; or
- (c) require a member or employee of a responsible person to attend before it under regulation 27 to answer questions in connection with the consultation.

(6) A joint overview and scrutiny committee may not discharge any functions other than relevant functions in accordance with this regulation.

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Coastal Access Act 2009 (c.23), section 99 of, and Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c.13), section 22 of, and Schedule 3 to, the 2011 Act and S.I. 2001/1517 and 2009/1375.

(16) Subsection (13) was amended by paragraph 15 of Schedule 14 to the Local Government Act 1985, section 332(1) of the Greater London Authority Act 1999, paragraphs 10 and 19 of Schedule 6 to the Local Democracy, Economic Development and Construction Act 2009, paragraphs 1 and 9 of Schedule 13 to the 2007 Act and Schedule 13 to the Education Reform Act 1988.

(17) Section 9FA was inserted by paragraph 1 of Schedule 2 to the 2011 Act.

(18) Section 9F was inserted by paragraph 1 of Schedule 2 to the 2011 Act.

(19) Section 246 is amended by paragraphs 6 and 9 of Schedule 1 to the Health Act 2009, paragraphs 73 and 76 of Schedule 3 to the 2011 Act and section 191(6), to (9) of the 2012 Act. Schedule 17 is amended by section 208(6) of the 2012 Act.

(20) 2006 c.42.



### **Co-option**

**31.**—(1) A county council may arrange for one or more of the members of an overview and scrutiny committee of the council of a district comprised in the area of that county council to be appointed as—

- (a) a member of an overview and scrutiny committee of the county council or another local authority, for the purposes of relevant functions exercisable by the committee in relation to the county council; or
- (b) a member of an overview and scrutiny committee of the county council, for the purposes of relevant functions exercisable by the committee in relation to another local authority.

(2) A county council making arrangements for an appointment under paragraph (1)(a) or (b) may specify that the appointment is—

- (a) for the life of the overview and scrutiny committee; or
- (b) until such time as it decides to terminate the appointment; or
- (c) for the review or scrutiny of a particular matter.

(3) In this regulation, references to an overview and scrutiny committee of a county council include references to a joint overview and scrutiny committee of the council and another local authority.

### **Directions to local authorities**

**32.** The Secretary of State may direct a local authority—

- (a) to make arrangements of any description within regulations 28(1)(b), 30 and 31 (discharge of health scrutiny functions by overview and scrutiny committees, joint overview and scrutiny committees and co-option); and
- (b) to comply with such requirements in connection with the arrangements as the Secretary of State may direct.

### **Revocations and consequential amendment**

**33.**—(1) The following Regulations are revoked—

- (a) the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002<sup>(21)</sup>;
- (b) the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Amendment Regulations 2004<sup>(22)</sup>.

(2) After regulation 9(7) of the Local Authorities (Committee System) (England) Regulations 2012<sup>(23)</sup>, there is inserted—

“(7A) In paragraph (7) the reference to “information” does not include information in respect of which provision may be made in exercise of the power conferred by section 244(2)(d) or (e) of the National Health Service Act 2006.”

### **Saving and transitional provision**

**34.**—(1) Where a relevant committee has reviewed or scrutinised a matter under regulation 2 of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (“the 2002 Regulations”) before the relevant date but, as at that date, has yet to make a report

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<sup>(21)</sup> S.I. 2002/3048, as amended by S.I. 2004/696, 2004/1427, 2006/562, 2008/528, 2010/720 and 2012/1641.

<sup>(22)</sup> S.I. 2004/1427.

<sup>(23)</sup> S.I. 2012/1020.

or recommendation under regulation 3 of those Regulations, the health scrutiny authority may make a report or recommendation on that matter under regulation 22 of these Regulations.

(2) Where before the relevant date a local NHS body, other than an NHS foundation trust, had under consideration a proposal to which regulation 4(1) of the 2002 Regulations applied, but as at the relevant date had not consulted the relevant committee—

- (a) if the body was a Primary Care Trust or Strategic Health Authority, the Board or clinical commissioning group which is responsible from the relevant date for arranging the services to which the proposal relates, or
- (b) if the body was an NHS trust or NHS foundation trust, that trust, must consult the health scrutiny authority in accordance with regulation 23 of these Regulations.

(3) This paragraph applies where—

- (a) a relevant committee has been consulted by a local NHS body pursuant to regulation 4(1) of the 2002 Regulations before the relevant date;
- (b) the date specified under regulation 4(4) of the 2002 Regulations (“the specified date”) is on or after the relevant date; and
- (c) the relevant committee has not made comments on the proposal by the relevant date.

(4) Where paragraph (3) applies—

- (a) the health scrutiny authority may make comments under regulation 23(4), as if the specified date was the date referred to in that paragraph, to—
  - (i) if the local NHS body was a Primary Care Trust or Strategic Health Authority, the relevant body; or
  - (ii) if the local NHS body was an NHS trust, that trust; and
- (b) regulation 23(1) and regulations 23(5) to (14) and 25 apply in relation to the consultation and proposal, as if the relevant body had consulted the authority under regulation 23(1).

(5) This paragraph applies where—

- (a) a relevant committee has been consulted by a local NHS body pursuant to regulation 4(1) of the 2002 Regulations before the relevant date;
- (b) the relevant committee has made comments on the proposals by the relevant date; and
- (c) the local NHS body has not made a decision on the proposal by the relevant date.

(6) Where paragraph (5) applies, regulations 23(5) to (14) and 25 apply in relation to the consultation and proposal, as if—

- (a) the health scrutiny authority had made comments on the proposal;
- (b) the relevant body (if the local NHS body was a Primary Care Trust or Strategic Health Authority) or the NHS trust (if the local NHS body was such a trust) had consulted the authority under regulation 23(1).

(7) This paragraph applies where a relevant committee has before the relevant date referred a matter to the Secretary of State under regulation 4(5) or (7) of the 2002 Regulations, but the Secretary of State has not made a decision on that referral by that date.

(8) Where paragraph (7) applies, the Secretary of State may make a decision and, the Secretary of State and the Board may give directions, in accordance with regulation 25, as if the referral had been made by a health scrutiny authority under regulation 23(9).

(9) This paragraph applies where an NHS foundation trust has consulted a relevant committee under regulation 4A(2) of the 2002 Regulations before the relevant date, but—

- (a) the date specified under regulation 4A(3) is on or after the relevant date and the committee has not made comments on the proposal by that date; or
  - (b) the relevant committee has made comments on the proposal before the relevant date, but the trust has not made an application to Monitor by the relevant date.
- (10) Where paragraph (9) applies, regulation 4A of the 2002 Regulations continues to apply in relation to the proposal, as if the health scrutiny authority were the relevant committee.
- (11) For the purposes of this regulation—
- “local NHS body” has the meaning given in the 2002 Regulations;
  - “health scrutiny authority”, in relation to a relevant committee, means—
    - (a) the local authority or authorities which arranged for the discharge of functions under the 2002 Regulations by the relevant committee; or
    - (b) any other person or body who exercises relevant functions of the authority or authorities under these Regulations;
  - “relevant body or bodies” in relation to a proposal, means the clinical commissioning group or groups or the Board responsible for arranging the provision of the services which are the subject of the proposal;
  - “relevant committee” means an overview and scrutiny committee or joint overview and scrutiny committee which exercised functions under the 2002 Regulations;
  - “relevant date” means 1st April 2013.