



NATIONAL ASSOCIATION OF LINK MEMBERS



NALM's Briefing for the Prayer to annul the HealthWatch England Committee Regulations 2012 No. 1640

October 2012

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Prayer to annul the Healthwatch England Committee Regulations 2012 No. 1640

Lord Collins of Highbury to move that this House regrets that the Care Quality Commission (Healthwatch England Committee) Regulations 2012 (SI 1640/2012) fail to provide sufficient safeguards to ensure the independence of HealthWatch England from the Care Quality Commission, despite Government assurances given to the House at report stage of the Health and Social Care Bill on 8 March 2012, and that the Regulations fail to provide for effective national patient representation in the health service.

CITATION, COMMENCEMENT AND INTERPETATION

1. -(2) **Independence – Independence – Independence**
HealthWatch England should be fully and completely independent and in particular independent from the CQC. Although it may be the government's intention for HWE to be independent and have its own identity, by co-locating it with the CQC it is unlikely that this will happen in reality, because the HWE Committee will be rapidly absorbed into, moulded and overwhelmed by dominant infrastructure of CQC.

The Regulations should ensure independence by stating that HWE will be an independent [stand alone] body. Independence is fundamental to the credibility, success and influence of HWE.

The relationship with the CQC could easily be redeemed by using an agency agreement enabling HWE to share some resources with the CQC. Technical expertise should be made available through this means. HWE should have access as required to CQC's expertise and infrastructure including data management, gathering and use of intelligence, analysis, and an evidence base of information about services across the country. Being subsumed within the CQC is not necessary to achieve this desired sharing.

One of the lessons expected to come from the Mid Staffs Inquiry relates to the issue of independence. It is expected that the report of the Inquiry will identify a systemic failure of organisations to focus primarily on the needs of hospital patients.

The inter-connectedness of the hospital with Monitor, the Department of Health and its regional offices, the CQC and others meant that there was no truly independent perspective. This situation must not be replicated in the establishment of HealthWatch structures. The keys to success are independence and transparency throughout the system – this is the only way to build public confidence and credibility in HealthWatch as the public champion in health and social care.

MEMBERS

2.-(1)(b) Number of Members for HealthWatch England

Having a small unrepresentative HWE Committee will damage its credibility.

The Committee of HWE could be as small as 6 members. For a body which is supposed to connect effectively with LHW and communities across England there is no value in having a small unrepresentative HWE Committee. The Committee is not simply a governance committee of the sort that runs Monitor, but should be made up of a diverse range of people who can be identified as representative both of LHW and communities across England.

A Committee of no less than 12 people would be required to ensure inclusivity and diversity. The Committee of HWE should represent diverse and hard-to-reach communities and show due regard to representing people with protected characteristics identified in the Equality Act 2010. People with diverse views and experiences are essential to ensure that Committee members possess the expertise needed to influence and engage with other organisations.

MONITOR, the CQC and NICE have very specific functions within an overall system and do not have the same need for the broad focus which is essential for the HealthWatch England Committee. Credibility and public confidence will only come if HWE is powerful, influential and effective and is seen as having a wide and geographically representative membership. Only such a committee can deliver what HWE was set up to achieve.

2.-(2) The unsatisfactory and undermining relationship between HWE and the CQC is demonstrated by the requirement for the Chair of HWE to consult the Chair of the CQC before appointing the first members. This demonstrates a clear abrogation of the independence of HWE in relation to the CQC.

APPOINTMENT OF MEMBERS

3.-(1) The requirement for the Chair of HWE to be a member of the CQC Board at the time when his or her appointment takes effect, ensures that the Chair of HWE cannot be independent. Whilst membership of the Board of the CQC, Monitor and the NHSCB would be valuable in terms of the influence of HWE, the position of the Chair should not be dependent on decisions of the CQC board. The Chair of HealthWatch England must not be accountable to the CQC or accountable to the Chair of the CQC. There are considerable risks in relation to the influence that the CQC might have over HWE - the credibility of HWE could be forfeit, there are reputational risks - and if the CQC were to be seen as a failing organisation this would impact heavily on the reputation of HWE. The Chair of HWE cannot be subservient to the Chair of the CQC.

3.-(2)b Relevant knowledge and experience is necessary for members of the HWE. That is why it is important to **elect** the majority of members and appoint other members with specific skills and expertise. Collectively they must ensure that HWE influences health and social care policy through its influence with the Secretary of State, CQC, Monitor and the NHS Commissioning Board, and ensure HWE fulfils its functions, i.e.

- Enabling and leading the development of effective LHW in every part of England
- Setting standards for LHW and providing support, advice, assistance to LHW organisations
- Using information from LHW on the views and experiences of patients and service users to influence the national agenda.

