EXPLANATORY MEMORANDUM TO

THE CARE QUALITY COMMISSION (HEALTHWATCH ENGLAND COMMITTEE) REGULATIONS 2012

2012 No. 1640

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument makes provision for the appointment of the Healthwatch England committee of the Care Quality Commission ("the Commission") a new body designed to represent, at a national level, the views of patients and the public about health and social care services.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1. The Health and Social Care Act 2008 ("the 2008 Act") made provision for the establishment of the Commission, with responsibility for the registration, review and inspection of certain health and social care services in England.

4.2. The Health and Social Care Act 2012 ("the 2012 Act") amends the 2008 Act to make provision for a committee of the Commission, known as "the Healthwatch England committee" ("Healthwatch England"), to be appointed in accordance with regulations. It makes provision for certain functions to be performed by Healthwatch England – those functions are functions of the Commission, which the Commission must arrange for Healthwatch England to exercise on its behalf (new section 45A of the 2008 Act, inserted by section 181(4) of the 2012 Act). It also requires the Commission and Healthwatch England to have regard to any guidance from the Secretary of State on managing conflicts of interest between themselves (new section 45B of the 2008 Act, inserted by section 181(4) of the 2012 Act). It provides for Healthwatch England to report annually to the Commission, and to publish annual reports on its exercise of functions (new section 45C of the 2008 Act, inserted by section 181(4) of the 2012 Act).

4.3. The instrument makes provision for the appointment of the Healthwatch England committee. The Department's intention is to establish Healthwatch England on 1st October 2012.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 One of the key policy objectives of the 2012 Act is to put patients and the public at the heart of care. The White Paper *Equity and Excellence: Liberating the NHS* (July 2010) outlined the Government's intention to "put patients and the public first" by creating a new Healthwatch – to strengthen the collective voice of patients and the public. The White Paper set out the following proposal: "We will strengthen the collective voice of patients, and we will bring forward provisions in the forthcoming Health Bill to create Healthwatch England, a new independent consumer champion within the Care Quality Commission. Local Involvement Networks (LINks) will become the Local Healthwatch, creating a strong local infrastructure, and we will enhance the role of local authorities in promoting choice, through the Healthwatch arrangements they commission."

7.2 The 2012 Act proposes that Healthwatch will be the new consumer champion for both health and social care. It will exist in two distinct forms – Local Healthwatch, at local level, and Healthwatch England, at national level. Provision for Local Healthwatch organisations is made by way of amendments to Part 14 of the Local Government and Public Involvement in Health Act 2007 by the 2012 Act.

7.3 The intention behind Healthwatch England is to create a national body representing the views of service users and the public at a national level. Healthwatch England will have its own identity within the Commission and will be able to benefit from expertise the Commission is able to offer.

7.4 The instrument makes provision about:

- the membership of Healthwatch England;
- the results to be secured by persons with powers to appoint members;
- the co-option of members by Healthwatch England;
- the tenure of office of members;
- disqualification for appointment or from holding office as a member;
- cessation of disqualification;
- termination of tenure;
- suspension of members.

7.5 Healthwatch England will have between six and twelve members in addition to the chair, which is consistent with the intention that Healthwatch England acts as a strategic organisation. The non-chair members will be appointed by the chair and in doing so, the chair must secure that a majority of members are not members of the Commission. This meets a requirement set out in the primary

legislation (paragraph 6(5A) of Schedule 1 to the 2008 Act inserted by section 181(3) of the 2012 Act).

7.6 The chair is required to consult the chair of the Commission for first appointments. This would enable the Commission's expertise to be contributed to the initial setting up of the committee

7.7 In addition, Healthwatch England is given the power to appoint members (co-opted members). Such members could be brought in to contribute particular knowledge and expertise to Healthwatch England. These members will not have voting rights, so that they do not take the voting membership of Healthwatch England above a level where it can function effectively. The ability for Healthwatch England to have such members means that Healthwatch England will be able to draw on a wide range of experience as required by the work that it undertakes. For example, Healthwatch England could appoint co-opted members to work on a specific project for a year or so.

8. Consultation outcome

8.1 A public consultation on proposals for the instrument was carried out from 26th January to 2nd March 2012. This was shorter than the twelve weeks recommended for normal circumstances in the Government Code of Practice on Consultations. The reasons for this were that the Department wanted to take account of the views expressed in the House of Lords on Healthwatch England in formulating proposals for consultation; at the same time there was support from the NHS Future Forum for establishing Healthwatch England no later than October 2012. (The NHS Future Forum was established in April 2011 as an independent advisory panel to the Department, to drive engagement on the proposals in the Health and Social Care Bill 2011 during a pause in the legislative process). Because of the relative shortness of the consultation period, the Department was particularly careful, both before and afterwards, to continue dialogue with those with an interest in the topics covered. By way of example, further discussion of the proposed disqualification criteria was held with NACRO (National Association for the Care and Rehabilitation of Offenders).

