

*These notes refer to the Lords Amendments to the Health and Social Care Bill
as brought from the House of Lords on 19 March 2012 [Bill 321]*

HEALTH AND SOCIAL CARE BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Health and Social Care Bill as brought from the House of Lords on 19 March 2012. They have been prepared by the Department of Health in order to assist the reader of the Bill and the Lords Amendments and help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 92, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. These notes include a number of amendments that were not tabled by the Government, but which the Government did not oppose (amendments 2, 3, 24, 31, 39, 40, 54, 59, 63, 70, 71, 72, 74, 80, 81, 82, 83, 97, 126, 177, 179, 182, 183, 185, 243, 244, 246, 287, 292, 300, 301, 302, 320 and 343). Lords Amendment 1 was opposed by the Government. Amendment 7 consists of a new clause which was inserted by an amendment in the name of the Minister at Committee and then amended at Report by an amendment tabled by Lord Patel and supported by the Government. Amendment 8 consists of a new clause which was inserted by an amendment tabled by Lord Patel of Bradford at Committee and then amended at Third Reading by further amendments tabled by him and supported by the Government. All the rest of the amendments were in the name of the Minister. In the following Commentary, an asterisk appears in the heading to each of the paragraphs dealing with non-Government amendments that were opposed by the Government.
5. In these notes, the National Health Service Act 2006 is defined as the “NHS Act 2006”.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendment 1*

6. This amendment would insert the words “physical and mental” before “illness” in section 1(1)(b) of the NHS Act 2006. It does so to emphasise that a comprehensive health service addresses mental as well as physical illness.

Lords Amendment 2

7. This amendment, tabled by Baroness Jay of Paddington and accepted by the Government, would amend clause 1 (Secretary of State’s duty to promote a comprehensive health service) to clarify that the Secretary of State will retain ministerial accountability to Parliament for the provision of the health service.

Lords Amendments 3 and 322

8. Amendment 3 was tabled by Lord Hennessy of Nympsfield and accepted by the Government. The amendment would insert a new section into the NHS Act 2006. This new section places a duty on the Secretary of State to have regard to the NHS Constitution when exercising his functions in relation to the health service.
9. Amendment 322 would add “the NHS Constitution” to the list of defined expressions in section 276 of the NHS Act 2006, and is consequential on amendment 3.

Lords Amendments 4, 5, 17 and 18

10. Amendments 4 and 17 would amend clauses 4 and 20, so as to amend the duties imposed on the Secretary of State and the Board as to promoting autonomy by new sections 1C and 13F of the NHS Act 2006. The duties would become duties to have regard to the desirability of securing autonomy, rather than to act with a view to securing that autonomy.
11. Amendments 5 and 18 also amend the duties so as to provide that in the event of a conflict between the promotion of autonomy and the discharge by the Secretary of State or the Board of their duties to promote the comprehensive health service and secure the provision of services, it is the latter which takes precedence.

Lords Amendments 6, 20 and 34

12. This set of three linked amendments would amend the duty on the Secretary of State (clause 5), the Board (new section 13L as inserted by clause 20) and clinical commissioning groups (new section 14X as inserted by clause 23) in relation to research. The amendments would strengthen the duty, changing it from a requirement, in the exercise of their functions, to ‘have regard to the need to promote’ research relevant to the health service and the use in the health service of evidence obtained from research, to a duty to ‘promote’ such

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activity.

Lords Amendments 7, 21, 26, 35 and 42

13. This set of amendments deal with education and training. Amendment 7 would, by inserting a new section into the NHS Act 2006, place a new duty on the Secretary of State to exercise his functions under the enactments listed in subsection (3) so as to secure that there is an effective system for the planning and delivery of education and training. The duty would apply to education and training for all persons delivering health care including doctors, dentists, nurses, midwives, pharmacists, healthcare scientists and members of the allied health professions. It would also cover trainees at the start of their career, before they enter employment in the NHS.
14. Subsection (2) of new section 1DA (which was inserted into the new section by an amendment tabled by Lord Patel and supported by the Government) would place a requirement on any person commissioning services as part of the health service to include in the arrangements made for the provision of those services a duty on the provider to co-operate with the Secretary of State in discharging his duty as to education and training. If a Special Health Authority is discharging that duty on behalf of the Secretary of State, then the duty would relate to co-operation with that body.
15. Amendments 21 and 35 would place a duty on the NHS Commissioning Board and clinical commissioning groups when exercising their functions, to have regard to the need to promote education and training so as to assist the Secretary of State in the discharge of his related duty. This would apply to any Special Health Authority supporting him in the discharge of his duty.
16. Amendments 26 and 42 would add the new duty to the list of Board or clinical commissioning group functions which are taken to include any public health functions which the Board or clinical commissioning groups are exercising by arrangement with the Secretary of State under section 7A.

Lords Amendment 8

17. This amendment was tabled by Lord Patel of Bradford and opposed by the Government at Committee stage. Lord Patel of Bradford subsequently brought back amendments to this clause at Third Reading, which were supported by the Government. It would insert a new clause into the NHS Act 2006 to impose a duty on the Secretary of State to report on and review the treatment of providers of NHS services.
18. *Subsection (1)* of this new clause would require the Secretary of State to lay a report before Parliament on any matter, including taxation, which might affect either the ability of NHS health care providers to provide health care services for the purposes of the NHS or the reward available to them for doing so. This report would have to be laid before Parliament within 12 months of Royal

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Assent to this Bill.

19. *Subsection (2)* of this new clause would provide that the report must include recommendations as to how the identified differences in the treatment of NHS health care providers could be addressed.
20. *Subsection (3)* would require the Secretary of State to keep under review the treatment of NHS health care providers as respects any differences in treatment identified in the report prepared under subsection (1).

Lords Amendment 9

21. This amendment would amend clause 10, which amends section 3 of the NHS Act 2006 (duties of clinical commissioning groups as to commissioning certain services). It would insert a new subsection (1F) into section 3, so as to require clinical commissioning groups, when exercising their functions under sections 3 and 3A to commission certain health services, to act consistently with the discharge by the Secretary of State and the Board of their duty under section 1(1) of the NHS Act 2006 (duty to promote a comprehensive health service).
22. The new subsection (1F) would also require clinical commissioning groups to act consistently with the objectives and requirements specified in the Secretary of State's mandate to the Board (new section 13A, as inserted by clause 20).

Lords Amendment 10

23. This amendment would make regulations under section 3(1D) of the NHS Act 2006 (inserted by clause 10 of the Bill), subject to the affirmative procedure in Parliament, as recommended by the Delegated Powers and Regulatory Reform Committee. Section 3 of the NHS Act 2006, as amended by the Bill, states that clinical commissioning groups have responsibility for persons provided with primary medical services by a member of the group, and persons usually resident in the group's area, who are not provided with primary medical services by a member of any clinical commissioning group. Regulations under subsection (1D) will enable the Secretary of State to specify that this would not apply to persons of a prescribed description, or in prescribed circumstances – for example, for persons registered with a GP in England, who are resident in Scotland.

Lords Amendments 11 and 12

24. These amendments would further amend Schedule 1 to NHS Act 2006. Paragraphs 7A and 7B of Schedule 1 confer powers on the Secretary of State to make arrangements for the weighing and measuring of children and to make related regulations. Clause 14 amends those paragraphs to confer the function of arranging weighing and measuring on local authorities.
25. The current regulation-making power under paragraph 7B(1) allows the

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Secretary of State to make other provision relating to the processing of information resulting from any weighing or measuring. Amendments 11 and 12 would extend this regulation-making power to include any other prescribed information relating to the children concerned. This would ensure that the Secretary of State could make provision in relation to information held by a local authority relating to the child which is connected to, but does not result from, the weighing and measuring itself. Amendment 12 would also amend paragraph 7B(2) to extend the existing guidance-making power to allow the Secretary of State to issue guidance covering the additional information prescribed under the extended regulation-making power.

26. The primary purpose of the amendments is to ensure that the information resulting from the National Child Measurement Scheme can continue to be processed after the transfer of public health functions from Primary Care Trusts to local authorities.

