

# NATIONAL HEALTH SERVICE REFORM AND HEALTH CARE PROFESSIONS ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – National Health Service, etc.**

#### **Patient and public involvement**

#### *Section 15: Establishment of Patients' Forums*

87. The NHS Plan set out the new arrangements for involving patients and the public, in the way the NHS is run. Central to this are Patients' Forums. They will be independent bodies established for each PCT and NHS trust in England, with members drawn from voluntary sector organisations representing patients and/or carers and from individual patients. Their main role will be to provide direct input from patients to NHS trusts and PCTs on the range and operation of local NHS services. The members of Patients' Forums will be appointed by CPPIH.
88. *Section 15* requires the Secretary of State to establish a Patients' Forum for each PCT and NHS trust in England and sets out their functions. These include monitoring and reviewing the services for which the trust is responsible, obtaining and reporting the views of patients and their carers to their trust, and making available to patients and carers advice and information about those services provided or arranged by the trust.
89. *Subsection (2)(e)* provides that in circumstances set out in regulations, the Patients' Forum can take on responsibility for arranging or providing services to assist patients. This could include Patient Advice and Liaison Services ("PALS") where the trust PALS was proved not to be performing satisfactorily.
90. *Subsection 2(f)* provides that the Secretary of State may by regulations confer additional functions on Patients' Forums.
91. *Subsection (4)* provides a Patients' Forum with the right to refer matters of which it becomes aware in the course of exercising its functions to the relevant overview and scrutiny committee and/or to CPPIH where it feels this is appropriate. *Subsection (5)* makes it clear that this does not restrict the power of a Patients' Forum to make representations or referrals to any other persons or bodies as it thinks fit.
92. *Subsection (8)(b)* makes clear that the services to which a Patients' Forum's functions relate include those of a trust exercising health related functions of a Local Authority under arrangements with the Local Authority pursuant to section 31 of the Health Act (eg. social care services).

### ***Section 16: Additional functions of PCT Patients' Forums***

93. *Section 16* provides for Patients' Forums established for PCTs to have additional functions.
94. *Section 16(1)(a)* gives PCT Forums the specific function of providing independent advocacy services. *Section 16 (5)* amends section 19A of the 1977 Act (as inserted by the HSC Act) to enable the Secretary of State to direct a PCT Patients' Forum to discharge his function of arranging for the provision of independent advocacy services. The combined effect of these two subsections is to enable PCT Forums to both provide or commission independent complaints advocacy. Subsection 16(5) also prevents PCT Patients' Forums from commissioning independent advocacy services from themselves. *Section 16(1)(b)* and *(3)(b)* give PCT Patients' Forums the responsibility of providing advice to patients and carers about the local complaints process and to the public on how they can get involved more generally. *Section 16(1)(c)* provides for PCT Patients' Forums to make representations to local bodies, in particular overview and scrutiny committees, on the views of members of the local public about matters that affect their health.
95. *Section 16(3)* provides for PCT Patients' Forums to promote the involvement of local people in local decision making processes. It also gives PCT Patients' Forums the role of advising Strategic Health Authorities, PCTs, NHS trusts, other public bodies and others providing services to the public on how to encourage such involvement, including how the NHS bodies might carry out their duty to involve the public under section 11 of the HSC Act; and of monitoring how successful these bodies are at achieving such involvement.

### ***Section 17: Entry and Inspection of Premises***

96. *Section 17* gives the Secretary of State power to make regulations requiring Strategic Health Authorities, HAs, PCTs, LHBs, NHS trusts, Local Authorities, providers of family health services (e.g. GPs, pharmacists, dentists and opticians), as well as others who own or control premises where family health services are provided, to allow authorised members of Patients' Forums to inspect premises owned or controlled by them. The requirement to allow access may be limited to the cases and circumstances set out in regulations and subject to any limitations or conditions specified in those regulations.