Members of HWE should be elected and appointed on the basis of a strong background in public and patient involvement in health and/or social care. It is essential that the skills and expertise of HWE members include, but are not dominated by, 'national vision'.

HWE will be looked to by 152 LHWs as an organisation that understands, and has experience of both national and local problems and issues, including the special needs of deprived communities, people suffering as a result of health inequalities and people living in rural areas.

3.-(2)c Not only should the arrangements for the selection and appointment of members be open and transparent, but the process must be democratic. A Committee of no less than 12 people would be most appropriate, consisting of 8 elected members and 4 appointed members, to ensure inclusivity and diversity, with additional members co-opted.

3.-(3)(4)(5) There should be no more than 1 member of the HWE Board representing the CQC and no more than 1 member representing local authorities.

The majority of members of HWE should be elected from LHW. As LHW is funded by government to influence local health and social care services - and is intended to influence national policy through HWE, and must have a diverse membership - it is appropriate for the majority of HWE Board members to be directly elected from LHW. This will ensure local issues sit at the centre and that local people have faith in HWE. The connection between LHW and HWE must be more than 'a brand, a name and a conversation'.

The decision to restrict LHW membership of HWE to only 4 members, one from each of the 4 NHS regions (Greater London, North, Midlands and South) is grossly inadequate and irrational. Already the London-centric, Whitehall-facing culture is evident.

The decision to restrict the LHW membership of HWE to people described as "directors" of Local Healthwatch organisations is limiting, irrational and confusing. It suggests that in practice only directors of the board of a body corporate, that is a social enterprise, running a LHW, would be able from April 1st 2013 to become a member of the HWE committee. This would exclude most of the lay people who have led LINKs and may lead LHW. Patients, users of social care services, carers and members of the public who lead LINKs and will be active in LHW should all have an opportunity to stand for election to HWE.

The regional representatives should be freely elected by their constituent LHWs.

CO-OPTION

4.-(1) Co-opted members should be sought, over and above the 12 HWE Committee members, to increase the diversity and influence of the HWE Committee.

TENURE

5.- The term of office for HWE Committee members of 4 years is too long - three years would be more satisfactory. The regulations allow for two periods of 4 years amounting to 8 years in all. This can be followed by a gap for four years and then reappointment for a further 4 or 8 years. This would allow unelected Committee members to sit on the Committee for a total 8 years, followed by a break and then another 8 years.

Only in exceptional circumstances should anyone be a member for more than 2 successive terms of office. It would be best if an appointment could be terminated after 3 years, if a Board member has not performed well, and active renewal/extension of appointments be offered for people who are reflecting the needs of local communities exceptionally well, and functioning as a notable leader of HWE demonstrating a significant impact on the effectiveness, development and safety of health and social care services.

TERMINATION OF TENURE OF OFFICE

8.-(2) It is of concern that if the Chair of HWE ceases to be a member of the CQC Board that their position as Chair of HWE ceases. It is irrational for a body - HWE - that is intended to be independent to have the position of the Chair dependent on his or her membership of another statutory body, even though appointed by the Secretary of State.

8.-(6)(a)(c) It is irrational for a member of the Healthwatch England Committee representing LHW to have his or her tenure terminated because the person is no longer a director of a LHW body corporate contracted by the local authority. The person may be an active individual, widely respected by local people but no longer willing to be a director of a body corporate. This approach undermines and diminishes the input of LHW into HWE. It is similarly absurd for a person's tenure to be terminated if he or she transfers to another LHW.

OTHER GENERAL ISSUES

Enhancing the Collective Voice of the Public

HealthWatch England must strengthen and give real power to the collective voice of patients and the public in social care and health.

Access and Influence

The Chair of HWE should have a seat on the Board of CQC, Monitor, NHS Commissioning Board and the DH Department Board, to ensure that the public's influence is felt everywhere in the health and social care system. This will ensure that HWE has real influence in every relevant key decision-making policy body.

Influencing the CQC, MONITOR, NHSCB and The Secretary of State

Formulating independent policies to create better health and social care nationally and locally, HWE must be able to take forward independent national policies based on need identified in communities across England. These policies may not be consistent with those of the CQC, Monitor, the NHSCB, the Secretary of State and local authorities. HWE policies may be aimed at improving the performance of any or all of these bodies.

Influencing National Policy in Health and Social Care

HWE must have the power and ability to influence and shape the content and direction of policy in the CQC, Monitor, NHS Commissioning Board and with the Secretary of State.

