

Have your say

*Consultation on the regulations for Local
Involvement Networks (LINKs)*



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Document purpose	Consultation/Discussion
Gateway reference	8817
Title	Have your say – Consultation on the regulations for Local Involvement Networks (LINKs)
Author	Patient and Public Empowerment Team, Commissioning and System Management, Department of Health
Publication date	28 September 2007
Target audience	PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, Foundation Trust CEs, Local Authority CEs, Directors of Adult SSs, Directors of Children's SSs, Patient and Public Involvement Forums, Health and Social Care Overview and Scrutiny Committees, Voluntary Organisations/NDPBs
Description	The Local Government and Public Involvement in Health Bill contains proposals to establish Local Involvement Networks (LINKs). LINKs will have specific powers to hold local health and social care services to account. Draft regulations, setting out how these powers will work, have been published for consultation. This document explains more about the regulations and how you can feed your views back.
Cross reference	N/A
Superseded documents	N/A
Action required	Comment and consultation
Timing	Deadline for responses: 21 December 2007
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Executive summary

The Government aims to strengthen the ability of local communities to influence what health and social care services are provided and how they are run.

To help achieve this aim, legislation is currently before Parliament to establish Local Involvement Networks (LINKs) across England.

LINKs will be made up of individuals and groups from across the community. LINKs will be funded and supported to hold local health and social care services to account.

To enable LINKs to carry out their role, the legislation gives the Secretary of State a power to make regulations imposing duties on commissioners and certain providers of health and social care services to respond to LINKs (to requests for information and to reports and recommendations made to them by a LINK) and to allow entry by LINKs to premises under certain conditions.

This document outlines draft versions of these regulations, explains more about them, and asks for views and comments on them.

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About the consultation

Plans to introduce Local Involvement Networks

The Government recognises that health and social care services will get better if they can listen and respond to the needs of the people who use them.

To date, one of the main tools the NHS has used to help listen to patients has been the local Patient and Public Involvement Forums. Every local trust has one of these groups, and many of them have played an important role in helping to improve front-line treatment.

However, Forums have also suffered from limitations that have stopped them being as effective as they could be. For example, Forums can monitor and review NHS services, but not the social care services run by local councils – despite the fact that barriers between health and social care are fast disappearing.

After an extensive review of this situation, in 2006 the Department of Health published, *A stronger local voice: A framework for creating a stronger local voice in the development of health and social services*. The document set out the Government's proposals for replacing Forums with Local Involvement Networks (LINKs).

The Local Government and Public Involvement in Health Bill includes provisions to establish LINKs. The Bill is currently undergoing parliamentary scrutiny and debate, and, if it is agreed by both Houses of Parliament, then it will become an Act of Parliament.

LINKs explained

A LINK will be a network of local people and organisations, funded by government and supported by an independent organisation to hold commissioners and providers of care services to account. There will be a LINK in every local authority area that has social services responsibility. LINKs will cover any health or social care service that is funded by the taxpayer.

The role of a LINK will be to:

- > give everyone the chance to say what they think about their local health and social care services – what is working well and what is not so good
- > give people the chance to check how those services are planned and run
- > provide feedback on what people have said about services, so that things can change for the better.

LINKs will have a range of powers, so that they can say how local services should improve. They will be able to:

- > make reports and recommendations and get a reply within a set period of time
- > ask for information and get a reply within a set period of time
- > go into some types of health and social care premises to see what they do
- > refer issues to the local overview and scrutiny committee (OSC) and get a response.

More about the legislation and regulations

The Bill includes provisions to abolish Patient Forums, the current mechanism for patient and public involvement in health.

Under the legislation, each local authority with social services responsibilities will have a duty to make contractual arrangements to ensure there are means for LINKs activities to be carried out.

The Bill also sets out LINKs activities in clause 226(2);¹ these will be:

- a) promoting and supporting people's involvement in the commissioning, provision and scrutiny of health and social care services;
- b) enabling people to monitor and review the commissioning and provision of health and social care services;
- c) obtaining people's views about their needs for, and their experiences of, health and social care services; and
- d) presenting people's views to those responsible for health and social care services, as well as making reports and recommendations on how services can be improved.

The Bill also gives the Secretary of State a power to make regulations imposing duties on commissioners and certain providers of health and social care services to respond to LINKs (to requests for information and to reports and recommendations made to them by a LINK) and to allow entry by LINKs to premises under certain conditions.