Lords Amendments 13, 14 and 342

27. Section 7 of the NHS Act 2006, as amended by clause 18 of the Bill, would allow the Secretary of State to delegate functions to Special Health Authorities by direction. Following recommendations from the Delegated Powers and Regulatory Reform Committee, amendment 13 would make it explicit that the Secretary of State cannot delegate the function of making orders or regulations in this way.
28. Section 7 would also allow the Secretary of State to delegate the functions of other organisations to Special Health Authorities. In response to recommendations from the Delegated Powers and Regulatory Reform Committee, amendment 14 would ensure that this was done through directions given in regulations that are subject to the negative resolution procedure.
29. Amendment 342 is linked to amendment 14 and would ensure that existing directions to Special Health Authorities continuing in the future system (for example, directions to NHS Blood and Transplant) do not need to be remade as regulations where the function that is conferred by the directions is a function of a person other than the Secretary of State in the new system. The directions could be amended or revoked in writing, but if they were amended so as to direct the Special Health Authority concerned to exercise an additional function, this would need to be done in regulations subject to the negative procedure.

Lords Amendments 15 and 16

30. In response to a recommendation from the Delegated Powers and Regulatory Reform Committee, these amendments would ensure that where the Secretary of State sets out requirements for the health service in the mandate, these would be given effect through regulations subject to the negative resolution

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procedure. This would also apply to any changes to the requirements.

Lords Amendments 19, 32 and 33

31. These amendments would amend the duties on the NHS Commissioning Board in clause 20 (new section 13H) and on clinical commissioning groups in clause 23 (new section 14T) in relation to promoting the involvement of each patient in decisions about the services they receive.
32. As amended, the duties would apply to involvement in decisions related to the prevention or diagnosis of illness in the patient or their care or treatment. This would clarify that the duty relates to decisions concerning individual patients (not, for example, to strategic decisions about the planning of services).
33. The amendments also impose an obligation on the NHS Commissioning Board to issue guidance to clinical commissioning groups on the discharge of their duty under new section 14T rather than this being at the Board's discretion. Clinical commissioning groups must have regard to this guidance.

Lords Amendments 22, 36 and 37

34. Amendment 22 would require the NHS Commissioning Board to include in its annual business plan an explanation of how it proposes to discharge its duty as to reducing inequalities in new section 13G.
35. Amendments 36 and 37 would require each clinical commissioning group to include in its commissioning plan an explanation of how the group proposed to discharge their duty as to reducing inequalities in new section 14S, and for the Board's annual performance assessment of clinical commissioning groups to assess how the group had discharged this duty.

Lords Amendments 23 and 38

36. These amendments would require the Board and clinical commissioning groups to include in their annual reports an assessment of how effectively they have discharged their duties to have regard to the need to reduce inequalities at new section 13G (for the Board) and new section 14S (for clinical commissioning groups) of the NHS Act 2006.

Lords Amendments 24, 39, 40, 74, 246, 287 and 292

37. This group of amendments was tabled by Lord Marks and accepted by the Government. The amendments relate to the powers in the Bill relating to failure by various bodies connected with the health service.
38. Amendment 24 would insert a new subsection (5) into new section 13Z1 of the NHS Act 2006 (failure by the Board to discharge any of its functions). The new subsection clarifies that the Secretary of State can exercise his intervention powers under that section where he considers that the Board is failing or has failed to discharge a function consistently with what the

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Secretary of State considers to be the interests of the health service, provided that he considers that the failure is significant.

39. Amendments 39 and 40 would amend new section 14Z15 (circumstances in which powers in sections 14Z16 and 14Z17 apply) and new section 14Z19 (power to give directions, dissolve clinical commissioning group etc) of the NHS Act 2006. Amendment 40 would clarify that the Board can exercise its power to direct or dissolve a clinical commissioning group where the Board considers that the clinical commissioning group is failing or has failed to discharge a function consistently with what the Board considers to be in the interests of the health service, or that there is a significant risk that it will fail to do so. Amendment 39 would similarly clarify that the Board could exercise its powers to require documents, information or an explanation from a clinical commissioning group where the Board has reason to believe that the clinical commissioning group may have failed, might be failing or might fail to discharge any of its functions consistently with what the Board considers to be in the interests of the health service.
40. Amendments 74, 246, 287 and 292 would make similar amendments to the intervention powers of the Secretary of State relating to Monitor, the Care Quality Commission, Healthwatch England, the National Institute for Health and Care Excellence (NICE) and the Health and Social Care Information Centre (the Information Centre). Amendment 74 relates to Monitor, amendment 246 to NICE, amendment 287 to the Information Centre and amendment 292 to Healthwatch England and the Care Quality Commission. In each case, the amendments would clarify that the Secretary of State can exercise his intervention powers in relation to the body where he considers that the body is failing or has failed to discharge a function consistently with what the Secretary of State considers to be in the interests of the health service, provided that he considers that the failure is significant.
41. In addition, as there is provision for each of these bodies to exercise functions other than in relation to the health service (e.g. in relation to social care), amendments 74, 246, 287 and 292 would also provide that, in relation to such a function, the Secretary of State can exercise his intervention powers where the body is failing or has failed to discharge that function consistently with what the Secretary of State considers to be the purpose for which it was conferred.

Lords Amendments 25 and 41

42. These amendments would ensure that the Board and clinical commissioning groups must conform with common law confidentiality requirements when considering whether or not to disclose information under section 13Z2 (in relation to the Board) and section 14Z21 (in relation to clinical commissioning groups), except in certain cases, for example, where disclosure would be in accordance with statute or a court order, or where the information is already

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lawfully in the public domain. This would ensure a balance between ensuring information is disclosed when required and protecting personal confidential information.

Lords Amendments 27 and 321

43. These linked amendments relate to the provision in section 14A(1) of the NHS Act 2006 inserted by clause 22 of the Bill, which requires the NHS Commissioning Board to exercise its functions to ensure that at any time after a day specified by the Secretary of State in writing, every provider of primary medical services, within the meaning of the section, is a member of a clinical commissioning group and that the areas of clinical commissioning groups specified in their constitutions taken together cover the whole of England but do not coincide or overlap. The Delegated Powers and Regulatory Reform Committee recommended that the Secretary of State should specify this date in a statutory instrument, rather than simply in writing, but that this instrument need not be subject to Parliamentary procedure. These amendments would amend the Bill to that effect.

Lords Amendments 28, 29 and 30

44. These linked amendments would ensure that the provisions which currently will apply to the function of a clinical commissioning group governing body of determining the remuneration, fees and allowances payable to the employees of the clinical commissioning group or to other persons providing services to it under section 14L(3)(a) of the NHS Act 2006 (inserted by clause 22 of the Bill), would also apply to the other specific function of the governing body under section 14L(3)(b) of the NHS Act 2006, that of determining allowances paid under a pension scheme which the clinical commissioning group may establish under paragraph 10(4) of Schedule 1A to the NHS Act 2006 (inserted by Schedule 2 to the Bill).
45. Amendment 28 would allow regulations made under new section 14L(6) of the NHS Act 2006 to make provision requiring clinical commissioning groups to publish prescribed information relating to determinations under section 14L(3)(b) as well as determinations under section 14L(3)(a) of the NHS Act 2006.
46. Amendment 29 would make provision for the NHS Commissioning Board to publish guidance for governing bodies on the exercise of their function under 14L(3)(b) as well as their functions under section 14L(3)(a) of the NHS Act 2006.
47. Amendment 30 would provide that the remuneration committee of the governing body has the function of making recommendations to the governing body as to the discharge of its functions under section 14L3(b) as well as its functions under section 14L(3)(a) of the NHS Act 2006.

Lords Amendments 31, 300, 301 and 302

48. These linked amendments were tabled by Baroness Barker and accepted by the Government. They would provide further safeguards in relation to preventing or addressing conflicts of interests of certain persons related to a clinical commissioning group.
49. Amendment 31 would insert a new section 14NA into the NHS Act 2006. Subsection (1) would require a clinical commissioning group to maintain one or more registers of the interests of members of the group, the members of the governing body, employees of the group, and members of committees and sub-committees (including committees and sub-committees of the governing body). Subsection (2) would require that the registers are published or available to the public on request.
50. Under subsection (3), the clinical commissioning group would be required to make arrangements to ensure that members of the group, the members of the governing body, employees of the group, and members of committees and sub-committees (including committees and sub-committees of the governing body) declare any interest, or potential interest, they may have in the outcome of a decision to be made by the group in the exercise of its commissioning functions, and which could result in a conflict of interest or potential conflict of interest. The declaration must be made as soon as possible after the individual becomes aware of the potential conflict, and no later than 28 days after. The clinical commissioning group must make arrangements to ensure that the declaration so made is included in the appropriate register of interests.
51. Under subsection (4), the clinical commissioning group would be required to make arrangements for managing conflicts and potential conflicts of interest that would be identified by the information provided in the declaration and registers, so they do not influence the group's decision making, or appear to do so.
52. Under subsection (5), the NHS Commissioning Board would have to issue guidance for clinical commissioning groups on the exercise of the duty under 14NA. This would include guidance on managing conflicts of interest. Subsection (6) would require that clinical commissioning groups have regard to this guidance.
53. Amendment 300 would omit the requirement in Schedule 1A to the NHS Act 2006, as inserted into that Act by Schedule 2, for the constitution of a clinical commissioning group to make provision for dealing with conflicts of interests of members or employees of the clinical commissioning group, as this is covered by the provision which amendments 31 and 301 would insert.
54. Amendment 301 would amend Schedule 1A to the NHS Act 2006, as inserted into that Act by Schedule 2, to require the constitution of a clinical

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commissioning group to specify the arrangements made by the group for discharging its duties under new section 14NA in relation to dealing with conflicts of interest.