A duty to respond to HealthWatch England recommendations

When HWE makes formal recommendations there must be action – a polite reply is not enough! It is essential that HWE will be able to make formal recommendations to the CQC, Monitor, NHS Commissioning Board, local authorities and the Secretary of State. There must be a duty on each of these bodies to respond to and take action in response to recommendations made by HWE

Proactive Leadership

HWE must actively represent the public and be pro-active in influencing the CQC, Monitor, NHSCB and the Secretary of State on behalf of the public.

Hearing the Public Voice and Acting Effectively

HealthWatch England should seek views and information about the experiences of people who use health or social care services. It must ensure that these views and experiences influence and improve the quality of services and access to those services. Creating services that meet the needs of people is fundamental. This must be an active function not a passive one. 'Being heard' is not enough. Access without power and influence is useless.

Developing a cadre of experts in public involvement

The creation of a cadre of expert staff to support the development of LHW essential. This capacity is needed in advance of LHW being established and HWE should have the resources and infrastructure both to actively support the development of LHW especially in its earliest stages, and to share good and best practice.

HealthWatch England Report must be in the public arena

HWE must share all of its reports with LHW and local people. All reports produced by HWE must be made available as hard copy to all LHW organisations and libraries in England.

Accessing and Sharing Data about Services

LHW will be led locally, but HWE must support, facilitate and enable the success and empowerment of LHW. HWE has unrealistic ambitions about accessing data from LHW. The LINK-LHW transition chaos which the government has created, will mean, in many parts of the country, that any systematic data production will take years to achieve, at least 2 years from establishment of LHW. In addition, LHW may not find it appropriate to provide the types of data that HWE may want and HWE should not be leading the direction of work of LHW. HWE and LHW might collaborate to carry out national surveys and the CQC could provide valuable support with data and information.

Consultation with Local HealthWatch on any major changes to HWE

LHW must be consulted before any major changes are made to HWE. If as a result of criticisms of its performance, the Secretary of State attempts to terminate HWE, LHW must have a locus in the decision-making process. LHW must be consulted before any attempts are made to substantially vary, or terminate the operation of HWE. LHW must be included in plans for its redevelopment.

Board Members must be Credible National Leaders

HWE Board members must understand the levers of community empowerment and influence. HWE Committee members must have sufficient skills and experience to enable HWE to deliver its work programme. HWE Committee members must also ensure the Board has a reputation that places it at the centre of public empowerment in health and social care. Board members must be credible people in the eyes of LHW and the wider community.

REFERENCES

Consultation on the regulations for Healthwatch England membership
26/1/2012
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_132416

Healthwatch England – response to consultation on regulations
27/6/2012
<http://healthandcare.dh.gov.uk/healthwatch-england-consultation-regulations/>

National Association of LINKs Members
<http://www.nalm2010.org.uk>

www.nalm2010.org.uk
www.HealthWatchdevelopment.net

APPENDIX ONE

Statutory Instruments

2012 No. 1640

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

PUBLIC HEALTH, ENGLAND

The Care Quality Commission (Healthwatch England Committee) Regulations 2012

Made

21st June 2012

Laid before Parliament

27th June 2012

Coming into force in accordance with regulation 1(1)

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by section 161(3) and (4) of, and paragraph 6(1A) and (5A) to (5D) of Schedule 1 to, the Health and Social Care Act 2008⁽¹⁾.

(1)

2008 c.14 ("the 2008 Act"). See the definition of "regulations" in section 97(1) of that Act. There are no relevant amendments to section 161 of the 2008 Act. Sub-paragraphs (1A) and (5A) to (5D) were inserted into paragraph 6 of Schedule 1 to the 2008 Act by subsections (2) and (3), respectively, of section 181 of the Health and Social Care Act 2012 (c.7) ("the 2012 Act").

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care Quality Commission (Healthwatch England Committee) Regulations 2012 and come into force immediately after the commencement of section 181 of the Health and Social Care Act 2012⁽¹⁾.

(2) In these Regulations—

“the Committee” means the Healthwatch England committee of the Commission⁽²⁾; and

“member”, except in the expression “member of the Commission”, means a member of the Committee, including the chair.

(1)

2012 c.7.

(2)

The reference to “the Commission” is a reference to the Care Quality Commission – see section 1(1) of the 2008 Act which made provision for the establishment of the Commission.

Members

2.—(1) The Committee is to consist of—

(a) a chair appointed by the Secretary of State; and

(b) not less than six and not more than twelve other members appointed by the chair.

(2) Before appointing the first members, the chair must consult the chair of the Commission⁽¹⁾.

(3) For the purposes of paragraph (2), “the first members”, in relation to the Committee, means those members, other than the chair, whose membership of the Committee takes effect from 1st October 2012.