### ***Section 18: Annual reports***

97. *Section 18* requires Patients' Forums to produce annual reports of their activities after the end of the financial year, to be submitted to the Patients' Forum's trust, the Secretary of State, CPPIH and the relevant overview and scrutiny committee and Strategic Health Authority. The Patients' Forum must include in the report a section that shows how it obtained the views of patients during the year.

### ***Section 19: Supplementary***

98. *Section 19* enables the Secretary of State to make further provision in regulations for Patients' Forums, in particular concerning funding, accounts, membership and appointments, committees and proceedings, payments for members, premises and staff, reports, the provision of information to or by Patients' Forums and the referral of matters to overview and scrutiny committees.
99. It is the Government's intention that Patients' Forums will receive their money via CPPIH. As such, the Patients' Forums' accounts will form part of the accounts of the CPPIH. *Subsection (2)(j)* provides for this.
100. As regards membership, the regulations must provide for members of the Patients' Forum to include representatives of local patient or carer voluntary sector groups, as

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well as patients of the trust. *Subsection (4)* provides that the PCT Patients' Forum must also include in its membership at least one member of each Patients' Forums of the NHS trusts that provide services in the PCT area. In addition, it provides that the CPPIH may include representatives of appropriate local community interest groups which represent the local public in matters relating to their health as members of the PCT Patients' Forum.

101. *Subsection (5)* provides that the regulations may include similar requirements about public access to meetings and information of Patients' Forums as now apply to CHCs and overview and scrutiny committees (with appropriate modifications to account for the different role and constitution).
102. *Subsection (6)* provides that correspondence from Patients' Forums is to be added to the list of bodies exempt from subsections (1)(b) and (2) of section 134 of the Mental Health Act 1983, which provide for the withholding of postal packets to and from persons held under that Act.

### ***Section 20: The Commission for Patient and Public Involvement in Health***

103. *Section 20,, subsection (1)* establishes an independent body corporate, to be known as CPPIH.
104. *Subsections (2)(a) and (2)(b)* provide for CPPIH to advise the Secretary of State, and such other bodies as the Secretary of State may prescribe in regulations, about the arrangements that are in place for the involvement and consultation of patients and the public in matters relating to the health service in England; and on arrangements for the provision of independent advocacy services (to be provided under section 19A of the 1977 Act).
105. *Subsection 2(c)* provides for CPPIH to report to and advise the Secretary of State, and such other bodies as the Secretary of State may prescribe in regulations, on the views of organisations representing patients and their carers, including Patients' Forums, on such arrangements (for example, how effectively they are operating).
106. *Subsection (2)(d)* provides for CPPIH to facilitate the co-ordination of Patients' Forums activities and to provide advice and assistance to Patients' Forums including staff for PCT Patients' Forums. It is intended that CPPIH will, through the staff provided to PCT Patients' Forums, provide administrative support to NHS trust Patients' Forums.
107. *Subsection (2)(e)* provides for CPPIH to give advice and assistance to providers of independent advocacy services. This could be, for example, in the form of guidance or training.
108. *Subsection (2)(f)* specifies that CPPIH will set quality standards for (i) the activities of Patients' Forums and (ii) the provision of independent advocacy services. It will also monitor how effectively these standards are met and make recommendations to them about how to improve their performance against those standards.
109. *Subsection (2)(g)* enables the Secretary of State in regulations to prescribe other functions for CPPIH.
110. *Subsection (3)* specifies CPPIH's function to promote public involvement in decisions and consultations on matters affecting the health of the population. It will do this at a national level whilst PCT Patients' Forums will do so at a local level. The bodies making decisions and carrying out consultations to which *subsection (3)* relates are described in *subsection (4)*, namely health service bodies but also other public bodies and others providing services to the public. *Subsection (5)* also confers on CPPIH a function of reviewing the annual reports of Patients' Forums and making any recommendations or reports to the Secretary of State and others that it thinks are necessary on matters arising from the annual reports.