55. Amendment 302 would remove the requirement in Schedule 1A to the NHS Act 2006, as inserted into the Act by Schedule 2, for the constitution of a clinical commissioning group to make provision for dealing with conflicts of interests of members of the governing body of the clinical commissioning group, as this is covered by the provision which amendments 31 and 301 would insert.

Lords Amendments 43, 45 and 47

56. These amendments would amend clauses 23, 27 and 29 of the Bill, which deal with directors of public health, the exercise of public health functions of local authorities and complaints about the exercise of public health functions by local authorities. Each clause contains a list of local authority functions relating to public health, including a reference to "functions by virtue of section 6C [of the NHS Act 2006]". The amendments would have the effect that the reference is to functions by virtue of section 6C(1) and (3) rather than just section 6C. This is to make it clear that clauses 27 to 29 are referring to functions conferred under regulations under section 6C(1) and (3), which allow the Secretary of State to require local authorities to exercise his public health functions, not to regulations under section 6C(2), which relate to how local authorities carry out their other public health functions.

Lords Amendment 44

57. Amendment 44 would amend clause 27 of the Bill so as to insert a new subsection in new section 73A of the NHS Act 2006. Section 73A deals with the appointment by a local authority of a director of public health. The new subsection would require a local authority to have regard to any guidance given by the Secretary of State in relation to its director of public health, including guidance as to the appointment and termination of appointment, terms and conditions and management.

Lords Amendment 46

58. Amendment 46 would amend clause 28 to insert a new subsection into new section 73B of the NHS Act 2006. The amendment would provide that guidance which the Secretary of State is able to issue to local authorities about the exercise of their public health functions may include guidance about staff employed in the exercise of those functions. This would be in addition to guidance on the Director of Public Health as provided for under amendment 44. Such guidance could cover the appointment of such staff, their dismissal from employment, their terms and conditions and their management. Guidance could, for example, make provision about the qualifications to be held by certain public health staff and provision for their training and

development.

59. Functions to which such guidance could apply include local authority functions under section 2B, 111 or 249 of, or Schedule 1 to, the NHS Act 2006; functions by virtue of regulations under section 6C(1) or (3) of that Act (regulation to provide for local authorities to exercise the public health functions of the Secretary of State); anything done by the authority in pursuance of arrangements under section 7A of that Act (arrangements for the exercise of Secretary of State public health functions); the functions of the authority under section 325 of the Criminal Justice Act 2003 and such other functions in relation to public health as may be prescribed.

Lords Amendments 48, 49, 50, 51, 52 and 53

60. These amendments relate to direction-making powers in sections 88K(5), 88L(4) and 88M(4) of the Water Industry Act 1991 as inserted by clause 33. These provisions, prior to amendment, allow the Secretary of State to use direction-making powers to exempt local authorities from consultation and other procedural requirements relating to proposals to terminate fluoridation schemes. In each case, the power to direct is exercisable generally or in relation to a particular proposal. The power to direct is additional to powers to prescribe in regulations the circumstances where the relevant duties do not apply.
61. Paragraphs 19 to 23 of the report of the Delegated Powers and Regulatory Reform Committee on the Bill took the view that all general exemptions should be in regulations. These amendments would limit the direction-making power to particular cases.

Lords Amendments 54, 242, 248, 252, 304, 305, 318, 323, 331, 335, 336, 337 and 338

62. Amendment 54, which would insert a new section into the NHS Act 2006, was tabled by Lord Patel of Bradford and opposed by the Government at Committee stage. Amendments were tabled to the new section by Lord Patel of Bradford at Third Reading stage, which were supported by the Government. The new section would impose a duty on the Secretary of State to remove a number of the Government's proposed modifications to section 117 of the Mental Health Act 1983 (after-care) in clause 37 of the Bill. In essence the amendment reinstates the current wording of section 117, making only those amendments consequential on other changes made by the Bill.
63. Amendments 242, 248, 252, 304, 305, 318, 323, 331, 335, 336, 337 and 338 make consequential changes to various measures in the Bill in the light of the acceptance of Lord Patel of Bradford's amendment.
64. These amendments ensure that new functions imposed on clinical commissioning groups (as opposed to the existing functions of Primary Care

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Trusts that they take over) will apply in relation to after-care services under section 117 of the Mental Health Act 1983. They will ensure consistency in the restructured system.

Lords Amendments 55, 56, 57 and 58

65. Following recommendations from the Delegated Powers and Regulatory Reform Committee, these amendments to clause 46 would clarify that the Secretary of State cannot delegate the function of making orders or regulations specifically relating to the provision of primary medical, dental, ophthalmic services or local or other pharmaceutical services.

Lords Amendment 59

66. This amendment, tabled by Baroness Cumberlege and accepted by the Government, would add Healthwatch England to the list of bodies whose effectiveness the Secretary of State must keep under review under clause 49.

Lords Amendment 60

67. This amendment would require the Secretary of State to include an assessment of how effectively he has discharged his duties at new sections 1A (duty as to improvement in quality of services) and 1B (duty as to reducing inequalities) in his annual report on the performance of the health service.

Lords Amendments 61 and 62

68. These amendments would amend clause 54, which confers new UK-wide functions in relation to biological substances on the Secretary of State and the Department of Health, Social Services and Public Safety in Northern Ireland. The Bill as drafted provides for the Secretary of State and the Northern Ireland Department to exercise the powers under clause 54 jointly. The amendments would also allow either the Secretary of State or the Northern Ireland Department acting alone, as well as both of them acting jointly, to exercise functions in relation to biological substances for the whole of the United Kingdom.

Lords Amendments 63, 70, 71, 72 and 343

69. Amendments 63, 70, 71 and 72 were tabled by Baroness Williams and Lord Marks and accepted by the Government.

70. Amendments 63 and 71 would provide for there to be guidance on the duty under clause 59(9). Amendment 63 would provide for the Secretary of State to publish guidance for the purpose of assisting Monitor to comply with its duty under clause 59(9) to exercise its functions in a manner consistent with the Secretary of State's duty to promote a comprehensive health service.

71. The guidance would cover:

- a) the objectives specified in the mandate published under section 13A

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- of the NHS Act 2006 which the Secretary of State considers to be relevant to Monitor's exercise of its functions, and
- b) the Secretary of State's reasons for considering those objectives to be relevant to Monitor's exercise of its functions.

72. Amendment 71 would remove paragraphs (k) to (m) from clause 62 as a consequential change.
73. Amendment 70 would provide that Monitor must have regard to any guidance the Secretary of State publishes on the parts of the document published for the purpose of section 13E of the NHS Act 2006 (improvement of quality of services) which the Secretary of State considers to be particularly relevant to the exercise of Monitor's functions.
74. Amendment 72 would provide that where the Secretary of State publishes such guidance, the Secretary of State must lay a copy of the published guidance before Parliament.
75. Amendment 343 was tabled by Lord Marks of Henley-on-Thames and accepted by the Government. It would provide that Monitor must include statements in its annual report on how it has complied with the duties that would be inserted by amendments 63 and 70.

Lords Amendments 64, 65, 67, 68, 69

76. Amendments 64 and 65 to clause 62 would provide that the need to maintain the safety of people who use health care services would be paramount amongst those matters that Monitor must have regard to in carrying out its functions.
77. Amendments 67, 68 and 69 would rationalise the list of other matters which Monitor is to have regard to.