(1)

See paragraph 3(1)(a) of Schedule 1 to the 2008 Act as to the appointment of the chair of the Commission.

Appointment of members

3.—(1) The Secretary of State must exercise the function in regulation 2(1)(a) so as to secure that the chair is a person who is a member of the Commission at the time when the appointment as chair takes effect⁽¹⁾.

(2) The chair must exercise the function in regulation 2(1)(b) so as to secure that—

(a) a majority of members are not members of the Commission;

(b) so far as reasonably practicable, the persons appointed include persons with knowledge or experience relevant to the discharge, by the Committee, of functions under section 45A of the Health and Social Care Act 2008⁽²⁾ (functions to be exercised by Healthwatch England); and

(c) arrangements for the selection and appointment of persons as members take into account—

(i) the principle that the selection and appointment of members should be open and transparent; and

(ii) the principles laid down in the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies of 1st April 2012⁽³⁾.

(3) In exercising the function in regulation 2(1)(b), the chair must have regard to the need to encourage diversity in the range of persons who may be appointed.

(4) In exercising that function, the chair may, subject to the conditions specified in paragraph (5), appoint up to four members who are directors of Local Healthwatch organisations⁽⁴⁾.

(5) The conditions are that—

(a) those persons are not members of the Commission at the time of the appointment; and

(b) in relation to each region of England, no more than one member is appointed from directors of Local Healthwatch organisations for the areas of English local authorities⁽⁵⁾ in that region.

(6) For the purposes of paragraph (5)(b), the regions of England are listed in column (1) of the Table in Schedule 1 and comprise the areas specified in column (2) of the Table.

(1)

See paragraph 3 of Schedule 1 to the 2008 Act and [S.I. 2008/2252](#), as amended by [S.I. 2011/2547](#), as to the membership of the Commission.

(2)

Section 45A was inserted into Part 1 of the 2008 Act by section 181(4) of the 2012 Act. Subsection (1) of section 45A provides that the functions set out in subsections (2) to (5) are functions of the Commission but that the Commission must arrange for the Healthwatch England committee to exercise the functions on its behalf.

(3)

A copy of the Code of Practice of April 2012 is available to download from the Commissioner for Public Appointments' website at <http://publicappointmentscommissioner.independent.gov.uk>.

(4)

As to the meaning of “Local Healthwatch organisation”, see subsection (2A) of section 222 of the Local Government and Public Involvement in Health Act 2007 (c.28) (“the 2007 Act”), which is to be inserted by section 183(2) of the 2012 Act on a date to be appointed under section 306 of the 2012 Act.

(5)

See section 97(1) of the 2008 Act as to the definition of “English local authority”.

Co-option

- 4.—(1) The Committee may appoint members in addition to those appointed under regulation 2 (“Co-opted Members”).
- (2) A Co-opted Member is appointed for such period as the Committee considers appropriate and a Co-opted Member who has ceased to hold office may be re-appointed.
- (3) A Co-opted Member does not count as a member for the purposes of regulations 5 to 9.
- (4) A Co-opted Member may not vote on any matter.
- (5) The Committee must exercise its power under paragraph (1) so as to secure that a majority of Members are not members of the Commission.
- (6) The membership of a Co-opted Member may be withdrawn at any time by the Committee.

Tenure

- 5.—(1) Subject to regulations 8 and 10, the term of office of a member must be such period, not exceeding four years, as is specified by the person making the appointment at the time of the appointment.
- (2) Subject to regulation 6 and paragraph (3), a member who has ceased to hold office may be re-appointed.
- (3) A member may not hold office for more than two consecutive terms without an intervening period of at least four years.

Disqualification for appointment or from holding office

6. Subject to regulation 7, a person is disqualified for appointment or from holding office as a member where that person falls within one or more of paragraphs 1 to 6 of Schedule 2.

Cessation of disqualification

- 7.—(1) Subject to paragraph (2), a person who is disqualified under paragraph 4 or 6 of Schedule 2 may, after the expiry of a period of two years beginning on the date of the dismissal or removal, apply in writing to the chair to remove the disqualification, and the chair may direct that the disqualification is to cease.

- (2) Where the chair refuses an application to remove a disqualification, no further application may be made by that person until the expiry of a period of two years beginning on the date of the application, and this paragraph applies to any subsequent application.