This document includes drafts of these regulations and gives details of the duties we intend to place on certain providers of health and social care, to respond to reports and recommendations made by LINKs and to allow authorised representatives of LINKs to enter certain premises and view certain services.

Have your say

The Government wants to make sure that LINKs are able to work as effectively as possible, and so wants to hear your views on the proposals contained in these draft regulations. This consultation document also sets out how we plan to deal with LINK requests for information and LINK referrals to overview and scrutiny committees.

These draft regulations have been developed as a result of the feedback received throughout an extensive review that culminated in *A stronger local voice*. We received over 500 responses to the questions we asked in the document. These were collated and addressed in the government response to *A stronger local voice*, published in December 2006. We have also been able to develop the proposals as a result of the experiences of Patient Forums, which have operated with similar powers over the past three years.

¹ All references to clauses in the Bill are to the Bill as it was printed on 25 July 2007.

Deadline for comments

This is a 12-week consultation, running from Friday, 28 September 2007 to Friday, 21 December 2007. In order for them to be considered, all comments must be received by Friday, 21 December 2007. Your comments may be shared with colleagues in the Department of Health and/or be published in a summary of responses. Unless you specifically indicate otherwise in your response, we will assume that you consent to this and that your consent overrides any confidentiality notice generated by your organisation's email system.

How to respond

This document:

- > explains each of the duties some organisations and bodies will have towards LINKs
- > asks you for your views on each duty
- > outlines the draft regulations for your information, and
- > includes a questionnaire that you can fill in to let us know your views.

Please send your consultation responses to:

PPI Team
Department of Health
502A Skipton House
80 London Road
London
SE1 6LH

Fax: 020 7972 5643

Email: ppimailbox@dh.gsi.gov.uk

If you would like further copies of this consultation document or an electronic version of the questionnaire, please visit www.dh.gov.uk/consultations

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information (FOI) Act 2000, the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOI Act, there is a statutory Code of Practice with which public authorities must comply, and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and, in the majority of cases, this will mean that your personal data will not be disclosed to third parties.

This consultation has been conducted in compliance with the Department for Business, Enterprise and Regulatory Reform Code of Practice on Consultation. For more information, see www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp

After the consultation

Once the consultation period is complete, the Department of Health will consider the comments it has received, and the regulations will be published early in 2008.

Further information

For further information about LINKs or the legislation to introduce them, please visit www.dh.gov.uk/patientpublicinvolvement

Consultation queries

If you have any queries or concerns about the process, please contact the Department of Health consultations co-ordinator by emailing Mb-dh-consultations-coordinator@dh.gsi.gov.uk

Responding to requests for information made by a LINK

About this duty

One of the roles of a LINK will be to gather the views and experiences of local people using local health and social care services. LINKs are also likely to monitor these services on an ongoing basis, forming strong relationships with all the decision makers in health and social care to ensure that the commissioning and delivery of services is informed by the views of the whole community.

To carry out their role effectively, LINKs will need to be able to collect a range of information and evidence about health and social care services. They are likely to do this by engaging with people locally (for example, by running focus groups or surveying the views of hard-to-reach groups), by entering premises and viewing services, and by collecting research and data from existing sources, such as Patient Advice and Liaison Services. Collating this information will help a LINK to develop a rich picture of people's views, preferences and experiences of local provision, and will enable them to identify trends, areas to investigate further and recommendations to make to both commissioners and providers in their area.

In addition, LINKs should be able to request information regarding NHS and social care services. Clause 228(1)(a) of the Local Government and Public Involvement in Health Bill contains a power which enables regulations to impose a duty on certain services-providers² to respond to requests for information made to the services-provider by a LINK.

These services-providers are detailed in the footnote below, but they include NHS trusts and local authorities.

The Government is keen to maintain the level of power that Patient Forums currently have to request information. However, since the Patient Forum Regulations were made in 2003, the Freedom of Information (FOI) Act has come into force,³ and the new LINKs regulations need to take account of this development.

2 A "services-provider" is defined in clause 228(2) of the Bill as:

- (a) a National Health Service trust;
- (b) an NHS foundation trust;
- (c) a Primary Care Trust;
- (d) a local authority; or
- (e) a person prescribed by regulations made by the Secretary of State.

