
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to Health and Wellbeing Boards established under section 194 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”) (Part 2), local authority public health functions (Part 3) and review and scrutiny of the local health service by local authorities (Part 4).

Part 2 modifies provisions in primary legislation relating to a committee appointed under section 102 of the Local Government Act 1972 (c.70) (“the 1972 Act”) in so far as those provisions relate to Health and Wellbeing Boards and provides that certain provisions do not apply to Health and Wellbeing Boards. The modification and disapplication provisions also apply to sub-committees of Health and Wellbeing Boards and joint sub-committees of such boards.

Regulation 3 modifies section 101(2) of the 1972 Act to enable certain functions of Health and Wellbeing Boards to be carried out by a sub-committee of a Health and Wellbeing Board and for functions of Health and Wellbeing Boards under section 196(2) of the 2012 Act to be carried out by a sub-committee of the Board or an officer of the local authority. The modification will also enable a sub-committee of the Board to arrange for functions under section 196(2) of the 2012 Act to be carried out by an officer of the authority.

Regulation 4 makes provision for section 102(2) of the 1972 Act to apply subject to section 194(2) to (9) of the 2012 Act and modifies section 102 to allow a Health and Wellbeing Board to appoint a sub-committee to advise the Board.

Regulation 5(1) disapplies section 104(1) of the 1972 Act in so far as that provision relates to Health and Wellbeing Boards, a sub-committee of such a Board, or a joint sub-committee of two or more such Boards so as to remove the restrictions which would prevent certain local authority officers from being members of Health and Wellbeing Boards.

Regulation 5(2) provides that regulation 5(1) does not apply in so far as it relates to section 80(1) (b) and (d) of the 1972 Act.

Regulation 6 modifies section 13(1) of the Local Government and Housing Act 1989 (c.42) (“the 1989 Act”) so as to enable all members of Health and Wellbeing Boards to vote in a section 102 committee meeting unless the local authority directs otherwise.

Regulation 7 disapplies the political balance requirements as set out in sections 15 and 16 of, and Schedule 1 to the 1989 Act, which apply to local authorities in relation to appointments to committees and sub-committees under section 102 of the 1972 Act in so far as those provisions relate to Health and Wellbeing Boards, a sub-committee of such a Board or a joint sub-committee of two or more such Boards.

Part 3 makes provision for the weighing and measuring of children in attendance at schools under arrangements provided for by local authorities. These weighing and measuring exercises are collectively known as the National Child Measurement Programme. This Part also provides for the processing of the resulting information, including the processing of personal information relating to the children concerned.

Personal information relating to children participating in a weighing and measuring exercise is prescribed under regulation 9 and may be disclosed to the person carrying out the weighing and measuring exercise (regulation 10). The meaning of “weighing and measuring exercise” is defined in regulation 8.

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Regulation 11 sets out the conditions subject to which children may be weighed and measured and provides that the resulting information and any personal information relating to the children concerned may be processed where those conditions are met.

Regulation 12 makes provision for parents to have an opportunity to “opt-out” their child from the National Child Measurement Programme.

Regulation 13 provides that a local authority may disclose information resulting from a weighing and measuring exercise, and personal information relating to the children concerned, for the purposes of research, monitoring, audit or the planning of services or for any purpose connected with public health. Such information may only be disclosed in a form in which no individual child can be identified.

Regulation 14 provides for the disclosure of information resulting from the weighing and measuring exercise about an individual child to the child’s parents, or to a health professional, with a view to the information being used to help the child concerned to improve its health.

Local authorities are required to forward specified information resulting from the weighing and measuring exercise together with personal information relating to the children concerned to the Health and Social Care Information Centre (regulation 15), referred to in these Regulations as “the Information Centre” (regulation 8). This information may be further processed by the Information Centre for the purposes of surveillance, research, monitoring, audit or the planning of health services and for onward disclosure in accordance with regulation 16 to the Department of Health, local authorities or any other person, subject to the conditions in that regulation.

Regulation 17 requires any person carrying out functions in relation to weighing and measuring or in relation to the processing of information, to have regard to guidance issued by the Secretary of State.

The National Child Measurement Programme Regulations 2008, under which Primary Care Trusts carried out the weighing and measuring of children in schools, are revoked (regulation 18).

Regulation 19 amends the Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 (“the principal Regulations”).

Regulation 4 of and Schedule 2 to the principal Regulations are amended to set out additional services which are excluded from a right whereby certain bodies may submit an expression of interest in providing or assisting in providing services on behalf of specified authorities (“relevant authorities”) in the exercise of any of those relevant authorities’ functions in relation to England (regulation 19(4) of these Regulations). These additional services are services relating to the exercise of the public health functions of local authorities (paragraph 5 of Schedule 2 to the principal Regulations); the public health advice services which are provided by local authorities to clinical commissioning groups (paragraph 6 of Schedule 2 to the principal Regulations); and (with effect from 1st April 2015) health visiting and related services for children under five (paragraph 7 of Schedule 2 to the principal Regulations).