Termination of tenure of office

- 8.—(1) A member may resign at any time by giving notice in writing to the Appointing Authority.
- (2) If the chair ceases to be a member of the Commission, the chair's tenure of office as chair terminates on the date of the cessation⁽¹⁾.
- (3) If a member other than the chair is appointed to be the chair, that member's tenure of office as such a member terminates when the appointment as chair takes effect.
- (4) The tenure of office of a member other than the chair terminates upon being notified in writing by the chair—
- (a) that the chair is satisfied that one of the conditions specified in paragraph (5) is met in relation to that member; and
 - (b) of the reason why the chair is so satisfied.
- (5) The conditions are that that member—
- (a) is unable or unfit to carry out the duties of that office;
 - (b) is failing to carry out those duties; or

(c) is disqualified from holding office (or was disqualified at the time of appointment).

(6) Without prejudice to paragraph (4) and subject to regulation 10, the tenure of office of a member appointed under regulation 3(4) terminates—

(a) where that member ceases to be a director of a Local Healthwatch organisation, on the date of the cessation;

(b) where that member becomes a member of the Commission, on the date on which that member's appointment as such a member takes effect; and

(c) where the condition specified in regulation 3(5)(b) ceases to be satisfied as a result of that member becoming a director of a Local Healthwatch organisation other than that of which that member is currently a director, on the date of the cessation.

(7) Where a person has been appointed as a member under regulation 3(4), that person must give notice in writing to the chair if that person's tenure of office as a member is terminated under paragraph (6).

(8) For the purposes of paragraph (1), "the Appointing Authority"—

(a) in relation to a member who is the chair, means the Secretary of State; and

(b) in relation to any other member, means the chair.

(1)

See [S.I. 2008/2252](#), regulations 3 and 6 as to the tenure of office and the termination of tenure of office, respectively, of members of the Commission.

Suspension of members

9.—(1) Paragraph (2) applies where the chair is suspended from office as a member of the Commission(1).

(2) The Secretary of State must suspend the chair from office as chair, for the duration of that suspension, by giving the chair notice in writing.

(3) Paragraphs (4) and (5) apply where it appears to the chair in relation to another member that one of the conditions in regulation 8(5) is or may be satisfied.

(4) The chair may suspend the member from office by giving that member notice in writing.

(5) The chair may, by giving that member notice in writing—

- (a) before the period referred to in paragraph (8) has expired, extend, or further extend, the suspension for a further specified period; or
 - (b) if it has expired, impose a further suspension for a specified period.
- (6) Where the chair suspends a member under this regulation, the chair may, on application by the suspended member or otherwise, remove a suspension before the period referred to in paragraph (8) has expired, or reduce its period.
- (7) Where the chair removes, or reduces the period of, suspension under paragraph (6), the chair must notify the member in writing to that effect.
- (8) A notice given under paragraph (2) or (4) must give the reason for, and the period of, the suspension and the date that it is to begin.
- (9) The chair or other member must cease to perform functions as the chair or member for the period of the suspension but the period of the chair or member's term of office is not affected by the suspension.

(1)

See [S.I. 2008/2252](#), regulation 7 as to the suspension of members of the Commission.

Transitional provision

10.—(1) In relation to appointments made during the period beginning on 1st October 2012 and ending on 31st March 2013—

(a) the reference, in regulation 3(4), to directors of Local Healthwatch organisations is to be read as a reference to the persons mentioned in paragraph (2); and

(b) the conditions specified in paragraph (5) of that regulation do not apply.

(2) The persons are—

(a) persons whom the chair recognises as persons representing Local Involvement Networks; or

(b) persons who, under arrangements made by an English local authority, are providing advice, assistance or other support to that authority in relation to that authority's preparations for making arrangements with Local Healthwatch organisations under section 221 of the 2007 Act⁽¹⁾ (local arrangements in relation to health services and social services).

(3) The term of office of a member appointed in accordance with this regulation must be such period, not

extending beyond 30th September 2013, as the chair specifies at the time of the appointment.

(4) The membership of a person appointed in accordance with this regulation may be withdrawn at any time by the chair.

(5) In this regulation—

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007; and

“Local Involvement Network” has the meaning given by section 222(2) of the 2007 Act⁽²⁾ (arrangements under section 221(1)).

(1)

[2007 c.28](#). Section 221 of the 2007 Act is to be amended by section 182 of the 2012 Act on a date to be appointed under section 306 of the 2012 Act. By virtue of the amendments to section 222 of the 2007 Act by section 183 of the 2012 Act, such arrangements must be made with Local Healthwatch organisations.

(2)

A reference in section 222 of the 2007 Act to a “local involvement network” is to a person who, in pursuance of any particular arrangements made under section 221(1) of that Act by a local authority, is to carry on, in that authority’s area, activities specified in section 221(2) for that area – see section 222(2).

Signed by authority of the Secretary of State for Health.

