

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – The Health Service in England**

##### **The health service: overview**

##### *Schedule 1 - The National Health Service Commissioning Board*

100. This Schedule inserts new Schedule A1 into the NHS Act. This new Schedule makes provision for the constitution and establishment of the NHS Commissioning Board. Paragraph 1 provides that the NHS Commissioning Board (a non-Departmental public body) is not to be regarded as a servant or agent of the Crown.
101. [Paragraph 2](#) makes provision about the membership of the NHS Commissioning Board.
102. Sub-paragraph (3) of paragraph 2 requires that the number of executive members of the NHS Commissioning Board must not exceed the number of non-executive members. This would mean that where there were resignations, suspensions or other departures of non-executive members, it might be necessary to appoint additional members or remove members from the NHS Commissioning Board to ensure that the number of executives was less than the number of non-executives.
103. [Paragraph 3](#) provides that the executive members of the NHS Commissioning Board must be appointed by the non-executive members. Sub-paragraph (2) requires that the appointment of the chief executive receives the approval of the Secretary of State. Sub-paragraph (3) provides that the chief executive and the other executive members must be employees of the NHS Commissioning Board. Sub-paragraph (4) requires that the Secretary of State appoints the first chief executive of the NHS Commissioning Board. The other remaining first executive members will therefore be appointed by the non-executive members.
104. [Paragraph 4](#) makes provision about the terms of appointment and tenure of office of non-executive members of the NHS Commissioning Board which are equivalent to those for members of Monitor under Schedule 8 to the Act: the terms of their appointment will set out the detail of the basis on which non-executive members will hold and vacate office. In sub-paragraph (2) provision is made to enable a non-executive member to resign at any time by giving notice to the Secretary of State and sub-paragraphs (3) and (4) enable the Secretary of State to remove or suspend non-executive members from office on grounds of incapacity, misbehaviour or failure to carry out their duties as a non-executive member.
105. Sub-paragraphs (5) and (6) specify that the maximum term of appointment for non-executive members of the NHS Commissioning Board is 4 years and that a person who ceases to be a non-executive member is eligible for re-appointment.

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(c.7) which received Royal Assent on 27 March 2012*

106. [Paragraph 5](#) sets out the procedural requirements to be complied with when the Secretary of State suspends a non-executive member of the NHS Commissioning Board under the power in [sub-paragraph 4 \(4\)](#).
107. [Paragraph 6](#) provides that the Secretary of State has power to appoint an interim chair where the chair is suspended. The NHS Commissioning Board will have no power to appoint an interim chair but could choose in practice to appoint a deputy chair (regardless of any suspension of the chair).
108. [Paragraph 7](#) requires the NHS Commissioning Board to pay to the non-executive members such remuneration, pensions, allowances or other gratuities as the Secretary of State may determine. Sub-paragraph (3) provides that, where a non-executive member of the NHS Commissioning Board ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances for that person to receive compensation, the NHS Commissioning Board is required to make compensation payments of such amount as Secretary of State may determine with HM Treasury approval.
109. [Paragraph 8](#) gives the NHS Commissioning Board powers to appoint employees.
110. [Paragraph 9](#) provides that the NHS Commissioning Board can employ staff on such terms and conditions and pay such remuneration, pensions or allowances as it may determine. In common with the other arm's-length bodies covered by this Act (for example, NICE and the Information Centre), the NHS Commissioning Board will be required to seek the approval of the Secretary of State for its policies on the payment of remuneration, pensions and allowances to staff before making a determination under this paragraph.
111. [Paragraph 10](#) provides that the NHS Commissioning Board may appoint committees and sub-committees, and pay remuneration and allowances to those members of a committee or sub-committee who are not employees of the NHS Commissioning Board.
112. The NHS Commissioning Board may hold property on trust and paragraph 11 confers a power on the Secretary of State to appoint trustees to oversee the management of any property held on trust.
113. [Paragraph 12](#) provides that the NHS Commissioning Board is to regulate its own procedure and must make any arrangements that it considers appropriate for the discharge of its functions. The NHS Commissioning Board may, for example, use this power to manage the risk of a conflict of interest by preventing executive members from being involved in determining their own pay.
114. [Paragraph 13](#) gives the NHS Commissioning Board the power to arrange for the exercise of any of its functions on its behalf by:
  - a) any non-executive member,
  - b) any employee (including any executive member), or
  - c) one of its committees or sub-committees.
115. [Paragraph 14](#) gives the Secretary of State power to require the NHS Commissioning Board to provide the Secretary of State with such information as the Secretary of State requires, in such form, and at such time or within such period, as the Secretary of State considers is necessary to delivery of the Secretary of State's functions in relation to health services.
116. [Paragraph 15](#) requires that the NHS Commissioning Board must keep proper accounts and proper records in relation to the accounts (in such form as the Secretary of State may direct with the approval of HM Treasury). The chief executive of the NHS Commissioning Board is to be its accounting officer.

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117. The NHS Commissioning Board sits within the Department of Health accounting and budgeting boundaries and the Department requires information to effectively and efficiently manage its financial position against, for instance, Departmental Expenditure Limits. In addition, the Department has a responsibility to provide information on those bodies for which it is accountable in order to meet requirements that may be set by HM Treasury and others on both financial and non-financial matters.
118. [Paragraph 16](#) requires the NHS Commissioning Board to prepare consolidated annual accounts in respect of each financial year. Consolidated annual accounts should contain the NHS Commissioning Board's own annual accounts and separately a consolidation of the NHS Commissioning Board's own annual accounts and the annual accounts of each CCG.
119. Sub-paragraph (3) of paragraph 16 requires the NHS Commissioning Board to submit the consolidated annual accounts to the Secretary of State and to the Comptroller and Auditor General for audit to a timetable prescribed by the Secretary of State, who will remain accountable to HM Treasury for the Department's Departmental Expenditure Limit. The Department's annual Resource Account must be prepared in accordance with the accounting rules and instructions set out by HM Treasury in its annual Financial Reporting Manual (FRoM). In turn, the accounts of all bodies that are consolidated into the Department's Resource Account must be prepared in accordance with the same HM Treasury accounting framework. The Secretary of State therefore requires powers to ensure that the NHS Commissioning Board's accounts, including the consolidation of its accounts with those of CCGs, are prepared in accordance with the requirements set by HM Treasury.
120. Sub-paragraph (4) of paragraph 16 requires the Comptroller and Auditor General to examine the consolidated annual accounts of the NHS Commissioning Board and lay copies of the accounts, along with a report on them, before Parliament.
121. Additional provision is made in paragraph 17 for the Secretary of State, with the approval of HM Treasury, to require in-year 'interim' accounts to be prepared and for the Secretary of State to direct that these are audited.
122. [Paragraph 18](#) makes provision in relation to the NHS Commissioning Board's seal.