The services specified in paragraph 5 of Schedule 2 to the principal Regulations are excluded from the right only until 1st April 2014 (regulation 19(2) of these Regulations); and the services specified in paragraph 7 of that Schedule are excluded from the right from the date on which the exclusion takes effect (1st April 2015) until 1st April 2016 (regulation 19(3) of these Regulations).

Part 4 makes provision in relation to the health scrutiny functions of local authorities. Section 244 of the National Health Service Act 2006 (c.41) (“the 2006 Act”) confers a power to make regulations on review and scrutiny of matters relating to the health service (“health scrutiny”) by local authorities. The 2012 Act made various changes to the system of health scrutiny. This included provision for health scrutiny functions to be conferred on local authorities directly with powers to enable those authorities to make various arrangements for the discharge of those functions, including discharge by overview and scrutiny committees. Part 4 makes provision accordingly.

Regulation 21 enables a local authority to review and scrutinise matters relating to the planning, provision and operation of the health service in its area. It sets out duties that the local authority

must discharge in carrying out such review and scrutiny. Regulation 21 also sets out duties that apply where a matter is referred to a local authority by a Local Healthwatch organisation or a representative of such an organisation.

Regulation 22 enables a local authority to make reports and recommendations to certain NHS bodies and certain providers of health services (“responsible persons”) on matters reviewed or scrutinised by it and imposes duties on those persons to respond where the local authority so requests. Where a committee, sub-committee or another local authority is discharging health scrutiny functions of a local authority (“the first local authority”), regulation 22 enables that committee, sub-committee or other local authority to make reports and recommendations to the first local authority. It sets out information which must be included in a report or recommendation.

Regulation 23 deals with consultation of local authorities by responsible persons on proposals (“relevant proposals”) for substantial developments of the health service or for substantial variations in the provision of the health service. The duty does not apply where a responsible person is of the view that there is insufficient time for consultation because of a risk to the safety or welfare of patients or staff. Regulation 23 also requires a local authority and responsible person to take steps to try to reach agreement in relation to any recommendations made by a local authority in relation to a relevant proposal. It enables a local authority to report on relevant proposals to the Secretary of State in certain circumstances. It also provides for the duties, under regulation 23, of a responsible person who is a provider of services to be discharged by a clinical commissioning group or groups or the National Health Service Commissioning Board (“the Board”) responsible for arranging the provision of services to which the relevant proposal relates.

Regulation 24 sets out proposals to which the duty to consult under regulation 23 does not apply.

Regulation 25 enables the Secretary of State to give Directions to the Board and the Board to give Directions to a clinical commissioning group in relation to proposals on which the local authority has reported to the Secretary of State.

Regulation 26 imposes duties on responsible persons to provide a local authority with information about the planning, provision and operation of health services in the area of the authority as it may reasonably require to discharge its health scrutiny functions.

Regulation 27 requires persons who are members or employees of responsible persons to comply with requests by local authorities to attend before them to answer questions which the authorities consider necessary for discharging their health scrutiny functions.

Regulation 28 enables a local authority to make arrangements for the discharge of its health scrutiny functions by an overview and security committee of its or of another local authority in certain circumstances.

Regulation 29 disapplies, in relation to health scrutiny functions of local authorities, various provisions of section 101 of the 1972 Act which relates to arrangements by a local authority for the discharge of its functions by a committee, sub-committee or officer of the authority or by another local authority. The effect of the disapplication is to prevent local authorities from making certain of those arrangements in relation to specified health scrutiny functions. This includes—

disapplication of section 101 in relation to the function of making reports to the Secretary of State on relevant proposals under regulation 23;

disapplication of section 101(1)(a) in relation to health scrutiny functions, in so far as it relates to an officer;

disapplication of section 101(5) which enables two or more local authorities to discharge their functions jointly. Joint arrangements are provided for in regulation 30.

Regulation 30 enables local authorities to appoint a joint committee for the discharge of health scrutiny functions and requires local authorities to do so in certain circumstances.

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Regulation 31 enables a county council to arrange for members of an overview and scrutiny committee of its district councils to be appointed to their own overview and scrutiny committee (“co-option”).

Regulation 32 enables the Secretary of State to direct local authorities to make arrangements for the discharge of their health scrutiny functions by overview and scrutiny committees, joint overview and scrutiny committees or to make arrangements for co-option.

Regulation 33 revokes—

the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (“the 2002 Regulations”);

the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Amendment Regulations 2004.

It also makes a consequential amendment to the Local Authorities (Committee System) (England) Regulations 2012.

Regulation 34 makes transitional and saving provision in relation to matters outstanding under the 2002 Regulations as at the date of commencement of these Regulations.

A full Impact Assessment has not been produced for this instrument as no or no significant impact on the private sector or civil society organisations is foreseen. A full impact assessment has been produced in relation to the relevant provisions of the 2012 Act and a copy is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583.