3 The FOI Act 2000 came into force fully in January 2005.

The Government considers that LINKs will be able to access the appropriate information by using the powers under the FOI Act. We therefore do not consider it necessary to make regulations under clause 228(1)(a) at this time, although we think it important to maintain this regulation-making power, in case the need should arise in future to extend LINKs' powers above and beyond the provisions of the FOI Act. This power would also be used if the definition of services-provider was extended to include bodies to which the FOI Act does not apply.

Freedom of Information Act

The Freedom of Information Act provides for a general right of access to information held by a public authority, and includes the right to be informed in writing whether the authority holds the information requested and, if it does, to have that information communicated. That said, information can be refused under various exemptions. In certain circumstances a Department may even refuse to confirm or deny that information is held.

A public authority must comply with a request promptly, and should generally provide information within 20 working days – although in some cases this can be extended.

The bodies that are identified as services-providers under the Bill to establish LINKs (within the meaning given in clause 228(2)(a) to (d)) are all public authorities, and so the FOI Act applies to them.

Freedom of information exemptions

It is important to remember that the FOI Act sets out a number of necessary exemptions that will apply to a LINK's ability to receive information. These exemptions include:⁴

Section 21 – information accessible by other means

This exemption applies when information is already reasonably accessible to the applicant.

⁴ This list sets out the most relevant exemptions – it is not an exhaustive list. A full list of exemptions can be found at www.foi.gov.uk

Section 22 – information intended for future publication

This exemption may apply if the public authority intends to publish the requested information at some future date. This ensures that the FOI Act does not force public authorities into premature publication of information. This exemption is public interest tested, which means that, for the exemption to apply, the public interest in withholding the information has to exceed the public interest in disclosing the information.

Section 30 – investigations and proceedings conducted by public authorities

This exemption is concerned primarily with preserving the integrity of certain proceedings and investigations which public authorities have the power or duty to conduct. There are two ways in which the application of this exemption may be triggered:

- > where information has at any time been held for the purpose of specified criminal and other investigations or proceedings, or
- > where information relates to the obtaining of information from confidential sources and was obtained or recorded for a number of specified investigations or proceedings.

This reason for withholding the information must outweigh the public interest in disclosing the information.

Section 32 – court records

This section exempts information contained in certain litigation documents and court, tribunal and inquiry records. It will apply regardless of the content of the information. There are separate and specific regimes for gaining access to court and tribunal records, and this exemption ensures that those regimes are not superseded by the FOI Act. This exemption is absolute – there is no public interest test.

Section 38 – health and safety

This section applies to information whose disclosure would be likely to endanger the physical or mental health or the safety of any individual. This exemption is public interest tested.

Section 40 – personal information

This exemption concerns personal data within the meaning of the Data Protection Act 1998. Section 40 applies to two distinct types of requests for information:

- > In relation to a request by a person for their own personal data, the information is exempt (but the request will be handled under the Data Protection Act instead), and
- > In relation to a request by a person for someone else's personal data, that information will be exempt if its disclosure would contravene any of the data protection principles in the Data Protection Act 1998 (or certain other provisions of the Data Protection Act 1998).

The majority of section 40 is not subject to a public interest test.

Section 41 – information provided in confidence

This exemption applies to information that has been obtained from another person and whose disclosure to the public would constitute an actionable breach of confidence (i.e. the person who supplied the information to the public authority could take legal action against the public authority if the public authority disclosed it to anyone else). This exemption is absolute – there is no public interest test.

Section 42 – legal professional privilege

This exemption applies to information that would be subject to legal professional privilege if litigation were in progress. Legal professional privilege covers confidential communications between lawyers and their clients, and certain other information that is created for the purposes of litigation. This exemption ensures that the confidential relationship between lawyer and client is protected. This exemption is public interest tested.

Section 43 – commercial interests

This section exempts information, the disclosure of which would be likely to prejudice the commercial interests of any person. It also includes a specific exemption for trade secrets. This exemption is public interest tested.

Section 44 – prohibitions on disclosure

This exemption applies to three distinct categories of information:

- > If there is an existing statutory prohibition on the disclosure of information by a public authority, then that information will be exempt
- > If disclosure would be incompatible with a European Community obligation, then the information will be exempt
- > If disclosure would constitute or be punishable as a contempt of court at common law (for example, because it would breach a court order) then it will be exempt.

This exemption is absolute – there is no public interest test.