Lords Amendments 66, 84, 85, 91, 95, 96, 98, 99, 109, 111, 125, 129, 344, 345, 346, 347 and 348

78. Amendments 66 and 91 would make drafting amendments to ensure consistency of wording and to remove any doubt there might otherwise be as to interpretation.
79. Amendment 84 would change the reference to "a person" in clause 82(3) to "any person", making it clear that any provider granted a licensing exemption could be required to comply with exemption conditions.
80. Amendment 85 would place an obligation on the Secretary of State to notify a prescribed person to whom a licensing exemption has been granted, and to publish notice of the exemption.

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81. Amendments 95 and 96 would clarify that the types of licence conditions provided for in clause 96(1)(j) and (k) may only be used in order to ensure the continued provision of one or more NHS health care services.
82. Amendment 98 would provide that the power conferred by clause 100 (on the Office of Fair Trading, the Competition Commission or Monitor) includes a power to modify the conditions of a particular licence.
83. Amendments 99, 344, 346, 347 and 348 would ensure consistency with comparable provisions in the Bill. Amendments 99, 344 and 348 would provide that Monitor could not publish information relating to a person's private affairs where it might significantly harm that person's interests. Currently the provisions only require the omission of information which may significantly harm legitimate business interests. Amendments 346 and 347 would make minor drafting amendments.
84. Amendment 109 would clarify how services can be specified for the purposes of determining prices for services in the national tariff.
85. Amendment 111 would clarify that any guidance provided by Monitor under clause 116(6) is to be published in the national tariff
86. Amendments 125 and 345 would correct drafting errors. Amendment 125 relates to when the Competition Commission can give a direction to Monitor to veto any proposed changes to Monitor's pricing methodology following a determination on a reference to it under clause 118. Amendment 345 relates to when the Commission can veto changes to licence conditions proposed by Monitor.
87. Amendment 129 would clarify that, in carrying out their duties, commissioners must have regard to revised guidance (as well as the original guidance) published by Monitor about determining services to be protected where a company providing NHS services fails.

Lords Amendment 73

88. Amendment 73 would provide that the Secretary of State's power to intervene under clause 67 (if Monitor were to fail significantly to perform its functions) does not apply to Monitor's functions under clauses 68 and 69. This would mean that the Secretary of State could not undertake investigations and enforcement action in a case under the Competition Act 1998 or Part 4 of the Enterprise Act 2002.

Lords Amendment 75

89. Amendment 75 would require Monitor to consult the NHS Commissioning Board and such other persons as it considers appropriate on proposed guidance

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on how it proposes to enforce regulations on commissioners of NHS health care services made under clause 71.

Lords Amendment 76

90. Amendment 76 would require Monitor to consult (before publication) on revisions to its guidance to commissioners of NHS health care services on regulations made under clause 71.

Lords Amendments 77, 78 and 79

91. Amendments 77, 78 and 79 would clarify that clause 75 applies to both completed and anticipated mergers involving NHS foundation trusts.

Lords Amendment 80

92. Amendment 80 was tabled by Lord Clement-Jones and accepted by the Government. It would provide for the OFT to notify Monitor of an investigation of a merger situation involving one or more NHS foundation trusts, and for Monitor to advise on the likely costs and benefits to patients which would arise. The OFT would be obliged to consider the advice as part of their general public law duties.

Lords Amendments 81, 82 and 83

93. Amendments 81, 82 and 83 were tabled by Lord Clement Jones and accepted by the Government. They would remove clauses 76, 77 and 78. Clause 76 which provides for the Competition Commission to review, every seven years, the development of competition in the provision of NHS health care services and the way in which Monitor carries out its functions under Part 3 of the Bill. Clause 77 gives the Competition Commission powers of investigation in relation to such reviews. Clause 78 makes provision about the considerations which are relevant to publication of such reviews.

Lords Amendments 86, 295 and 296

94. Amendments 86, 295 and 296 follow recommendations by the Delegated Powers and Regulatory Reform Committee. Amendment 86 would provide that the Secretary of State's approval of the first licensing criteria set by Monitor under clause 85 must be by order. Amendments 295 and 296 would make the first set of licensing exemption regulations and the first approval of the licensing criteria by order subject to the affirmative resolution procedure. Subsequent instruments under those provisions would be subject to the negative resolution procedure.

Lords Amendments 87, 88, 89 and 90

95. Amendments 87, 88 and 89 would amend the list of persons Monitor must consult on the proposed first set of standard licence conditions, to anticipate which bodies are expected to exist at the time of such consultation. Amendment 90 makes supplementary provision.

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Lords Amendments 92, 93 and 94

96. Amendments 92, 93 and 94 would give Monitor express power to set and enforce licence conditions for the purpose of enabling integration of services and for the purpose of enabling co-operation between providers of NHS health care services. Such integration could relate to the provision of NHS health care services, or to the provision of such services with health-related services or social care services.
97. The amendments would enable Monitor to use its licensing powers to support such integration and co-operation where it would:
- a) improve the quality or efficiency of NHS health care services; or
 - b) reduce inequalities between persons with respect to either their ability to access such services or the outcomes achieved for them by the provision of such services.

Lords Amendments 97 and 126

98. Amendments 97 and 126 were tabled by Lord Warner and accepted by the Government.
99. Amendment 97 would insert a new clause to provide for Monitor to take action as part of its ongoing assessment of risk to the continuity of NHS health care services. It would oblige Monitor to notify the NHS Commissioning Board and clinical commissioning groups where it had identified significant risks to the provision of services and was satisfied that this was attributable to the way in which services were configured. It would require the Board and clinical commissioning groups to have regard to such notifications when arranging for the continued provision of NHS health care services. It would be for commissioners to decide what action to take to address any unsustainable configuration of services, in consultation with local Health and Well-being Boards.
100. The clause would provide for Monitor to notify the Board and such clinical commissioning groups as Monitor considers appropriate:
- a) when it takes action under a licence condition under clause 96(1)(1), (j) or (k) for the purpose of ensuring the continuity of the services covered by such a condition, and
 - b) where Monitor is satisfied that an unsustainable configuration of NHS health care services is putting services subject to such a licence condition at significant risk.
101. Any such notification would include the action Monitor has taken and its reasons for being satisfied that the way services were configured was unsustainable and was causing significant risk to service continuity. The

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clause would also require Monitor to publish an annual list of the notifications it has sent to commissioners regarding unsustainable service configurations and a summary of its reasoning in each case.

102. Amendment 126 would complement the new clause which would be inserted by amendment 97. It would require Monitor to notify the NHS Commissioning Board and such clinical commissioning groups as Monitor considers appropriate where:
 - a) a provider of NHS health care services applies to Monitor for a modification to the tariff price, under clause 123 (where the provider has previously been unable to agree a modification with the commissioner of the health care services in question), and
 - b) Monitor is satisfied that an unsustainable configuration of certain health care services is putting services subject to a licence condition under clause 96(1)(1), (j) or (k) (for the purpose of ensuring the continuity of those services) at significant risk.
103. The clause would also require Monitor to publish an annual list of the notifications it has sent to commissioners regarding unsustainable service configurations and a summary of its reasoning in each case.
104. Finally, the clause would require the Board and clinical commissioning groups to have regard to any such notification received when arranging for the continued provision of NHS health care services. It would be for commissioners to decide what action to take to address any unsustainable configuration of services, in consultation with Local Health and Well-being Boards.

Lords Amendments 100, 101, 102 and 103

105. These amendments to clause 109 (Imposition of licence conditions on NHS foundation trusts) would provide that these transitional intervention powers would allow Monitor to intervene if a foundation trust were at risk of breaching its licence conditions (which would permit it to provide NHS services) because of governance failure. These powers would allow Monitor to set additional licence conditions to require, for example, a foundation trust with weak governance arrangements to remedy a failure of governance which might put its ability to provide NHS services at risk. The powers are intended for use in the early years of the new regulatory regime when some foundation trust governors may be relatively inexperienced and, moreover, some foundation trusts may be newly authorised. Monitor's exercise of its transitional powers would not affect its ability to exercise its powers under clauses 103 and 104 to set and enforce requirements on foundation trusts, including requirements relating to governance, or requirements to ensure a foundation trust's continued ability to provide services for the purpose of the

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NHS.

106. Amendments 101 and 102 would provide for Monitor firstly to require the trust to take action and then, if action is not taken by the trust, for Monitor itself to take action.
107. Amendment 103 would provide that Monitor can use both the transitional powers to address governance issues by setting additional licence conditions, and its enduring powers under clauses 103 and 104 to address other concerns (as well as governance issues after the transition period) relating to a foundation trust's continued ability to provide services for the purpose of the NHS. The amendment would also make clear that the enduring powers can be applied during the transitional period and afterwards.

