

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

#### **Arrangements for provision of health services**

#### ***Section 23 - The NHS Commissioning Board: further provision***

#### **Intervention powers**

237. *Failure by the Board to discharge any of its functions.* New section 13Z2 confers a power on the Secretary of State to intervene in cases of significant failure of the NHS Commissioning Board to carry out any of its functions properly or at all. Failure to discharge a function properly would include failure to discharge that function consistently with what the Secretary of State considers to be in the interests of the health service (subsection (5)). It is in line with similar powers in the case of significant failure of the other arm's-length bodies.
238. Similar intervention powers exist in respect of Monitor and the Care Quality Commission, but with the difference that as regards those bodies the Secretary of State would not be able to intervene in a particular case - he would have to demonstrate that the failure was more widespread. This limitation is intended to maintain the independence of the regulators, but is not appropriate with respect to the NHS Commissioning Board. The NHS Commissioning Board has a wide range of functions in relation to the health service. As a result, in the event of significant failure, it might be appropriate for the Secretary of State to intervene in a particular case, for example if the NHS Commissioning Board failed to allocate funds to a particular CCG or if it failed to commission a service as required by the NHS Act.
239. The powers conferred by this new section are not intended to be powers that the Secretary of State would use regularly or routinely to intervene in the affairs of the NHS Commissioning Board.