

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8 – The National Institute for Health and Care Excellence

Functions: advice, guidance etc.

Section 237 – Advice, guidance, information and recommendations

1382. This section describes how, as well as preparing quality standards, NICE may be able, under regulations, to give advice or guidance, or provide information or make recommendations on matters relating to the provision of NHS services, public health services or social care in England. The guidance provided for in regulations could include guidance on new and existing medicines, treatments and procedures and treating and caring for people with specific diseases and conditions or with particular social care needs. Regulations might also provide for NICE to be able to publish or disseminate advice, guidance, information or recommendations to the NHS, local authorities or other organisations in the public, private, voluntary or community sectors on how to improve people's health and prevent illness and disease.
1383. The section gives the Secretary of State a regulation-making power to enable him to confer additional functions on NICE. *Subsections (2) and (3)* enable provision to be made for functions conferred on NICE by regulations to be exercisable only on or subject to directions of the Secretary of State or the NHS Commissioning Board in relation to NHS services, or the Secretary of State in relation to public health services or social care. The direction-giving powers ensure that either the Secretary of State or the Board will have the flexibility to commission work from NICE. However, neither will be able to direct NICE as to the substance of its advice, guidance or information or recommendations (*subsection (4)*). *Subsection (5)* describes the additional provision that such regulations might make, such as for the persons or bodies that may commission work from NICE or matters relating to the publication or other dissemination of NICE products. *Subsections (5)(c) and (6)* enable such regulations to make provision for NICE to impose charges in connection with such giving of advice or guidance, provision of information or making of recommendations. *Subsection (7)* requires such regulations to make provision for NICE to set up, through consultation, processes for the development of such advice, guidance, information or recommendations.
1384. *Subsections (8) and (9)* allow regulations to require specified public bodies to have regard to NICE advice or guidance, or to comply with NICE's recommendations. The provision allows replication of the effect of an existing funding direction requiring commissioners to make funding available within three months for treatments recommended by NICE's technology appraisal guidance, so they are made normally available. *Subsection (10)* states that such regulations may only apply to local authorities in relation to their public health functions.