Lords Amendments 104, 105, 106 and 107

108. These amendments would provide that, rather than the transitional powers ceasing to apply after the transitional period ended in 2016 unless the Secretary of State made an order to retain them for some trusts, the powers would remain until the Secretary of State made an order to remove them. The earliest any such order could be made would be in 2016, and would depend on an assessment of foundation trusts' readiness for release against criteria to be developed for the purpose by Monitor, subject to consultation and approval by the Secretary of State.
109. Amendments 105, 106 and 107 make consequential amendments removing references to the previous proposals to retain the powers for some trusts only.

Lords Amendments 108, 297 and 298

110. Amendment 108 to clause 112 and the two amendments to clause 298 (Regulations, orders and directions) would provide for the orders by the Secretary of State to release trusts from the transitional intervention powers to be made subject to the negative resolution procedure.

Lords Amendments 110, 112, 114, 115, 116, 117, 118, 119, 122, 124, 128 and 350

111. These amendments would amend clauses 116 and 118, paragraph 1 of Schedule 12 and clauses 119 and 124. The amendments would substitute reference to "licence holders" with "relevant providers" and provide a definition of such providers. "Relevant providers" would be licence holders or such other description of persons providing NHS health care services as the Secretary of State may prescribe by regulations. This definition would determine, in particular, which providers are to be consulted on, and to be able to trigger independent adjudication of, Monitor's proposed pricing methodology.

Lords Amendment 113 and 120

112. These amendments would provide that the persons are to be consulted on the

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proposed first national tariff would be the same as for subsequent consultations.

Lords Amendments 121, 123, 349 and 350

113. These amendments would ensure that clinical commissioning groups, along with licence holders, come within the definition of “objectors” (which refers to those bodies that have objected to the proposed national tariff pricing methodology) for the purposes of clause 119 (amendments 121 and 123) and paragraph 1 of Schedule 12 (amendments 349 and 350). This would ensure that clinical commissioning groups who objected to the proposed pricing methodology have any representations made by them taken into account by the Competition Commission and receive notices from it.

Lords Amendments 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141 and 142

114. These amendments would amend the provisions relating to mechanisms for providing financial assistance in special administration cases. Amendment 130 would clarify that the type of providers that Monitor can provide such financial assistance to are providers of health care services for the purposes of the NHS.

115. Amendments 131 and 142 would amend clauses 135(3)(c) and 140(10) respectively, would clarify that the power to recover unpaid levies summarily as a civil debt would not affect any other method of recovery (for example, through mediation).

116. Amendment 132 would clarify that the second use of the word “that” refers to the current financial year.

117. Amendments 133, 135, 136, 137, 138, 139, 134 and 141, to clauses 138 and 139, would provide that the providers that would be consulted on, and would be able to object to, the proposed provider levy methodology are those providers potentially liable to pay the levy for the coming financial year.

118. Clause 138(5)(b) refers to the time or times by reference to which Monitor proposes to assess the rate of the levy. Amendment 134 would correct this to refer to the time or times by reference to which Monitor proposes to assess the factors by which it will assess the rate of the levy, in order to be consistent with similar provision in clause 136(3)(a).

Lords Amendments 143 and 150

119. These amendments would insert new subsections into clause 147 and 172. These subsections would make transitional provision in relation to the exercise of functions of the NHS Commissioning Board, Clinical Commissioning Groups and Healthwatch England, under Part 3 of the Bill, before the establishment of those bodies. Until the Board and Clinical Commissioning

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Groups are established references to them in Part 3 would be read as references to the NHS Commissioning Board Authority and Primary Care Trusts respectively.

Lords Amendment 144

120. This amendment would make a further amendment which is consequential to clause 151 (accounts: initial arrangements).

Lords Amendment 145

121. This amendment would repeal a reference in paragraph 22 of Schedule 7 to the NHS Act 2006 as a consequence of the repeal of the same provision in clause 153 (annual report and forward plan).

Lords Amendment 146

122. This amendment to clause 161 (goods and services) would provide that a foundation trust's principal purpose, which is to provide goods and services for the purposes of the health service in England, is not fulfilled unless its income from NHS work is greater than its income from non-NHS work.

Lords Amendment 147

123. This is a minor drafting amendment to clause 161 to ensure consistency of references in section 43 of the NHS Act 2006.

Lords Amendment 148

124. This amendment to clause 161 (goods and services) would place a general duty on foundation trusts to explain in their annual reports the impact that the non-NHS income they earned has had on their NHS service provision.

125. The amendment would also place a duty on the directors to describe their proposals to earn non-NHS income in the foundation trust's annual plan. Governors would be required to consider the annual plan and notify the directors as to whether or not they are satisfied that any proposal to increase non-NHS income would not significantly interfere with the foundation trust's principal purpose to provide goods and services for the NHS. Any proposal by the directors to increase the proportion of its total income which comes from non-NHS work by 5% or more would require agreement by the majority of governors in a vote. For example, the governors would be required to vote where a foundation trust planned to increase its non-NHS income from 2% to 7% or more of the trust's total income.

Lords Amendment 149

126. This amendment would correct a drafting error in clause 170.

Lords Amendments 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166 and 167

127. This group of amendments would make necessary consequential changes and

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correct referencing errors to clause 175 in order to ensure that all appropriate references are accurate and included.

128. Amendments 162, 163, 164, 165, 166 and 167 would ensure that all relevant statements (whether published or not), information, notices and orders relating to Trust Special Administration as well as reports are to be made available to the public free of charge.

Lords Amendments 168 and 169

129. These amendments would require regulations on appointment of the Healthwatch England committee to require the person with power to appoint members to secure that a majority of the members are not members of the Care Quality Commission (“the CQC”). They would also enable the regulations to specify other results to be secured. They would in particular enable the regulations to make provision as to eligibility of persons for appointment and as to procedures for selecting members or proposing persons for appointment.

Lords Amendments 170, 171 and 176

130. These would introduce two new subsections into new section 45A of the Health and Social Care Act 2008 conferring functions on the CQC (to be exercised by Healthwatch England by virtue of section 45A(1)). The function in new subsection (2A) would be a power to make recommendations of a general nature to English local authorities with regard to making arrangements under section 221(1) of the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”) (for Local Healthwatch organisations’ activities). The function in new subsection (2B) would be a power, where Healthwatch England is of the opinion that Local Healthwatch organisations’ activities are not being carried on properly in a local authority’s area, to give written notice of this to the local authority.

Lords Amendment 172

131. This amendment would make a minor change to the function exercisable by Healthwatch England under new section 45A(2) of the Health and Social Care Act 2008 so that it would be a function of providing general advice and assistance to Local Healthwatch organisations as opposed to specific advice.

Lords Amendments 173, 174 and 175

132. These are minor amendments to the provision in new section 45A(2) of the Health and Social Care Act 2008 concerning the function exercisable by Healthwatch England to provide general advice and assistance to Local Healthwatch organisations. The matters in relation to which general advice and assistance are to be provided are the making of arrangements with local authorities under section 221(1) of the 2007 Act, the making of arrangements with “Local Healthwatch contractors” and the carrying on of Local Healthwatch organisations’ activities.

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Lords Amendment 177

133. This amendment was tabled by Baroness Cumberlege and accepted by the Government. It would require the CQC and Healthwatch England to have regard to any guidance from the Secretary of State on managing conflicts of interest arising between themselves. It would require the CQC, in making arrangements for Healthwatch England to exercise functions under section 45A, and for Healthwatch England, in exercising functions on behalf of the CQC, to have regard to any guidance issued by the Secretary of State on managing conflicts between the exercise of functions by the CQC and the exercise of functions on behalf of the CQC by Healthwatch England.

Lords Amendment 178

134. This amendment would amend new section 45B (reports by Healthwatch England) inserted by clause 178(4) of the Health and Social Care Bill into the Health and Social Care Act 2008 to require the Healthwatch England committee to send a copy of its annual report on the exercise of functions to each local Healthwatch organisation.

Lords Amendments 179, 183

135. The first of these amendments, both of which were tabled by Baroness Tyler and accepted by the Government, would add a new Local Healthwatch activity to make recommendations to Healthwatch England to publish reports under section 45B(3) of the Health and Social Care Act 2008 about particular matters. The second would place a duty on Healthwatch England to have regard to such recommendations.