For more information on the FOI Act 2000, please see www.foi.gov.uk

Limits and charges

The FOI Act allows for public authorities to decline to comply with certain requests for information on the grounds of cost, if these requests would be particularly expensive to comply with. The FOI Act also allows for public authorities to charge for answering requests for information in certain circumstances.

Consultation questions

The Government believes that the current Freedom of Information Act will give LINKs the ability to ask for and get most kinds of information from services-providers, but we want to know what you think.

Do you think that services-providers should have duties to provide information to LINKs that go beyond the obligations imposed in the FOI Act 2000? If so, what should they be and why are the duties needed?

Responding to reports and recommendations made by a LINK

About this duty

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

The Government thinks that services should take account of any findings made by a LINK, so that these views can be used to improve the care provided. Therefore, although LINKs may make reports and recommendations to whichever body they feel can best learn from their insights, the Government is placing a specific duty, through regulations, on the commissioners of health and social care services to respond to reports and recommendations they receive from LINKs.

Under our proposals, commissioners will have 20 working days to respond to LINK recommendations or reports. The commissioner will have to acknowledge receipt of the report or recommendation and provide an explanation to the referring LINK of any action it intends to take in respect of the report or recommendation, or an explanation of why it does not intend to take any action in respect of that report or recommendation.

The commissioner will also have to provide a copy of the report or recommendation to any other commissioner who is responsible for a service to which the report or recommendation relates. This may be the case where, for example, there has been a joint commissioning decision by a PCT and a local authority.

Where a report or recommendation is received by a services-provider other than the relevant commissioner of that service, then it must acknowledge receipt of the report or recommendation and provide a copy of the report or recommendation to the relevant commissioner or commissioners within 20 working days. If it appears to the services-provider that there are no other relevant commissioners, then it must inform the referring LINK of this.

When there is more than one relevant 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 LINK within 20 working days of the latest date on which the report or recommendation was received by a relevant commissioner.

Exemption of children's services

This duty to respond will not apply to reports or recommendations (or parts of reports or recommendations) that relate to children's social care activities and functions.

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 planning, regulation and inspection of services.

These mechanisms include a duty on the Office for Standards in Education, Children's Services and Skills (Ofsted), which took over the regulation of children's social care on 1 April 2007, to take account of the views of children and young people who receive services which it inspects.

Ofsted also now includes the statutory post of Children's Rights Director, which has transferred from the Commission for Social Care Inspection. The holder of this post advises HM Chief Inspector on the discharge of their duties for regulation of children's social care and inspection of children's services.

In addition, children's trusts must seek the views of children in the development of the Children and Young People's Plans. These plans inform the work of a trust and the services they fund with the aim of improving services for all children.

Consultation questions

The Government believes that these proposals will help ensure that commissioners listen to the views of LINKs and respond to their recommendations and reports, but we want to know what you think.

Do you have any comments on these proposals?

Is the timescale of responding within 20 days appropriate?

Duty of services-providers to allow entry by LINKs

About this duty

To enable LINKs 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.

The draft regulations therefore impose a duty on health and social care services-providers⁵ to allow authorised representatives of LINKs to enter premises that they own or control (with some exceptions), to observe the nature and quality of services.

The Government believes that some exemptions to this duty are essential to protect patient safety and dignity. Therefore, under the draft regulations, a services-provider does not have to allow a LINK representative entry if this would compromise either the effective provision of a service or the privacy or dignity of a person.

The draft regulations further state that, while an authorised LINK representative is on premises owned or controlled by a services-provider, they must not compromise the provision of care services or the privacy or dignity of any person; and if they do, then the duty on the services-provider ceases.

There are also some types of premises that it would be inappropriate for a LINK to have the right to enter, and therefore the duty to allow entry does not apply; for example, the extent to which the duty should apply to the provision of care in someone's home.

Under the draft regulations, LINKs will not have the right to enter premises that are occupied by one or more persons as their home if at least one person occupies those premises under a tenancy or a licence. For similar reasons, LINKs will also not be able to enter non-communal areas of care homes – for example, people's private bedrooms.

5 A "services-provider" is defined in relation to clause 229 as:
(a) a National Health Service trust;
(b) an NHS foundation trust;
(c) a Primary Care Trust;
(d) a local authority; or
(e) a person prescribed by regulations made by the Secretary of State.

This does not mean that LINKs cannot enter when invited by residents – it just means that services-providers are not under a duty to allow them to enter. The duty would also not apply in respect of premises used as accommodation for employees.

