



National Health Service Act 2006

2006 CHAPTER 41

PART 2

HEALTH SERVICE BODIES

[^{F1}CHAPTER A1

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

Textual Amendments

- F1** Pt. 2 Ch. A1 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **23(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2) (with art. 4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Secretary of State's mandate to the Board

13A Mandate to Board

- (1) Before the start of each financial year, the Secretary of State must publish and lay before Parliament a document to be known as “the mandate”.
- (2) The Secretary of State must specify in the mandate—
 - (a) the objectives that the Secretary of State considers the Board should seek to achieve in the exercise of its functions during that financial year and such subsequent financial years as the Secretary of State considers appropriate, and
 - (b) any requirements that the Secretary of State considers it necessary to impose on the Board for the purpose of ensuring that it achieves those objectives.

Status: Point in time view as at 27/03/2012.

Changes to legislation: National Health Service Act 2006, CHAPTER A1 is up to date with all changes known to be in force on or before 20 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) The Secretary of State must also specify in the mandate the amounts that the Secretary of State has decided to specify in relation to the financial year for the purposes of section 223D(2) and (3) (limits on capital and revenue resource use).
- (4) The Secretary of State may specify in the mandate any proposals that the Secretary of State has as to the amounts that the Secretary of State will specify in relation to subsequent financial years for the purposes of section 223D(2) and (3).
- (5) The Secretary of State may also specify in the mandate the matters by reference to which the Secretary of State proposes to assess the Board's performance in relation to the first financial year to which the mandate relates.
- (6) The Secretary of State may not specify in the mandate an objective or requirement about the exercise of the Board's functions in relation to only one clinical commissioning group.
- (7) The Board must—
 - (a) seek to achieve the objectives specified in the mandate, and
 - (b) comply with any requirements so specified.
- (8) Before specifying any objectives or requirements in the mandate, the Secretary of State must consult—
 - (a) the Board,
 - (b) the Healthwatch England committee of the Care Quality Commission, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (9) Requirements included in the mandate have effect only if regulations so provide.

13B The mandate: supplemental provision

- (1) The Secretary of State must keep the Board's performance in achieving any objectives or requirements specified in the mandate under review.
- (2) If the Secretary of State varies the amount specified for the purposes of section 223D(2) or (3), the Secretary of State must revise the mandate accordingly.
- (3) The Secretary of State may make any other revision to the mandate only if—
 - (a) the Board agrees to the revision,
 - (b) a parliamentary general election takes place, or
 - (c) the Secretary of State considers that there are exceptional circumstances that make the revision necessary.
- (4) Revisions to the mandate which consist of adding, omitting or modifying requirements have effect only if regulations so provide.
- (5) If the Secretary of State revises the mandate, the Secretary of State must—
 - (a) publish the mandate (as so revised), and
 - (b) lay it before Parliament, together with an explanation of the reasons for making the revision.

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General duties of the Board

13C Duty to promote NHS Constitution

- (1) The Board must, in the exercise of its functions—
 - (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
 - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

13D Duty as to effectiveness, efficiency etc.

The Board must exercise its functions effectively, efficiently and economically.

13E Duty as to improvement in quality of services

- (1) The Board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—
 - (a) the prevention, diagnosis or treatment of illness, or
 - (b) the protection or improvement of public health.
- (2) In discharging its duty under subsection (1), the Board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
 - (a) the effectiveness of the services,
 - (b) the safety of the services, and
 - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), the Board must have regard to—
 - (a) any document published by the Secretary of State for the purposes of this section, and
 - (b) the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

13F Duty as to promoting autonomy

- (1) In exercising its functions, the Board must have regard to the desirability of securing, so far as consistent with the interests of the health service—
 - (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate, and
 - (b) that unnecessary burdens are not imposed on any such person.
- (2) If, in the case of any exercise of functions, the Board considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Board of its duties under sections 1(1) and 1H(3)(b), the Board must give priority to those duties.