Earl Howe

Parliamentary Under-Secretary of State,

Department of Health

21st June 2012

SCHEDULE 1 REGIONS IN ENGLAND

1. The regions in England are listed in column (1) of the Table below and comprise the areas specified in column (2) of the Table.
2. A reference to an area specified in column (2) of the Table is a reference to that area as it is for the time being.

Table

<i>(1) Name of Region</i>	<i>(2) Area Included</i>
London	Greater London
North	County of Darlington County of Durham County of Hartlepool County of Middlesbrough County of Northumberland County of Redcar and Cleveland County of Stockton-on-Tees County of Tyne and Wear County of Blackburn with Darwen County of Blackpool County of Cheshire East County of Cheshire West and Chester County of Cumbria County of Greater Manchester County of Halton County of Lancashire County of Merseyside County of Warrington

	<p>County of the City of Kingston upon Hull</p> <p>County of the East Riding of Yorkshire</p> <p>County of North East Lincolnshire</p> <p>County of North Lincolnshire</p> <p>County of North Yorkshire</p> <p>County of South Yorkshire</p> <p>County of West Yorkshire</p> <p>County of York</p>
<p>Midlands</p>	<p>County of Derby</p> <p>County of Derbyshire</p> <p>County of Leicester</p> <p>County of Leicestershire</p> <p>County of Lincolnshire</p> <p>County of Northamptonshire</p> <p>County of Nottingham</p> <p>County of Nottinghamshire</p> <p>County of Rutland</p> <p>County of Bedford</p> <p>County of Central Bedfordshire</p> <p>County of Cambridgeshire</p> <p>County of Essex</p> <p>County of Hertfordshire</p> <p>County of Luton</p> <p>County of Norfolk</p> <p>County of Peterborough</p> <p>County of Southend-on-Sea</p>

	<p>County of Suffolk</p> <p>County of Thurrock</p> <p>County of Herefordshire</p> <p>County of Shropshire</p> <p>County of Staffordshire</p> <p>County of Stoke-on-Trent</p> <p>County of Telford and Wrekin</p> <p>County of Warwickshire</p> <p>County of West Midlands</p> <p>County of Worcestershire</p>
<p>South</p>	<p>County of Berkshire</p> <p>County of Brighton and Hove</p> <p>County of Buckinghamshire</p> <p>County of East Sussex</p> <p>County of Hampshire</p> <p>County of Isle of Wight</p> <p>County of Kent</p> <p>County of the Medway Towns</p> <p>County of Milton Keynes</p> <p>County of Oxfordshire</p> <p>County of Portsmouth</p> <p>County of Southampton</p> <p>County of Surrey</p> <p>County of West Sussex</p> <p>County of Bath and North East Somerset</p> <p>County of Bournemouth</p>

	County of the City of Bristol
	County of Cornwall
	County of Devon
	County of Dorset
	County of Gloucestershire
	County of North Somerset
	County of Plymouth
	County of Poole
	County of Somerset
	County of South Gloucestershire
	County of Swindon
	County of Torbay
	County of Wiltshire
	Isles of Scilly

SCHEDULE 2 GROUNDS FOR DISQUALIFICATION

1. The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.

2. The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986⁽¹⁾, Schedule 2A to the Insolvency (Northern Ireland) Order 1989⁽²⁾ or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985⁽³⁾ (which relate to bankruptcy restrictions orders and undertakings).

3. The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.

4. The person has been dismissed (without being re-instated) by reason of misconduct from any paid employment where that dismissal has not been the subject of a finding of unfair dismissal by a tribunal or court.

5. The person is subject to—

(a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986⁽⁴⁾;

(b) a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989⁽⁵⁾ or a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002⁽⁶⁾; or

(c) an order made under section 429(2) of the Insolvency Act 1986⁽⁷⁾ (disabilities on revocation of administration order against an individual).

6. The person has been removed—

(a) from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners, the Charity Commission, the Charity Commission for Northern Ireland or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which that person was responsible or to which that person was privy, or which that person, by their conduct, contributed to or facilitated; or

(b) under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽⁸⁾ (powers of the Court of Session to deal with management of charities) or section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005⁽⁹⁾ (powers of the Court of Session to deal with management of charities) from being concerned in the management or control of any body.

(1)

[1986 c.45](#). Schedule 4A was inserted by Schedule 20 to the Enterprise Act 2002 ([c.40](#)).

(2)

[S.I. 1989/2405 \(N.I. 19\)](#). Schedule 2A was inserted by article 13(2) of the Insolvency (Northern Ireland) Order 2005 ([S.I. 2005/1455](#)) (N.I. 10).