LINKs 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.

LINKs will also not have the right to enter premises 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. This safeguard has been put in place to ensure that the ability of LINKs to enter and view premises is in line with the Principles of Good Regulation⁶ and the general intention that LINKs should use their right with discretion and judgement.

Exemption of children's services

Nor does the duty apply to the observation of any activities that relate to the provision of social care services to children.

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.

These mechanisms include a duty on Ofsted, which took over the regulation of children's social care on 1 April 2007, to take account of the views of children and young people who receive services which it inspects.

Ofsted also now includes the statutory post of Children's Rights Director, which has transferred from the Commission for Social Care Inspection. The holder of this post advises HM Chief Inspector on the discharge of their duties for regulation of children's social care and inspection of children's services.

⁶ For more information on the principles see www.brc.gov.uk/publications/principlesentry.aspx

LINK representatives

The Government does not believe that all those involved in LINKs should undertake the role of viewing services. The Government is clear that those who are able to exercise the power to enter services should:

- > have the right skills
- > have received the right training
- > have had criminal records checks and be cleared against the LINK's own policy (administered by the host)
- > be able to demonstrate an understanding of patient confidentiality and the right level of sensitivity towards the role.

The draft regulations state that a person is an authorised representative if they are authorised in accordance with the arrangements the LINK has put in place.

In practice, the LINK's governance arrangements or structure are likely to include protocols – based on guidance from the Department of Health – which will set out criteria that a person undertaking any visits should fulfil. These will include a Code of Conduct, which will help set out for LINKs, for their hosts, and for those organisations that will be visited by LINKs, the necessary skills and requirements, including those outlined above.

Additional services-providers covered by this duty

The draft regulations also list additional persons who are to be regarded as services-providers for the purposes of clause 229, and who will therefore have to comply with the duty to allow authorised representatives to enter and view the health and social care services delivered on the premises that they own or control and to view activities carried on at those premises.

These additional persons are:

- > GPs and all those providing primary medical services
- > dentists and all those providing primary dental services
- > opticians and all those providing primary ophthalmic services (and who own or control premises where services are provided)

- > pharmacists and all those providing primary pharmaceutical services (and who own or control premises where services are provided).

Consultation questions

The Government believes that these proposals give LINks the ability to effectively carry out their roles while at the same time, protecting the safety and dignity of patients, but we want to know what you think.

Do you have any comments on these proposals?

Are the premises that are exempted from the duty to allow entry appropriate?

Are there any further premises that should be exempted?

Do you feel the safeguards in place are proportionate? If not, why not? What do you think should be altered and why?

LINK referral to an overview and scrutiny committee

About this duty

The Government is committed to ensuring that health and social care services are locally accountable. This is why LINKs will be able to refer matters to the relevant health or social care overview and scrutiny committee if they believe that a particular issue should be drawn to its attention.

An overview and scrutiny committee (OSC) is a committee of elected councillors with the power to review and scrutinise any matter relating to the planning, provision and operation of health and social care services in the area of its local authority.

To give weight to the views of local people, the Government believes that an OSC should be required to acknowledge receipt of the referral within 20 working days and keep the referrer informed of the OSC's action in relation to the matter.

Clause 230 of the Local Government and Public Involvement in Health Bill deals with social care referrals to OSCs. It ensures that, following a referral of a social care matter to an OSC, the OSC will have an obligation to consider the referral from the LINK and decide whether it should, on the basis of the information provided, review and scrutinise the social care services being detailed in the referral. Whether or not it does review and scrutinise, it must keep the referring LINK informed of its actions in relation to the referrals.

Clause 230 gives the Secretary of State a power to make regulations to determine the time within which an OSC should acknowledge receipt of a LINK's referral in relation to a social care matter. We intend that the regulations under clause 230(6) will specify that an OSC will have to do this within 20 working days of receipt of the referral.

The Government plans to use the existing regulation-making powers (in section 244 of the NHS Act 2006) to amend the current secondary legislation in relation to the referral of health matters to OSCs to mirror the policy set out for social care OSCs in the Bill.

Consultation questions

The Government believes these proposals will help ensure that OSCs hear the views of local people so that they can take action, but we want to know what you think.

Do you have any comments on these proposals?

Is the timescale of responding within 20 days appropriate?

Response form

Responses to the consultation on LINK regulations should be returned by Friday, 21 December 2007.