Lords Amendment 180

136. This amendment is a drafting amendment to the provision that ensures that, in general, meetings of Healthwatch England must be open to the public.

Lords Amendments 181 and 366

137. These amendments would leave out current clause 181 (which provides for establishment of Local Healthwatch organisations) and Schedule 15 (which makes further provision about Local Healthwatch). This would remove the provisions relating to the establishment of Local Healthwatch as a statutory body corporate.

Lords Amendments 18 and, 185

138. These amendments, tabled by Baroness Jolly and accepted by the Government, would replace references in section 221(2)(a), (b) and (c) of the 2007 Act to “people” with references to “local people”; and introduce a definition of “local people” in section 221.

Lords Amendments 184

139. This amendment would require the local authority to ensure that only one contract under section 221(1) (with a Local Healthwatch organisation) was in

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force in relation to its area at any one time.

Lords Amendments 186, 187 and 193

140. These are minor and technical amendments to the title to section 221 of the 2007 Act, the cross-heading before that section and the title to section 222 of that Act.

Lords Amendments 188

141. The amendment would provide a power for the CQC to grant a licence for use of a registered trade mark, of which CQC is the proprietor, to Local Healthwatch organisations in relation to the carrying on of Local Healthwatch activities. It would enable the licence to provide for the grant of a sub-licence authorising use of the trade mark by a Local Healthwatch contractor, in relation to carrying on of Local Healthwatch arrangements.

Lords Amendments 189, 192, 205, 208, 209, 211, 212, 213, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 226, 227, 228, 230, 231 and 234

142. This group of amendments would amend section 222 of the 2007 Act to specify as to whom a local authority must contract with under section 221 for the carrying on of Local Healthwatch activities. They would enable local authority arrangements with Local Healthwatch to authorise Local Healthwatch organisations to arrange for persons (which could be people or bodies) to assist it to carry on the activities or to carry on some of the activities on its behalf (“Local Healthwatch contractors”).

143. These amendments would require the contractual arrangements under section 221(1) of the 2007 Act to be made (by a local authority) with a body corporate which is a social enterprise, and which satisfies any criteria prescribed by regulations.

144. Amendment 192 would make provision in relation to when a body is a social enterprise, for the purposes of section 222 of the 2007 Act.

145. The amendments would also ensure that regulations under section 224 of the 2007 Act could require certain specified persons to respond to information requests made by Local Healthwatch contractors and to deal with reports or recommendations made by such contractors when carrying on the activities set out in section 221(2) of the 2007 Act under Local Healthwatch arrangements.

146. The amendments would remove clause 186 concerning dissolution and transfer schemes in relation to Local Healthwatch. This is because matters such as dissolution of a Local Healthwatch organisation as a social enterprise would be governed by the relevant legislation governing its status as a social enterprise body.

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Lords Amendments 190 and 191

147. The first of these is a consequential amendment to the provision in section 222 of the 2007 Act which sets out which bodies may not be hosts in relation to Local Involvement Networks (LINks), namely local authorities and various NHS bodies. The amendment would ensure that those bodies may not be a Local Healthwatch organisation.
148. The second is a consequential amendment to section 222 to set out the bodies with which Local Healthwatch arrangements may not be made. These are local authorities and various NHS bodies.

Lords Amendment 194

149. The amendment would impose a duty for the local authority to have regard to guidance from the Secretary of State on managing conflicts of interest between the making of arrangements by local authorities under section 221(1) of the 2007 Act and the carrying on of Local Healthwatch activities. It would also require the local authority to require the Local Healthwatch organisations to have regard to this guidance

Lords Amendments 195, 196 and 207

150. These amendments would insert a new clause amending section 223 of the 2007 Act, which requires the Secretary of State to make regulations in relation to local authority arrangements. The amendments would enable the regulations to require local authority arrangements to require Local Healthwatch arrangements (arrangements with “Local Healthwatch contractors”) to include prescribed provision relating to various matters, including the activities which a Local Healthwatch contractor may not carry out on behalf of Local Healthwatch, the obtaining (by a Local Healthwatch organisation) of a licence from the CQC for use of a trade mark, the grant of a sub-licence to a Local Healthwatch contractor, the use or infringement of the trade mark, and imposition of a requirement for Local Healthwatch to act with a view to securing that its Local Health contractors are representative.
151. The amendments would also ensure that regulations under section 224(1) of the 2007 Act could require certain specified persons to respond to information requests made by a Local Healthwatch organisation in discharging its obligations as to the representativeness of its contractors.

Lords Amendments 197 and 204

152. These are minor and technical amendments to make it clear that section 223A, concerning arrangements for independent advocacy services, only extends to complaints to the Public Services Ombudsman for Wales which relate to certain health-related bodies in Wales.

Lords Amendments 198, 199 and 202

153. These amendments are consequential on the transfer of public health duties to

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local authorities, and would ensure that the scope of arrangements for independent advocacy services continues to cover complaints about public health services. The amendments would also ensure that where arrangements for the provision of independent advocacy services are made with a Local Healthwatch organisation, these are no longer treated as part of arrangements made under section 221(1) of the 2007 Act.

Lords Amendments 200, 201, 203, 206, 210, 214, 224 and 229

154. These amendments make technical drafting changes.

Lords Amendments 232 and 233

155. These amendments are consequential on the omission of clause 186. They would ensure that the provision which may be made by transfer schemes under clause 188 (transitional arrangements) are set out on the face of clause 188 as opposed to being cross referred to through clause 186.

Lords Amendments 235, 236, 237, 238 and 239

156. This is a set of linked amendments which would amend or remove scrutiny provisions inserted into the NHS Act 2006 by the Localism Act 2011, and make amendments to other scrutiny provisions in the NHS Act 2006 and the Localism Act 2011. These are consequential on provision made by clauses 187 (scrutiny functions of local authorities) and 188 (amendments consequential on clause 187).

157. Amendment 235 would make an amendment to a provision inserted into section 244 of the NHS Act 2006 by the Localism Act 2011 which concerns references to an overview and scrutiny committee.

158. Amendment 236 would make amendments to section 245 of the NHS Act 2006 to ensure that it refers to functions exercisable by scrutiny committees as opposed to functions of those committees. This is consequential on amendments made to the regulation-making powers in section 244 of the NHS Act 2006 by clause 187, by virtue of which scrutiny functions would be conferred directly on local authorities.

159. Amendment 237 would amend section 247 of the NHS Act 2006 consequential on an amendment made to section 245 by clause 188, by virtue of which the Common Council for the City of London would not be excluded from the definition of “local authority” and therefore would not need to be treated as a London Borough Council.

160. Amendment 238 would remove section 247A of the NHS Act 2006, inserted by the Localism Act 2011, which requires certain local authorities to establish committees which have scrutiny functions. The amendment is consequential on amendments made to the regulation-making powers in section 244 of the NHS Act 2006 by clause 187, by virtue of which scrutiny functions would be

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conferred directly on local authorities.

161. Amendment 239 would make consequential amendments to the Localism Act 2011.

Lords Amendment 240

162. This amendment would amend clause 193 (other functions of Health and Wellbeing Boards) so that the power it confers on a local authority is a power to delegate to the Health and Wellbeing Board functions that are exercisable by the authority as opposed to functions of the authority.

Lords Amendment 241

163. This amendment would make a minor drafting correction.

Lords Amendments 243 and 244

164. These amendments were tabled by Lord Ribeiro and accepted by the Government. Clause 234 allows for regulations to replicate the effect of the current funding direction that requires NHS Commissioners normally to make available funding for drugs and technologies recommended in NICE technology appraisal guidance. Under the Bill, local authorities will be responsible for funding public health services that may include drugs and treatments that are the subject of NICE technology appraisal recommendations. The amendments would extend the scope of the regulation-making power enabling provision to be made in relation to local authorities exercising their public health functions, so that provision to replicate the effect of the funding direction can also be applied to them. This means that patients would continue to have access to NICE-approved drugs and treatments, whether NHS or local authority funded.

Lords Amendment 245

165. Clause 240(2)(b) limits the circumstances in which NICE may exercise additional functions under clause 240(1) to cases where doing so would not interfere significantly with its exercise of its other functions. Amendment 245 would ensure that for these purposes it is clear that those “other functions” are any functions NICE has other than the additional functions themselves.