(3)

[1985 c.66](#). Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 ([asp 3](#)).

(4)

[1986 c.46](#).

(5)

[S.I. 1989/2404 \(N.I. 18\)](#).

(6)

[S.I. 2002/3150 \(N.I. 4\)](#).

(7)

Section 429(2) was amended by paragraph 15 of Schedule 23 to the Enterprise Act 2002, and is to be substituted by paragraph 3 of Schedule 16 to the Tribunal, Courts and Enforcement Act 2007 (c.15), on a date to be appointed under section 148 of that Act.

(8) 1990 c.40. Section 7 was repealed by paragraph 7(b) of Schedule 4 to the Charities and Trustee Investment (Scotland) Act 2005 (asp 10). The functions of the Lord Advocate transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678), article 2(1) and the Schedule. See the entry in the Schedule for the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(9) Section 34 was amended by section 122 of the Public Services Reform (Scotland) Act 2010 (asp 8).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the appointment of the Healthwatch England committee (“the Committee”) of the Care Quality Commission (“the Commission”). The Committee was provided for in section 181 of the Health and Social Care Act 2012 (“the 2012 Act”) which made various amendments to Part 1 of, and Schedule 1 to, the Health and Social Care Act 2008 in relation to the appointment and functions of the Committee.

Regulation 2 makes provision as to the membership of the Committee.

Regulation 3 makes provision as to the appointment of members, including results to be secured by persons with powers to appoint members. This includes a requirement to secure that the majority of the members are not members of the Commission.

Regulation 4 makes provision for the appointment of co-opted members by the Committee.

Regulations 5 to 9 make provision as to the tenure of office of members (regulation 5), disqualification for appointment or from holding office as a member (regulation 6), cessation of disqualification (regulation 7), termination of tenure (regulation 8) and suspension of members (regulation 9).

Regulation 10 makes transitional provision to ensure that, until the provisions of the 2012 Act relating to Local Healthwatch organisations are commenced, specified persons, such as representatives of Local Involvement Networks, can be appointed as members in place of directors of Local Healthwatch organisations.

A full Impact Assessment has not been produced for this instrument as no impact on the private sector or civil society organisations is foreseen.

<http://www.legislation.gov.uk/uksi/2012/1640/made>

APPENDIX TWO

HEALTH SOCIAL CARE ACT 2012

181 Healthwatch England

(1)The Health and Social Care Act 2008 is amended as follows.

(2)In Schedule 1 (the Care Quality Commission: constitution, etc.), in paragraph 6, after sub-paragraph (1) insert—

“(1A)A committee of the Commission known as “the Healthwatch England committee” is to be appointed in accordance with regulations.

(1B)The purpose of the Healthwatch England committee is to provide the Commission or other persons with advice, information or other assistance in accordance with provision made by or under this or any other Act.”

(3)After sub-paragraph (5) insert—

“(5A)Regulations under sub-paragraph (1A) must make provision requiring a person who has power to appoint a member of the Healthwatch England committee to secure that a majority of the members of the committee are not members of the Commission.

(5B)Regulations under sub-paragraph (1A) may specify other results which a person who has power to appoint a member of the committee must secure.

(5C)Regulations under sub-paragraph (1A) may, in particular, make provision as to—

- (a)eligibility for appointment;
- (b)procedures for selecting or proposing persons for appointment.

(5D)Regulations under sub-paragraph (1A) may, in particular, make provision as to—

- (a)the removal or suspension of members of the committee;
- (b)the payment of remuneration and allowances to members.”

(4)In Chapter 3 of Part 1 (quality of health and social care), before section 46 and the preceding cross-heading insert—

“Healthwatch England and Local Healthwatch organisations

45A Functions to be exercised by Healthwatch England

(1)The Commission has the functions set out in subsections (2) to (5), but must arrange for the Healthwatch England committee to exercise the functions on its behalf.

(2)The function in this subsection is to provide Local Healthwatch organisations with general advice and assistance in relation to—

(a)the making of arrangements under section 221(1) of the Local Government and Public Involvement in Health Act 2007 (local care services);

(b)the making of arrangements in pursuance of arrangements made under section 221(1) of that Act (see section 222(2B) of that Act);

(c)the carrying-on of activities specified in section 221(2) of that Act.

(3)The function in this subsection is a power to make recommendations of a general nature to English local authorities about the making of arrangements under section 221(1) of that Act.

(4)The function in this subsection is a power, where the Healthwatch England committee is of the opinion that the activities specified in section 221(2) of that Act are not being carried on properly in an English local authority's area, to give the authority concerned written notice of its opinion.