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111. *Subsections (6) and (7)* place a duty on CPPIH to report to those it considers appropriate matters of concern about patient safety and welfare, where these are not being dealt with satisfactorily. An example might be that if it were made aware, as a result of the monitoring of a trust by a Patients' Forum, of a unit within a trust with a particularly high mortality rate, it might then report its concerns to, for example, a body such as CHI, the National Patients Safety Agency, the National Care Standards Commission or the police.
112. *Subsection (8)* allows CPPIH to make charges as it sees fit for the provision of its advice or other services. It is envisaged that in practice CPPIH will want to use this power to recover reasonable costs incurred in providing its services, but there may also be opportunities for CPPIH to supplement its income in this way, for example by charging for advice provided to private hospitals. Regulations may be made to set limits on this - for example, it is not intended that CPPIH would charge for the advice it provides to the Secretary of State or for the routine guidance and training materials it provides to Patients' Forums and providers of independent advocacy services.
113. *Subsection (9)* gives the Secretary of State power by regulations to make further provision about CPPIH and *subsection (10)* provides by way of example that those regulations may make provision about the information that should be made available to CPPIH by Strategic Health Authorities, Special Health Authorities, NHS trusts, PCTs, Patients' Forums or providers of independent advocacy services.
114. *Subsection (11)* gives effect to *Schedule 6*. *Schedule 6* makes provision about constitution, membership, the payment of allowances, appointment of staff, the delegation of functions, arrangements for assistance with functions, payments and loans, accounting and auditing arrangements, reporting and the miscellaneous amendments needed in relation to other legislation. It also provides for the Secretary of State to delegate his function of appointing the chair of CPPIH to a Special Health Authority. In practice, this will be the NHS Appointments Commission.

### ***Section 21: Overview and scrutiny committees***

115. This section provides for a referral process by overview and scrutiny committees to the Secretary of State for Health and the Assembly in relation to their health scrutiny activities under section 21 of the Local Government Act 2000. Further details about the circumstances in which referrals may be made and the nature of the referrals may be set out in regulations made under section 7 of HSC Act – functions of overview and scrutiny committees.

### ***Section 22: Abolition of Community Health Councils in England***

116. *Subsections (1) and (2)* provide for the abolition of CHCs in England.
117. Paragraph 5 of Schedule 7 to the 1977 Act provides that the Secretary of State may by regulations provide for the establishment of a body to advise and assist CHCs. The [National Health Service \(Association of Community Health Councils\) Regulations \(S.I.1977/874\)](#), made under that paragraph, established ACHCEW. *Subsection (3)* provides for the abolition of that body, but *subsection (4)* ensures that the Assembly may continue to exercise the power in paragraph 5 and establish a new body to advise and assist CHCs in Wales.
118. *Subsection (5)* provides for the transfer of rights and liabilities and, in the case of ACHCEW property, of members and former members of CHCs and members and former members of CHCs which were members of ACHCEW. Any such transfer must be to a person listed in *subsection (6)*. In the case of the Association a transfer may also be made to the Assembly. Under *subsection (7)*, transfers from ACHCEW require consultation with the Assembly.