Lords Amendment 247

166. Amendment 247 would amend clause 246, the purpose of which is to ensure that existing quality standards, referred to as “statements of standards” for the purposes of the clause, including any in development, may survive intact the transition to the proposed establishment of NICE. The amendment would ensure that any public consultations that have taken place prior to April 2013 in relation to a statement of standards count as though they were consultations with the public which had taken place under the arrangements for a quality standard envisaged in clause 231.

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Lords Amendments 249, 250, 251, 254, 255, 256, 261, 262, 263, 267, 269, 270, 271, 272 and 283

167. This series of amendments would make it clear that the Information Centre is to be able to be directed or requested to establish an information system just for the analysis of information it already holds, as well as a system for the collection of information. They would also make it clear that the provisions about what information the Centre can publish and disseminate apply to information it generates through analysing and linking information as well as to information it has collected.

Lords Amendment 253

168. This amendment would provide that the Information Centre may charge the NHS Commissioning Board a reasonable fee where the Board has directed it to collect or analyse information. This would ensure that the cost of any in-year collections the Board might require was covered. It mirrors the provisions in clause 253(3) for other arm's length bodies such as Monitor, NICE or CQC.

Lords Amendments 257 and 259

169. These amendments would make a change in the terminology used to refer to persons who are able to make a mandatory request to the Information Centre, for the purposes of improving the clarity of the drafting.

Lords Amendments 258 and 282

170. Amendment 282 would require the Information Centre to publish a code of practice for health or social care bodies (and others providing publicly funded health or social care) on how to deal with person identifiable or other confidential information.

171. Amendment 258 would require the Information Centre, when considering whether to comply with a request to establish an information system, to take into account the extent to which the person making the request has complied with the code of practice.

Lords Amendment 260

172. This amendment would limit the range of persons who could request the Information Centre to collect person identifiable information. The persons who may request must be bodies able to make a mandatory request (such as Monitor, CQC or NICE) and persons to whom information may be lawfully disclosed (e.g. because they have obtained consent, have a power in statute, etc.), or where the information may be lawfully disclosed to the Information Centre. The amendment does not affect clause 251, which enables the Secretary of State or NHS Commissioning Board to direct the Information Centre to collect or analyse person identifiable information for the purposes of a system the Centre is to establish and operate.

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Lords Amendments 264, 265 and 266

173. Amendment 264 would further limit the ability of the Information Centre to require person identifiable information from bodies providing publicly funded health or social care services. Only where the Centre is responding to a request for collection from a person who has made a mandatory request to the Centre (such as NICE, CQC or Monitor) or who could have required the provision of information to itself or to the Centre (e.g. through another power in statute) may the Centre require the provision to it of the information. The amendment does not affect the power of the Information Centre to require the provision of information for the purposes of complying with a direction of the Secretary of State or the NHS Commissioning Board pursuant to clause 251.
174. Amendment 265 would enable the Information Centre to make a payment to someone (other than a public body) providing publicly funded health services or adult social care who has provided the Centre with information following a request for its provision by the Centre arising from a confidential collection request. This would enable any cost incurred to the person of responding to the request to be covered.
175. Amendment 266 is a minor and technical amendment consequential on amendment 264.

Lords Amendments 268, 284, 285 and 286

176. These drafting amendments would clarify certain provisions in Part 9, Chapter 2 of the Bill. Amendment 286 makes similar provision for the Information Centre to that made by amendment 245 for NICE (please see explanation above).

Lords Amendments 273, 274, 275, 276, 277, 278, 279 and 281

177. These amendments would provide for additional circumstances in which the Information Centre can disseminate information it collects under Part 9. Amendment 281 would introduce a new clause which makes minor and consequential changes to the provisions about what can be included in directions under clause 251 and requests under clause 252 about dissemination.

Lords Amendment 280

178. This amendment would clarify that when the Information Centre provides information to the person who directed or requested the Centre to collect or analyse it, the Centre is to be treated as disseminating the information to that person (and so can only provide it in the circumstances in which dissemination is permitted by the Bill).

Lords Amendments 288, 290 and 291

179. These amendments would provide flexibility for powers to be conferred in regulations on the Secretary of State or the NHS Commissioning Board to

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enable them to direct the Information Centre to carry out their respective functions exercisable in relation to the development or operation of information or communications systems in connection with the provision of health services or (in the case of the Secretary of State) of adult social care. The amendments would also enable provision to be made in the directions for the Centre to be appropriately resourced in order to exercise such functions under directions.

Lords Amendment 289

180. This amendment would provide that, where under regulations the Secretary of State or the NHS Commissioning Board re-allocates information functions or systems delivery functions by a direction given to the Information Centre or another health or social care body, the Secretary of State or the Board may also give directions about the way in which the function in question is to be exercised.

Lords Amendments 293, 294, 306, 307 and 308

181. This is a set of linked amendments dealing with the definition of “qualifying company” in clause 294 (transfer schemes). Amendment 294 would extend the definition of “qualifying company” in clause 294 to include not only companies established under section 223 of the NHS Act 2006 which are wholly or partly owned by the Secretary of State, but also a subsidiary of a such a company (provided the parent section 223 company is wholly owned by Secretary of State). This means that it would be possible to transfer former Primary Care Trust and Strategic Health Authority property under the Bill, not only to a company that is directly owned by the Secretary of State, but also to a subsidiary of such a company.

182. Amendment 306 would amend the NHS Act 2006 so that such subsidiary companies would be eligible to be members of the statutory “risk-pooling” schemes for meeting losses and liabilities of NHS bodies. This would enable them to benefit from schemes relating to property liabilities.

183. Amendments 307, 308, 293 are consequential on amendments 306 and 294.

Lords Amendment 299

184. Amendment 299 would amend clause 300 (commencement) to make additional provision about what may be included in a commencement order bringing paragraph 16 of Schedule 1A to the NHS Act 2006 (inserted by Schedule 2 to the Bill) into force. That paragraph imposes a duty on a clinical commissioning group to prepare accounts. The amendment would enable the Secretary of State to provide that this duty does not apply in relation to the whole or part of the “initial period” (the period between the coming into force of the provisions for the establishment of clinical commissioning groups and the date specified by the Secretary of State by which every provider of primary medical services in England is to be a member of a clinical commissioning

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group, proposed to be 1st April 2013). The power could be exercised in relation to all clinical commissioning groups or only groups meeting certain conditions (e.g. those groups which were receiving income or incurring expenditure).

185. The power could also be exercised to modify the duty on the NHS Commissioning Board to produce consolidated accounts (that is, accounts consolidating the Board's annual accounts and the accounts of the clinical commissioning groups) for that period (paragraph 16 of Schedule A1 to the NHS Act 2006, inserted by Schedule 1 to the Bill).

Lords Amendment 303

186. This amendment would make provision about the use of a seal, and the execution of instruments without a seal, by a clinical commissioning group. It would also make provision about receiving executed documents in evidence. It would do so by adding a new paragraph to Schedule 1A to the NHS Act 2006 (as inserted by Schedule 2) under which the application of the seal of a clinical commissioning group would have to be authenticated by the signature of an authorised person. The new paragraph also makes provision for the execution of an instrument by an authorised person without the use of a seal. This provision would be of particular use in cases where the use of a seal would otherwise be required for the execution of an instrument by a body corporate.

Lords Amendments 309 and 311

187. These amendments would correct an error in a cross-reference in Schedule 4 to the Bill.

Lords Amendment 310

188. This amendment would correct a missed repeal in section 12 of the NHS Act 2006.

Lords Amendments 312 and 314

189. These amendments would amend section 216 and 220 of the NHS Act 2006 to add a reference to this Bill's provisions on transfer schemes (in clauses 294 and 296). The amendments would ensure that existing provisions on property held on trust by the NHS (e.g. charitable property) continue to apply where such property is transferred by transfer schemes under the Bill.

Lords Amendment 313

190. This amendment would insert references to provisions providing for the appointment of trustees for the NHS Commissioning Board and clinical commissioning groups into section 217 of the NHS Act 2006 (which makes supplementary provisions relating to trust property).

Lords Amendments 315, 316 and 317

191. These amendments would remove references in sections 222, 226 and 227 of

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the NHS Act 2006 to Strategic Health Authorities, or to provisions which relate to Strategic Health Authorities. These will be redundant at the point that Strategic Health Authorities are abolished.

Lords Amendment 319

192. This amendment would enable the Secretary of State to continue to provide support services for the NHS. This might include central procurement of medicines and supply of informatics, for example.