Responder details

Name:

Organisation:

Contact details

Telephone:

Email:

Questions relating to 'Responding to requests for information made by a LINK' (see page 10)

Do you think that services-providers should have duties to provide information to LINKs that go beyond the obligations imposed in the FOI Act 2000? If so, what should they be and why are the duties needed?

Response box:

Questions relating to 'Responding to reports and recommendations made by a LINK' (see page 12)

Do you have any comments on these proposals?

Response box:

Is the timescale of responding within 20 days appropriate?

Response box:

**Questions relating to 'Duty of services-providers to allow entry by LINKs'
(see page 16)**

Do you have any comments on these proposals?

Response box:

Are the premises that are exempted from the duty to allow entry appropriate?

Response box:

Are there any further premises that should be exempted?

Response box:

Do you feel the safeguards in place are proportionate? If not, why not? What do you think should be altered and why?

Response box:

Questions relating to 'LINK referral to an overview and scrutiny committee'
(see page 18)

Do you have any comments on these proposals?

Response box:

Is the timescale of responding within 20 days appropriate?

Response box:

Where to return this form

Please return your consultation response to

PPI Team

Department of Health

502A Skipton House

80 London Road

London

SE1 6LH

Or

Fax: **020 7972 5643**

Or

Email: **ppimailbox@dh.gsi.gov.uk**

Annex A – Draft regulations

The following section contains the draft regulations relating to (a) Duties of Services-Providers to Respond to Local Involvement Networks and (b) The Duty of Services-Providers to Allow Entry.

STATUTORY INSTRUMENTS

2008 No. []

NATIONAL HEALTH SERVICE, ENGLAND

The Local Involvement Networks (Duties of Services-Providers to Respond to Local Involvement Networks) Regulations 2008

Made - - - - []
Laid before Parliament []
Coming into force - - []

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 228(1)(b) and (c) and 232(2) of the Local Government and Public Involvement in Health Act 2007(a).

[In accordance with section 228(4) of the Local Government and Public Involvement in Health Act 2007, the Secretary of State has consulted with such persons as he considers appropriate.]

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Involvement Networks (Duties of Services-Providers to Respond to Local Involvement Networks) Regulations 2008.

(2) These Regulations shall come into force on [] 2008.

(3) In these Regulations—

“care services” has the meaning given in section 226(5) of the Local Government and Public Involvement in Health Act 2007;

“working day” means any day except for a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking and Financial Dealings Act 1971(b).

Duties of services-providers to respond to reports and recommendations by local involvement networks

2.—(1) Subject to regulation 3, this regulation applies where a local involvement network has made a report or recommendation to a services-provider.

(2) Where a report or recommendation is received for the first time by a relevant services-provider that services-provider must within 20 working days—

(a) acknowledge receipt to the referrer; and

(a) 2007 c.[]. Section numbers relate to the clause numbers in the Local Government and Public Involvement in Health Bill as ordered to be printed on 25 July 2007.
(b) 1971 c. 80.

- (b) provide an explanation to the referrer of any action it intends to take in respect of the report or recommendation or an explanation of why it does not intend to take any action in respect of that report or recommendation;
- (3) Where a report or recommendation is received by a services-provider for the first time other than a relevant services-provider that services-provider must within 20 working days—
 - (a) acknowledge receipt to the referrer;
 - (b) provide a copy of the report or recommendation to any other services-provider which appears to it to be a relevant services-provider;
 - (c) inform the referrer if no other services-provider appears to it to be a relevant services-provider.
- (4) A relevant services-provider is a services-provider who was responsible for commissioning any of the care services to which the report or recommendation relates.
- (5) Subject to paragraph (6), where there is more than one relevant services-provider in respect of a report or recommendation then paragraph (2)(b) is satisfied if one of the relevant services-providers provides—
 - (a) an explanation to the referrer of any action any of the relevant service-providers intends to take in respect of the report or recommendation; or
 - (b) an explanation of why none of the relevant services-providers intends to take any action in respect of that report or recommendation.
- (6) Paragraph (5) only applies if all the relevant services-providers in respect of a report or recommendation agree that a particular relevant services-provider may act on behalf of all of them in relation to a report or recommendation made by a local involvement network.
- (7) The explanation referred to in paragraph (5) must be provided within 20 working days of the latest date on which the report or recommendation was received by a relevant services-provider.
- (8) If a relevant services-provider receives a report or recommendation from a local involvement network it must send a copy of the report or recommendation to any other relevant services-provider which appears to it not to have received that report or recommendation.
- (9) If a relevant services-provider receives a copy of a report of recommendation from a services-provider it must send a copy to any other relevant services-provider which appears to it not to have received a copy of that report or recommendation.
- (10) In this regulation “the referrer” means the local involvement network who made the report or recommendation in accordance with paragraph (1).

