31st July 2012

Dear Colleague,

I am writing to inform you about the Government’s proposal for local Healthwatch (LHW) and to seek your views by 14th September 2012 on aspects of the two sets of regulations that are proposed. We welcome your views in light of your existing or future role in relation to health or social care.

This consultation builds on the Department’s recent engagement on issues relating to the LHW regulations (for more information see summary report at http://healthandcare.dh.gov.uk/healthwatch-engagement/).

Healthwatch will be the new consumer champion for people in relation to certain publicly funded health and social care services. At the local level, LHW will have a role in influencing the way in which those services are provided or commissioned by feeding in people’s views and experiences. This will be enhanced by its membership on the local authority health and well being boards. For more information about Healthwatch visit http://healthandcare.dh.gov.uk/files/2012/03/Local-Healthwatch-policy.pdf.

Under changes introduced by the Health and Social Care Act 2012 (for more information visit http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted) to the Local Government and Public Involvement in Health Act 2007 (“the 2007 Act”), LHW organisations will replace LINks and carry forward its statutory activities as listed under section 221 of the 2007 Act.

Section 222 of the 2007 Act contains new regulation-making powers on the criteria to be met in order for a body to be contracted as LHW. There are also regulation-making powers in section 223 of the 2007 Act to require local authority arrangements for LHW to include prescribe provision. There are also powers in section 226 of the 2007 Act to enable the Secretary of State, by regulations, to make provision as respects the time by which a local authority overview and scrutiny committee must acknowledge receipt of the referral of a matter relating to social care services by LHW. The powers in sections 223 and 226 carry forward existing regulation-making powers in relation to LINks. We believe the existing regulations for LINks (“the LINks regulations 2008”) under these powers have worked well so far and intend to generally roll forward the current provisions as set out in the LINks regulations 2008 (for more information visit...
But there are two other regulation-making powers on which we are seeking your views, as follows:

- **Section 224** of the 2007 Act enables the Secretary of State to make regulations to impose on certain persons\(^1\) duties relating to responding to requests for information made by LHW or an LHW contractor, dealing with reports or recommendations made by LHW or an LHW contractor or dealing with reports or recommendations which have been referred by another person.

- **Section 225** of the 2007 Act requires the Secretary of State to make regulations for the purpose of imposing on certain persons\(^2\) a duty to allow authorised representatives of LHW or an LHW contractor to enter and view, and observe the carrying-on of activities on, premises owned or controlled by the services-provider.

### Section 224 - Responding to information requests, reports and recommendations made by LHW

We are asking for your views about requiring commissioners and providers to respond to reports and recommendations made by LHW.

Because of their activities in collecting peoples’ views and experiences, and through their monitoring and review of services, LHW will be able to form a view on how services can be improved and strengthened.

The Department believes that services should take account of any findings made by a LHW, so that these views can be used to improve the care provided. There is a new duty under section 221 of the 2007 Act requiring a person to whom LHW makes views known or makes reports or recommendations, in exercising any function relating to care services, to have regard to those views, reports or recommendations.

Further, the Department is proposing that a specific duty be placed, through regulations, on commissioners and providers of health or social care services\(^3\) to respond to reports and recommendations they receive from LHW.

This would be a change to the position under the LINks regulations 2008 in so far as the duty to send a substantive response (as opposed to an

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1 Those persons are the National Health Service Commissioning Board; a clinical commissioning group; a National Health Service trust; an NHS foundation trust; a Primary Care Trust; a local authority; or a person prescribed by regulations made by the Secretary of State. See section 224(2) of the 2007 Act.

2 Those persons are a National Health Service trust; an NHS foundation trust; a Primary Care Trust; a local authority; or a person prescribed by regulations made by the Secretary of State. See section 225(7) of the 2007 Act.

3 See Footnote 1 as the commissioners and providers to which the power extends.
acknowledgment) would be extended to providers whereas such a duty currently only applies to commissioners (and lesser duties apply to providers).

Under our proposals, commissioners and providers would have 20 working days to respond to the recommendations or reports. They would have to acknowledge receipt of the report or recommendation and provide an explanation to the referring LHW of any action they intend to take in respect of the report or recommendation, or an explanation of why they do not intend to take any action in respect of that report or recommendation.

A commissioner would also have to provide a copy of the report or recommendation to any other commissioner and to a provider who is responsible for a service to which the report or recommendation relates. A provider would have to provide a copy of the report or recommendation to a commissioner of a service to which the report or recommendation relates and to any other provider who is responsible for the service.

When there is more than one commissioner, those commissioners may agree that one of them will provide a response on behalf of them all. The agreed lead on the report or recommendation must then respond to the referring LHW within 20 working days of the latest date on which the report or recommendation was received by a commissioner.