(5)The function in this subsection is to provide the persons mentioned in subsection (6) with information and advice on—

(a)the views of people who use health or social care services and of other members of the public on their needs for and experiences of health and social care services, and

(b)the views of Local Healthwatch organisations and of other persons on the standard of provision of health and social care services and on whether or how the standard could or should be improved.

(6)The persons referred to in subsection (5) are—

(a)the Secretary of State;

(b)the National Health Service Commissioning Board;

(c)Monitor;

(d)English local authorities.

(7)A person provided with advice under subsection (5) must inform the Healthwatch England committee in writing of its response or proposed response to the advice.

(8)The Healthwatch England committee may provide the Commission with information and advice on the matters mentioned in subsection (5)(a) and (b); and the Commission must inform the committee in writing of its response or proposed response to the advice.

(9)The Commission must publish details of arrangements it makes under subsection (1) (including details of payments of remuneration or other amounts); and inclusion of the details in a report under section 83 is not to be regarded as a discharge of the duty imposed by this subsection.

(10) In performing functions under this section, the Healthwatch England committee must have regard to such aspects of government policy as the Secretary of State may direct.

45B Conflicts of interest

(1) In making arrangements under section 45A(1), the Commission must have regard to any conflicts guidance issued by the Secretary of State.

(2) In exercising functions on behalf of the Commission, the Healthwatch England committee must have regard to any conflicts guidance issued by the Secretary of State.

(3) In this section, "conflicts guidance" means guidance about managing conflicts between—

(a) the exercise of functions by the Commission, and

(b) the exercise of functions by the Healthwatch England committee on the Commission's behalf.

45C Reports

(1) As soon as possible after the end of each financial year, the Healthwatch England committee—

(a) must make a report to the Commission (whether or not in writing) on the matters mentioned in section 45A(5)(a) and (b), and

(b) must publish a report on the way in which it has exercised during the year the functions exercisable by it.

(2) The committee must—

(a) lay before Parliament a copy of each report made under subsection (1)(b), and

(b) send a copy of each such report to the Secretary of State and to every Local Healthwatch organisation.

(3) The committee may publish other reports at such times, and on such matters relating to health or social care, as it thinks appropriate.

(4) Where a recommendation is made to the committee under section 221(2)(h) of the Local Government and Public Involvement in Health Act 2007 (reports under subsection (3)), the committee must have regard to the recommendation.

(5) Before publishing a report under subsection (1)(b) or (3), the committee must, so far as practicable, exclude any matter which relates to the private affairs of an individual the publication of which, in the committee's opinion, would or might seriously and prejudicially affect that individual's interests.

(6) In this section, "financial year" means—

(a) the period beginning with the date on which the committee is appointed and ending with the following 31 March, and

(b) each successive period of 12 months ending with 31 March."

(5)In section 82 (failure by Commission to discharge functions), after subsection (1) insert—

“(1A)The Secretary of State may give a direction to the Healthwatch England committee if the Secretary of State considers that the committee—

(a)is failing or has failed to discharge a function under section 45A or any other function it is required to discharge, or

(b)is failing or has failed properly to discharge a function under that section or any other function it is required to discharge,

and that the failure is significant.”

(6)In subsection (2) of that section—

(a)after “(1)” insert “or (1A)”, and

(b)after “the Commission” insert “or (as the case may be) the committee”.

(7)In subsection (2A) of that section (inserted by section 294), after “(1)” insert “or (1A)”.

(8)In subsection (3) of that section—

(a)after “the Commission” insert “or the committee”, and

(b)after “(1)” insert “or (1A)”.

(9)In subsection (4) of that section (inserted by section 294), after “(1)” insert “, (1A)”.

(10)For the title to that section substitute “Failure by the Commission or Healthwatch England in discharge of functions”.

(11)In section 83 (reports for each financial year etc), after subsection (1) insert—

“(1A)The reference in subsection (1)(a) to the Commission’s functions does not include a reference to its functions under section 45A.”

(12)After subsection (2) of that section insert—

“(2A)The reports under subsection (1)(b) and (c) must, in particular, set out (and identify as such) the contents of the report made by the Healthwatch England committee under section 45C(1)(a) in respect of the year concerned.”

(13)In each of the following provisions, at the end of the entry for the Care Quality Commission insert “and the Healthwatch England committee”—

(a)Part 2 of Schedule 1 to the Public Records Act 1958,

(b)Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, and

(c)Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

(14)The Healthwatch England committee is to be treated for the purposes of section 2(1) of the Public Bodies (Admission to Meetings) Act 1960 as a body that includes all the members of the Care Quality Commission.

<http://www.legislation.gov.uk/ukpga/2012/7/section/181/enacted>

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