**Section 23: Joint working with the prison service**

119. This section make provision for the NHS and the prison service to work together to fulfil their functions more effectively. It will enable regulations to be made to enable them to pool their resources and to delegate functions and resources from one party to another. It also introduces an explicit duty of co-operation between the NHS and the prison service to secure and maintain the health of prisoners. Responsibility for the health of prisoners is shared between the prison service and the NHS. Following publication in 1999 of the report *The Future Organisation of Prison Health Care*<sup>1</sup>, a formal partnership has already been established between the prison service and the NHS with the aim of ensuring that prisoners have access to health services which are as far as possible equivalent to those available to the general population from the NHS.
120. *Section 23* removes existing legal barriers to joint working between the NHS and the prison service. The measures set out in this section are intended to allow NHS bodies and the prison service to agree jointly who is best placed to carry out certain of their functions, and to agree how resources might be used in joint working arrangements. They parallel the provisions that exist to allow closer working between the NHS and Local Authorities under section 31 of the Health Act. This section removes some of these barriers by allowing NHS bodies and the prison service to:
- pool resources, which will mean that the agreed resources contributed to the pool can be used on any of the functions agreed by the partner agencies when the pool is established. This is intended to allow staff from either agency to develop packages of care suited to the needs of prisoners irrespective of whether health or prison service money is used; and
  - delegate functions to one another. This will allow, for example, one of the partner bodies to commission or provide all mental health services for a group of prisoners. It is expected that this will improve the integration of the services commissioned or provided.
121. These joint working arrangements need to be able to respond to local needs and will not necessarily be appropriate in all areas, or for all prisoners. The powers are therefore discretionary, not mandatory.
122. *Subsection (1)* introduces an explicit duty of co-operation between the NHS and the prison service to secure and maintain the health of prisoners, making clear the intention that NHS bodies and the prison service are expected to work together.
123. *Subsection (2)* provides for the Secretary of State in relation to England and the Assembly in relation to Wales to make regulations setting out the details of the joint working arrangements. These arrangements can only be used if doing so leads to an improvement in the way in which the bodies' functions are exercised, which might, for example, include better outcomes for service users. *Subsection (3)* sets out examples of the new operational working arrangements.
124. *Subsection (3)(a)* enables the creation of pooled budgets made up of contributions from the NHS and the prison service. The resources contributed by each body will lose their identity as health or prison service money, and will be used to carry out the functions agreed by the partner agencies when the pool is established. The pool will be able to fund both health and prison service activity as set out in regulations.
125. *Subsections (3)(b)* and *(3)(c)* allow both NHS bodies and the prison service to delegate some of their functions to the other partner. These functions will be prescribed in regulations. In relation to health services for prisoners, the effect of these subsections will be to allow in particular:

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<sup>1</sup> For copies: postal address: PO Box 777, London SE1 6XH. Website address: <http://193.32.28.83/nhsexec/prison.htm>

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- the prison service to delegate specified commissioning functions to NHS commissioning bodies, and vice versa; and
  - the prison service to delegate specified provider functions to NHS bodies and vice versa.
126. *Subsections (3)(d) to (3)(f)* provide for practical arrangements to support the exercise of these provisions for budget pooling and delegation.
127. *Subsection (4)* makes it clear that, where an NHS body or the prison service delegates its functions under the arrangements in this section, that body will remain liable for the exercise of those functions.

#### ***Section 24: Health and well-being strategies in Wales***

128. *Section 24* is intended to give effect to the Assembly's commitment to ensure joint working in the development and implementation of local strategies for health and well-being.
129. *Subsection (1)* places a duty on each newly created LHB and each Local Authority in Wales to formulate and implement a health and well-being strategy for the area. (LHBs and Local Authorities will be co-terminous).
130. *Subsection (3)* requires the LHBs and Local Authorities to have regard to their strategy in the exercise of their functions.
131. *Subsection (4)* empowers the Assembly, by regulations, to set the time period to which the strategy will apply. Under *subsections (5) and (6)* further provision about such strategies may be made by the Assembly by regulations. Such regulations may in particular require LHBs and Local Authorities to co-operate with other prescribed bodies such as NHS trusts, voluntary bodies and local businesses in formulating their strategy (*subsection (6)(a)*) The regulations may also cover such issues as steps to be taken before formulation of the strategy (*subsection (6)(b)*) and measures to avoid duplication between health and well-being strategies and other strategies prescribed in the regulations (*subsection (6)(g)*). This might include, for example, the Community Care Plan under section 46 of the National Health Service and Community Care Act 1990 (the 1990 Act).