The above proposals largely mirror the existing provisions under regulations under section 224 of the 2007 Act in relation to LINks\(^4\), but have been adapted to apply to both commissioners and providers.

In addition, under the existing regulations relating to LINks, the duty to respond does not apply to reports or recommendations (or parts of reports or recommendations) that relate to children’s social care functions.

The reason for this is that it was felt that there were already effective mechanisms in place to ensure that the views of children and young people are taken into account in the planning, regulation and inspection of services.

However we propose a change to this i.e. to remove the **exclusion relating to children’s social care** so that the regulations for LHW would extend the duties to respond to reports or recommendation to those reports and recommendations that relate to children’s social care. The reason for this is that we want LHW to be a stronger champion of health and social care for people of all ages including children and young people and being able to influence through making reports and recommendations would support this intention.

In relation to duties to respond to information requests, we consider that LHW will be able to access the appropriate information in most cases by using the powers under the Freedom of Information Act 2000. We therefore do not consider it necessary to make regulations under section 224(1)(a) at this time.

\(^4\) The Local Involvement Networks Regulations 2008 (S.I. 2008/528).
1. What are your views on these proposals? In particular do you agree that the requirement to respond to reports and recommendations by a LHW should apply to commissioners and providers? In particular, is the timescale of responding within 20 days appropriate? Should the exclusion relating to children’s services be removed? Do you agree that duties should not be imposed on commissioners or providers to respond to information requests by [LHW]?

Section 225 - Duty of services-providers to allow entry by LHW

To enable LHW to gather the information they need about services, there will be times when it is right for them to see and hear for themselves how those services are provided.

We therefore propose that regulations will impose a duty on health and social care services-providers to allow authorised representatives of LHW or LHW contractors to enter premises that they own or control (with some exceptions), to observe the nature and quality of services.

The Department believes that some exemptions to this duty are essential to protect patient safety and dignity. We therefore propose that a services-provider does not have to allow a representative of LHW or an LHW contractor entry if this would compromise the effective provision of a service or the privacy or dignity of a person.

We also propose that the regulations will provide that, while an authorised representative is on premises owned or controlled by a services-provider, they must not act in a way that compromises the provision of services or the privacy or dignity of any person. If the representative does not comply with this, the duty to allow entry would not apply.

There are also some types of premises that it is deemed inappropriate for a representative to have the right to enter, and therefore the duty to allow entry not to apply.

This includes non-communal areas of care homes – for example, people’s private bedrooms, premises used as accommodation for employees of services-providers, and premises which are occupied by one or more persons as their home and which at least one of those persons occupies under a tenancy or a licence.

We therefore believe that the duty to allow entry should not apply to such premises.

It is also proposed that LHW will not have the right to enter premises or parts of premises at any time when health and social care services are not being provided or if, in the opinion of the services-provider, the authorised
representative, in seeking to enter and view its premises, is not acting reasonably and proportionately.

The above proposals largely mirror the content of existing regulations on LINks.

At present, under those regulations, the duty to respond does not apply to reports or recommendations (or parts of reports or recommendations) that relate to children’s social care activities and functions.

We propose to retain this exclusion relating to children’s social care activities. The reason for this is that there are already effective mechanisms in place to ensure that the views of children and young people are taken into account in the inspection of services such as through the Children’s Rights Director and Ofsted.

It is also proposed to state in the regulations that a person is an authorised representative if they are authorised in accordance with the arrangements the local authority has put in place with LHW or in accordance with the arrangements LHW has put in place with a contractor.

**Additional services-providers covered by this duty**

Finally, it is proposed to list additional persons who are to be services-providers for these purposes, and who will therefore have to comply with the duty to allow authorised representatives to enter and view activities carried on at premises which they own or control. These are carried forward from existing regulations on LINks.

These additional persons are:
- those providing primary medical services
- those providing primary dental services
- those providing primary ophthalmic services (and who own or control premises where services are provided).
- those providing primary pharmaceutical services (and who own or control premises where services are provided).

We believe that these proposals will give LHW the ability to effectively carry out their roles while at the same time, protecting the safety and dignity of patients.

2. **Do you agree with the above proposals to impose duties on commissioners and providers to allow entry to LHW to visit and make observations about the quality of care? In particular, that the exclusion relating to children’s social care remains? Does the list of additional services providers seem appropriate?**

I would welcome your views about the above regulations and please do not hesitate to contact us if you wish to discuss further.
In order for us to take your views into consideration in the drafting of the LHW regulations, which we are aiming to lay in October/November, please send your responses by 14th September (or earlier if you wish or are able) to kasey.chan@dh.gsi.gov.uk and helen.jones@dh.gsi.gov.uk.

Thank you and we look forward to hearing from you.

Yours sincerely,

Kasey Chan
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