Excluded services

- 3.—**(1) Regulation 2 does not apply where a report or recommendation wholly relates to—
- (a) children’s services; or
 - (b) excluded services.
- (2) Where a report or recommendation partly relates to
- (a) children’s services; or
 - (b) excluded services;
- then regulation 2 only applies to that part of the report or recommendation that does not relate to those services.
- (3) In this Regulation—
- “children’s services” means care services provided as part of—
- (a) the social services functions of a local authority so far as relating to persons aged under 18;

- (b) the functions conferred on or exercised by a local authority under the Children Act 1989(a), the Adoption (Intercountry Aspects) Act 1999(b) or the Adoption and Children Act 2002(c); and
- (c) the functions continuing to be exercisable by a local authority under the Adoption Act 1976(d);

“excluded services” means services which are not care services in respect of which the local involvement network who made the report or recommendation carries-on activities in pursuance of arrangements made under section 226(1) of the Act.

Signed by the authority of the Secretary of State for Health

Date

Parliamentary Under Secretary of State
Department for Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for imposing duties on services-providers where a local involvement network has made a report or recommendation to a services-provider.

Regulation 2 sets out the duties to be imposed on services-providers. Where a services-provider is the person who was responsible for commissioning the services to which the report or recommendation relates then it must acknowledge receipt of the report or recommendation and inform the referrer of the action, if any, it intends to take in respect of the report or recommendation. If such a services-provider doesn't intend to take any action then it must inform the referrer of this and explain why no action is to be taken.

Where there is more than one services-provider who was responsible for commissioning the services to which the report or recommendation relates then in certain circumstances it will be sufficient for one of those services-providers to respond to the referrer.

Where a services-provider is not the person who was responsible for commissioning all or any the services to which the report or recommendation relates then it must acknowledge receipt of the report or recommendation and send a copy of it to the services-provider or services-providers who were responsible for commissioning the services to which the report or recommendation relates.

Regulation 3 provides that the duties in regulation 2 do not apply to the extent that a report or recommendation made by a local involvement network relates services provided as part of a local authority's functions relating to or concerning persons aged under 18. The Regulation also provides that the duties in regulation 2 not apply to the extent that a report or recommendation made by a local involvement network doesn't relate to the activities of the particular local involvement network.

(a) 1989 c.41.
(b) 1999 c.18.
(c) 2002 c.38.
(d) 1976 c.36.

Draft Regulations laid before Parliament under section 243(6) of the Local Government and Public Involvement in Health Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No. []

NATIONAL HEALTH SERVICE, ENGLAND

The Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008

Made - - - - []
Coming into force - - []

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 229(1) to (3) and (7)(e) and 232(2) of the Local Government and Public Involvement in Health Act 2007(a).

[A draft of these Regulations was laid before Parliament in accordance with section 243(6) of the Local Government and Public Involvement in Health Act 2007 and approved by a resolution of each House of Parliament.]

Citation and commencement

- 1.—(1) These Regulations may be cited as the Local Involvement Networks (Duty of Services-Providers to Allow Entry) Regulations 2008.
- (2) These Regulations shall come into force on [] 2008.

Interpretation

- 2.—(1) In these Regulations—
 - “the 2006 Act” means the National Health Service Act 2006(b);
 - “the Act” means the Local Government and Public Involvement in Health Act 2007;
 - “care home” has the meaning assigned by section 3 of the Care Standards Act 2000(c);
 - “care services” has the meaning given in section 226(5) of the Act;
 - “excluded activities” means any activities provided in pursuance of—
 - (a) the social services functions of a local authority so far as relating to persons aged under 18;

(a) 2007 c.[]. Section numbers relate to the clause numbers in the Local Government and Public Involvement in Health Bill as ordered to be printed on 25 July 2007.
(b) 2006 c.41.
(c) 2000 c.14.

