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Healthwatch England's position on the Statutory Instruments 2012 No, 3094 "The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012. Part 6 Local Healthwatch."

Established on 1 October 2012, Healthwatch England is the new, independent statutory consumer champion for health and social care in England. We will represent the interests of individuals who use health and social care services. We will work with emerging local Healthwatch organisations to help build a national picture of the trends and issues that matter most to people.

We will use the evidence we gather to identify national trends and issues, and to influence national policy. The Healthwatch network will hold all organisations to account for how they involve consumers and users in their decision-making. Healthwatch will challenge organisations to do better and remind them of their responsibilities. Whether it's the service providers, CCGs, NHS Commissioning Board, the Care Quality Commission or indeed the Secretary of State, Healthwatch will be the constant reminder that engaging people in their care, its planning and delivery is a necessity.

A summary of Healthwatch England's views on the Statutory Instruments 2012 No, 3094 "The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012. Part 6 Local Healthwatch."

There are a number of issues relating to the legislation pertaining to the regulations that should be improved and addressed.

- The regulations ensure that local Healthwatch has the necessary freedom to undertake campaigning and policy work related to their core activities. However, the regulations should have been worded more appropriately to avoid any potential confusion.
- Healthwatch England proposes that it works with the Department of Health and the Local Government Association to produce guidance for local Healthwatch and local authorities to assist them to correctly interpret the regulations.
- As a recipient of public money and a champion of the needs of consumers of health and care services, the social enterprise that is local Healthwatch should be seeking to invest as much of any distributable profit as feasible into the activities of the local Healthwatch.
- Local Healthwatch reliance on the Freedom Of Information Act 2000, which is an intensely administrative process, to get information from private providers that are in receipt of public funds may prove problematic. Consideration should be given to introducing a more straight forward and simpler duty on service providers to respond to requests for information from local Healthwatch.



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Healthwatch England's detailed views on the Statutory Instruments 2012 No, 3094 "The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012. Part 6 Local Healthwatch.

The following briefing sets out the more detailed views of Healthwatch England in relation to the Statutory Instruments¹ which were made on 12th December 2012 and subsequently laid before parliament. This response focuses on those areas where Healthwatch England has the strongest views, namely the wording of Sections 36, 35 and omissions from the regulations.

Section 36. Political activities not to be treated as being carried on for the benefit of the community.

Local Healthwatch is the independent champion of consumers of health and social care. The independence of local Healthwatch is crucial to ensure that consumers feel they can share their views and experiences and that these will be acted on appropriately with out undue influence. Healthwatch England welcomes section 36 (1c) of the regulations which ensures that local Healthwatch England remains independent and can not undertake activities intended to affect support for a political party or influence voters in relation to an election. Healthwatch England's view is that section 36 (2) ensures local Healthwatch has the necessary freedom to undertake campaigning and policy work related to its core activities. However, Healthwatch England understands why there could be some confusion because of the wording in Section 36 (1a & 1b). This section should have been worded more appropriately to avoid any potential confusion, around the active role local Healthwatch will have in undertaking policy and campaigning work on behalf of consumers of health and social care services in their areas.

Healthwatch England would welcome that these concerns be resolved in future statutory instruments. In the interim, Healthwatch England proposes that it works with the Department of Health and the Local Government Association to produce guidance for local Healthwatch and local authorities to assist them to correctly interpret the regulations.

¹ Statutory Instruments 2012 No, 3094 "The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012. Part 6 Local Healthwatch."



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Section 35. Criteria concerning social enterprises

Local Healthwatch is the consumer champion for users of health and social care services in a locality. Healthwatch England believes that local Healthwatch should be focussed on maximising its impact on behalf of consumers in its area of operation. Regulation 35 (1A) allows that the Social Enterprise that is local Healthwatch has to “ensure that not less than 50 per cent of its distributable profits” will be “used or applied for the purpose of the activities” of the local Healthwatch social enterprise. Healthwatch England’s view is that this % is too low. As a recipient of public money and a champion of the needs consumers of health and care services, the social enterprise that is local Healthwatch should be seeking to invest as much of any distributable profit as feasible into the activities of the local Healthwatch.

Omissions from the regulations: Duty on service providers to respond to requests for information from local Healthwatch.

Section 221 (6) of the Local Government and Public Involvement in Health Act 2007 sets out the definition of “local care services” as meaning “care services provided in the authority’s area and; care services provided, in any place, for people from the area.” It is possible that some of these publicly funded health and care services will be subcontracted to private providers to deliver.

Section 224 (1a) of the aforementioned Act allows the Secretary of State to impose duties on a service provider to respond to requests for information from the local Healthwatch. The Department of Health consulted about the local Healthwatch regulations between April and June 2012 and subsequently reported that “the Department also prefers not to impose a duty to respond to information requests.²” This in part appeared to reflect the view of respondents that “in the light of availability of FOIA requests, a duty to respond to information requests would be unnecessary³.”

Had Healthwatch England been in existence at this time, we would have highlighted to the Department that the FOIA requests are only likely to be used as a last resort, potentially where the service provider is not willing to collaborate with the local Healthwatch. In such circumstances the local Healthwatch may struggle to get information using the FOIA 2000. This is because when a local authority or health provider outsources provision of services to a private company then the information held by the private provider may not necessarily be accessible using the FOIA 2000.

² P16., Summary report, Issues Relating to local Healthwatch regulations, Department of Health. July 2012.

³ P8., Summary report, Issues Relating to local Healthwatch regulations, Department of Health. July 2012.