Lords Amendment 320

193. This amendment was tabled by Baroness Murphy and accepted by the Government. It would amend paragraph 128 of Schedule 4 to the Bill, which amends section 256 of the NHS Act 2006 (power of Primary Care Trusts to make payments towards expenditure on community services). The amendment would confer additional powers for the Secretary of State to specify minimum sums that the Board must pay to local authorities (or certain other bodies exercising functions in relation to housing) towards expenditure on local authority social care or other community services. This would not affect the powers of the NHS Commissioning Board to make payments to local authorities under these powers in addition to those sums, or the powers of clinical commissioning groups.

194. The Secretary of State would be able to specify in directions the bodies to which those payments must be made and the functions in respect of which the payments must be made. The Secretary of State would also be able to specify the minimum amount to be paid to each local authority (or other body) specified in the direction. Although a direction would relate to a particular financial year, the Secretary of State would be able to amend the direction at any time during the year, in order to change the minimum amount payable (either in total or to a particular body).

195. The existing powers in section 256 for the Secretary of State to give directions as to the conditions that should apply to such payments would continue to apply. The Government has indicated its intention that these directions would include a requirement on a local authority to obtain the agreement of their Health and Wellbeing Board as to how the funds are spent.

Lords Amendment 324

196. This amendment would make a consequential amendment to section 60 of the Health and Safety at Work etc. Act 1974 (which makes supplementary provision about the Employment Medical Advisory Service) to replace references to Primary Care Trusts and Local Health Boards with references to the NHS Commissioning Board and clinical commissioning groups (in relation to England) or Local Health Boards (in relation to Wales). It would also clarify the operation of section 60(1) of that Act in relation to Scotland.

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Lords Amendment 327

197. This amendment would amend Schedule 5 to the Bill so as to provide for an amendment to section 2 of the Local Government and Housing Act 1989 (politically restricted posts) to add the director of public health to the list of statutory chief officers in section 2(6). As a statutory chief officer, a person appointed as a director of public health would hold a “politically restricted post”, prevented by the 1989 Act from being a member of a local authority and subject to other restrictions on political activity. That would put them in the same position as other statutory chief officers, such as directors of social services and directors of children’s services.

Lords Amendments 328, 329 and 332

198. These amendments would make minor drafting amendments to the consequential amendments made by Schedule 5 to the Bill to the Trade Union & Labour Relations (Consolidation) Act 1992 and the Community Care (Delayed Discharges etc) Act 2003.

Lords Amendments 330, 341, 360, 361 and 365

199. Schedules 5 and 14 to the Bill make consequential amendments to other pieces of legislation, such as the Charities Act 1993 and the Welsh Language Act 1993. These amendments would replace the consequential amendments currently in the Bill to the Charities Act 1993 with equivalent amendments to the Charities Act 2011.

Lords Amendments 333 and 334

200. The Police Reform and Social Responsibility Act 2011 amends the Licensing Act 2003 to add Primary Care Trusts to the list of existing responsible authorities that are entitled to make representations to a licensing authority in relation to the application for the grant, variation or review of a licence to use premises for the supply of alcohol or to undertake certain entertainment activities. The 2011 Act also adds Primary Care Trusts to the list of bodies which a licensing authority must consult before determining or revising its statement of licensing policy, and makes provision for representations by responsible authorities, including Primary Care Trusts, in relation to the new “early morning alcohol restriction orders”.

201. These amendments would amend Schedule 5 to the Bill, to provide for amendments to sections 5(3), 13(4), 69(4) and 172B(4) of the Licensing Act 2003, as amended by the 2011 Act. The amendments would omit references to Primary Care Trusts in the definitions of “relevant authority” in each of those sections, and insert references to the local authority in England whose public health functions within the meaning of the NHS Act 2006 are exercisable in respect of an area any part of which is in the licensing authority’s area or (as appropriate) in respect of any area in which the premises concerned are situated. The effect is that local authorities with responsibility for health improvement under section 2B of the 2006 Act (as

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inserted by clause 9 of the Bill) would be responsible authorities able to make representations in relation to licence applications and early morning alcohol restriction orders affecting their area.

Lords Amendments 325 and 326

202. These amendments would correct the positioning of a consequential repeal. They would ensure that the Bill correctly identifies which paragraph of Schedule 4 the repeal is consequential upon. Both amendments move the repeal of paragraph 49 of Schedule 2 to the NHS Reform and Health Care Professions Act 2002 from paragraph 27(4) to paragraph 30(2) of Schedule 4 to the Bill.

Lords Amendments 339 and 340

203. These amendments would remove the reference in Schedule 5 to the Bill to section 2 of the Local Democracy, Economic Development and Construction Act 2009. That section is repealed by section 28 of the Localism Act 2011.

Lords Amendments 351, 352, 353 and 354

204. This group of amendments would clarify various provisions in paragraph 7 of Schedule 12 relating to oral hearings held by the Competition Commission when considering a reference to it on the proposed national tariff pricing methodology. Amendment 351 would provide for the Competition Commission to inform objectors of the time and place of the hearing and give them the opportunity to attend if they so wish. Amendment 352 would make clear that only those persons present at the oral hearing are able to be cross-examined by an objector, a representative of an objector, or a representative of Monitor. Amendments 353 and 354 would make clear that where a person who is not present at the hearing and therefore cannot be required to give evidence or make representations at the hearing, the Competition Commission can determine the reference without requiring that person to attend and give evidence or make representations.

Lords Amendment 355

205. This amendment would remove a reference in the NHS Act 2006 to NHS trusts in England when they no longer exist due to provisions in clause 176 of the Bill.

Lords Amendments 356 and 357

206. These two amendments would align provision in Schedule 14 with provisions in clauses 165 (mergers) and 166 (acquisitions). The provisions ensure that only English NHS trusts may be subject to merger with or acquisition by foundation trusts.

Lords Amendment 358

207. This amendment would amend Schedule 14 (abolition of NHS trusts in England: consequential amendments) of the Bill. It would repeal section 79 of

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the NHS Act 2006 (further provisions about directions and directed partnership arrangements) along with section 78 of that Act (directed partnership arrangements), which is already repealed by the Bill. Without section 78, section 79 cannot meaningfully operate.

Lords Amendment 359

208. This amendment would remove an incorrect provision, which would have removed a reference in the Local Government and Public Involvement in Health Act 2007 to relevant Welsh bodies which should remain in place.

Lords Amendment 362

209. This amendment would remove a reference to non-existent Welsh bodies in the Health and Social Care (Community Health and Standards) Act 2003.

Lords Amendments 363, 364

210. These two amendments would make a consequential amendment to the Criminal Justice and Immigration Act 2008.

Lords Amendment 367

211. Amendment 367 would remove paragraph 15 of Schedule 18, which amends the National Assembly for Wales (Disqualification) Order 2010 to provide for members of NICE to be disqualified from membership of the National Assembly for Wales. This amendment would remove the paragraph at the request of the Welsh Assembly Government. The Welsh Assembly Government has indicated that it would prefer amendments concerning disqualification to be consolidated rather than have individual amendments made from time to time.

Lords Amendments 368

212. This is a minor and technical amendment which would enable the Information Centre's power of delegation in paragraph 9 of Schedule 19 to apply in relation to any functions it may exercise under directions given by the Secretary of State or the Board under regulations under clause 268 as well as to its other functions.

Lords Amendments 369 and 370

213. Amendment 369 would make a specific reference to the Information Centre in section 64 of the Health and Social Care Act 2008. This would ensure that the CQC could continue to be able to require information from the Information Centre (as established by the Bill) to support the CQC's regulatory functions.

214. Amendment 370 would remove paragraph 13 from Schedule 20, which amends the National Assembly for Wales (Disqualification) Order 2010 to provide for members of the Information Centre to be disqualified from membership of the National Assembly following a request to do so from the Welsh Assembly Government (see the commentary on amendment 367

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above).

Lords Amendments 371, 372, 373 and 374

215. These amendments would support amendments 288, 290 and 291. They would provide that property and staff transfer schemes made for the purposes of the Bill could include transfers from the NHS Business Services Authority and the Secretary of State to the Information Centre. This would enable the Centre to carry out any systems delivery functions allocated to it by directions given under regulations (see amendment 291).

HEALTH AND SOCIAL CARE BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

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*Ordered, by The House of Commons,
to be Printed, 19 March 2012.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON — THE STATIONERY OFFICE LIMITED
Printed in the United Kingdom by The Stationery Office Limited
£x.xx