8.2 The consultation paper was sent to key stakeholders, such as members of the Healthwatch Programme Board (which represents the key partners in delivering the programme, both in the Department and externally), and Advisory Group to the Board (which has members from a wider range of stakeholders, to ensure that the programme can draw on a range of sector expertise). It was also circulated to the Department of Health Strategic Partners, and was distributed to LINks through their regional representatives; it was also available on the Department's website. 113 responses were received, from groups such as representative organisations, voluntary and community sector organisations, LINks, and individuals. The Department sought the views of stakeholders and experts in the field throughout, and after the consultation period, in order to ensure that a wide range of views was captured. In addition, web chats were held, so that interested members

of the public could ask questions, and join the discussion. A full analysis of the responses is available on the Department's website at http://healthandcare.dh.gov.uk/category/care/healthwatch-2/

8.3 The proposals put forward in the consultation paper were in relation to :

- the number of the members;
- suitability for membership;
- the process for appointing members;
- the period of time a member should be appointed for.

The consultation proposed that :

i) Healthwatch England should have a minimum membership (in addition to the chair) of six (7.3.1.).
ii) It should have a maximum membership (in addition to the chair) of twelve (7.3.1.).
iii) Certain disqualification criteria should apply to members of Healthwatch England (full details in the consultation document [http://www.dh.gov.uk/health/2012/01/healthwatch-member/]). (7.3.2.)
iv) There should be a transparent appointment process for appointment of members to Healthwatch England (by the chair of Healthwatch England). An option of elections to a pool of nominees, a number of whom would then be appointed to Healthwatch England, was also put forward (7.3.3.)
v) There should be a maximum membership tenure of four years (7.3.4).

8.4 The public's response to the proposed size of Healthwatch England (points (i) and (ii)) was generally positive, though there was some suggestion that Healthwatch England should be larger. This was taken into consideration, with the Department taking the view that whilst there should be a maximum of twelve members (with a minimum of six members), there should also be the option for Healthwatch England to appoint co-opted members (as outlined in 6.7).

8.5 The public's response to (iii) was that there should be certain disqualification criteria, which supported the Department's view. However, an issue was raised about disqualifying offenders. On the basis of further discussion with stakeholders, it was decided that offenders, and ex-offenders, should not be disqualified from being appointed. Also, in relation to a proposed disqualification based on dismissal other than by reason of redundancy, concerns were raised about disqualifying "whistleblowers". Having considered this, the Department has based the disqualification in question on dismissal by reason of misconduct.

8.6 There was support for both views proposed in (iv), with some regarding elections as the right way for the local voice to have a national presence on Healthwatch England, with others feeling that elections were not an appropriate way to get a member with the right skills and experience onto the board. There was, however, general support for having a procedure that is open and transparent, and conducted by the chair of Healthwatch England. The Department

decided to reflect these views in the instrument by providing that up to four seats covering the four NHS regions may be filled by Local Healthwatch directors. The instrument also places a requirement on the chair to ensure that arrangements for the selection and appointment of persons take into account the principles of openness and transparency.

8.7 The public had mixed views about the proposal in (v); while many thought four years was an appropriate maximum tenure, others thought that realistically members would not necessarily stay for four years, so they suggested the tenure should be shortened to reflect this. The issue of continuity of members was raised, with the suggestion that tenures should be staggered to ensure that board intelligence is not lost; the issue of re-appointments was also raised. On the basis of these comments, the Department has set a maximum tenure of four years, with the flexibility for members to be re-appointed subject to a gap of at least four years after two consecutive terms. The Department is of the view that the nature of such appointments will mean that tenures are likely to overlap naturally, providing continuity for Healthwatch England.

9. Guidance

9.1 None.

10. Impact

10.1 Annex A (pages 92 **to** 113) of the combined Health and Social Care Bill Impact Assessment contains a section on Healthwatch, and therefore contains relevant information.

10.2 The combined Health and Social Care Bill Impact Assessment and coordinating document, and combined Equality analyses, can be found on the Department of Health website: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring and review

12.1 This instrument will not be specifically monitored. However, the operation of Healthwatch England and the effectiveness of its board will be kept under review by the Department of Health.

13. Contact

Kasey Chan at the Department of Health (Tel: 020 7972 4526 or email: kasey.chan@dh.gsi.gov.uk), or Helen Jones at the Department of Health (Tel: 02079724530 or email: helen.jones@dh.gsi.gov.uk) can answer any queries regarding the instrument.