- (b) the functions conferred on or exercised by a local authority under the Children Act 1989(a), the Adoption (Intercountry Aspects) Act 1999(b) or the Adoption and Children Act 2002(c); and
- (c) the functions continuing to be exercisable by a local authority under the Adoption Act 1976(d);

“excluded premises” means—

- (a) the parts of a care home which are not communal areas;
- (b) premises or parts of premises used as accommodation for employees;
- (c) premises which are occupied by one or more persons as their home and at least one person occupies those premises under a tenancy or a licence;

“social services functions” has the same meaning as in the Local Authority Social Services Act 1970(e).

Duty of services-providers to allow entry by local involvement networks

3.—(1) A services-provider must allow an authorised representative to—

- (a) enter and view, and
- (b) observe the carrying-on of activities on,

premises that it owns or controls.

(2) Paragraph (1) does not apply—

- (a) in respect of any premises, or parts of premises, if the presence of an authorised representative on any of those premises, or any parts of those premises, would compromise—
 - (i) the effective provision of care services; or
 - (ii) the privacy or dignity of any person;
- (b) if the authorised representative does not comply with regulation 5;
- (c) in respect of excluded premises;
- (d) to the observing of excluded activities;
- (e) to the entering and viewing of premises, or parts of premises, for the purpose of observing excluded activities;
- (f) in respect of any premises, or parts of premises, at any time when care services are not being provided on those premises or parts of those premises;
- (g) if, in the opinion of the services-provider, the authorised representative in seeking to enter and view its premises and observe the carrying-on of activities is not acting reasonably and proportionately.

(3) Where any premises, or parts of premises, are owned by a services-provider and controlled by another services-provider, then for the purpose of this regulation the services-provider who owns those premises, or parts of premises, is to be treated as not being a services-provider.

Authorised representative

4. An individual may be authorised for the purposes of section 229 only if he is authorised in accordance with arrangements made under section 226(1) of the Act to enter and view, and observe the carrying-on of activities on, premises owned or controlled by services-providers.

(a) 1989 c.41.
(b) 1999 c.18.
(c) 2002 c.38.
(d) 1976 c.36.
(e) 1970 c.42.

Viewing and observing activities

5. For the purposes of section 229(4)(b) of the Act, while an authorised representative is on any premises as a result of a services-provider having complied with a duty imposed under regulation 3(1) the authorised representative must not act in any way that compromises—

- (a) the effective provision of local care services; or
- (b) the privacy or dignity of any person.

Services-provider

6. For the purposes of section 229(7)(e) of the Act the following persons are prescribed as services-providers—

- (a) a person providing services which are primary medical services for the purposes of the 2006 Act;
- (b) a person providing services which are primary dental services for the purposes of the 2006 Act;
- (c) a person providing services which are primary ophthalmic services for the purposes of the 2006 Act;
- (d) a person providing services which are pharmaceutical services for the purposes of the 2006 Act;
- (e) a person who owns or controls premises where services referred to in paragraphs (c) and (d) are provided.

Signed by the authority of the Secretary of State for Health

Date

Parliamentary Under Secretary of State
Department for Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose a duty on services-providers requiring them to allow authorised representatives of local involvement networks to enter and view certain premises owned or controlled by services-providers and to allow authorised representatives to view certain activities on such premises.

Regulation 3 sets out the duty to be imposed on services-providers. In particular it sets out that the duty is not to apply—

- if the presence of an authorised representative would compromise the effective provision of local care services or the privacy or dignity of any person;
- to activities provided as part of a local authority's functions relating to or concerning persons aged under 18;
- to non-communal areas of care homes and certain types of residential accommodation;
- to premises or any parts of premises when care services are not being provided on those premises or parts of premises; and

- if in seeking to enter and view the premises and observe the carrying-on of activities the authorised representative is not acting reasonably and proportionately.

Regulation 5 provides that whilst an authorised representative is on premises owned or controlled by a service-provider in accordance with these Regulations then the authorised representative must not compromise the provision of care services or the privacy or dignity of any person.

Section 227(7) of the Local Government and Public Involvement in Health Act 2007 (c. []) sets out the meaning of “services-provider” for the purpose of that section. Regulation 6 sets out additional persons who are to be services-providers for the purposes of section 227 and who will therefore have to comply with the duty to allow authorised representatives to enter and view the premises that they own or control and to view activities carried-on on those premises.



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283171 1p 4k Sep 07 (CWP)

Produced by COI for the Department of Health

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