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13G Duty as to reducing inequalities

The Board must, in the exercise of its functions, have regard to the need to—

- (a) reduce inequalities between patients with respect to their ability to access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

13H Duty to promote involvement of each patient

The Board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

- (a) the prevention or diagnosis of illness in the patients, or
- (b) their care or treatment.

13I Duty as to patient choice

The Board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

13J Duty to obtain appropriate advice

The Board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

- (a) the prevention, diagnosis or treatment of illness, and
- (b) the protection or improvement of public health.

13K Duty to promote innovation

- (1) The Board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).
- (2) The Board may make payments as prizes to promote innovation in the provision of health services.
- (3) A prize may relate to—
 - (a) work at any stage of innovation (including research);
 - (b) work done at any time (including work before the commencement of section 23 of the Health and Social Care Act 2012).

13L Duty in respect of research

The Board must, in the exercise of its functions, promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

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13M Duty as to promoting education and training

The Board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

13N Duty as to promoting integration

- (1) The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
 - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
 - (b) reduce inequalities between persons with respect to their ability to access those services, or
 - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) The Board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—
 - (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
 - (b) reduce inequalities between persons with respect to their ability to access those services, or
 - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (3) The Board must encourage clinical commissioning groups to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure—
 - (a) that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or
 - (b) that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).
- (4) In this section—

“health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

13O Duty to have regard to impact on services in certain areas

- (1) In making commissioning decisions, the Board must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England.
- (2) In this section, “commissioning decisions”, in relation to the Board, means decisions about the carrying out of its functions in arranging for the provision of health services.

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13P Duty as respects variation in provision of health services

The Board must not exercise its functions for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

- (a) whether the persons in question are in the public or (as the case may be) private sector, or
- (b) some other aspect of their status.

Public involvement

13Q Public involvement and consultation by the Board

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by the Board in the exercise of its functions (“commissioning arrangements”).
- (2) The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—
 - (a) in the planning of the commissioning arrangements by the Board,
 - (b) in the development and consideration of proposals by the Board for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
 - (c) in decisions of the Board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

Functions in relation to information

13R Information on safety of services provided by the health service

- (1) The Board must establish and operate systems for collecting and analysing information relating to the safety of the services provided by the health service.
- (2) The Board must make information collected by virtue of subsection (1), and any other information obtained by analysing it, available to such persons as the Board considers appropriate.
- (3) The Board may impose charges, calculated on such basis as it considers appropriate, in respect of information made available by it under subsection (2).
- (4) The Board must give advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service.
- (5) The Board must monitor the effectiveness of the advice and guidance given by it under subsection (4).

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- (6) A clinical commissioning group must have regard to any advice or guidance given to it under subsection (4).
- (7) The Board may arrange for any other person (including another NHS body) to exercise any of the Board's functions under this section.
- (8) Arrangements made under subsection (7) do not affect the liability of the Board for the exercise of any of its functions.

13S Guidance in relation to processing of information

- (1) The Board must publish guidance for registered persons on the practice to be followed by them in relation to the processing of—
 - (a) patient information, and
 - (b) any other information obtained or generated in the course of the provision of the health service.
- (2) Registered persons who carry on an activity which involves, or is connected with, the provision of health care must have regard to any guidance published under this section.
- (3) In this section, “patient information”, “processing” and “registered person” have the same meaning as in section 20A of the Health and Social Care Act 2008.

Business plan and report

13T Business plan

- (1) Before the start of each financial year, the Board must publish a business plan setting out how it proposes to exercise its functions in that year and each of the next two financial years.
- (2) The business plan must, in particular, explain how the Board proposes to discharge its duties under—
 - (a) sections 13E, 13G and 13Q, and
 - (b) sections 223C to 223E.
- (3) The business plan must, in particular, explain how the Board proposes to achieve the objectives, and comply with the requirements, specified in the mandate for the first financial year to which the plan relates.
- (4) The Board may revise the plan.
- (5) The Board must publish any revised plan.

13U Annual report

- (1) As soon as practicable after the end of each financial year, the Board must publish an annual report on how it has exercised its functions during the year.
- (2) The annual report must, in particular, contain an assessment of—
 - (a) the extent to which it met any objectives or requirements specified in the mandate for that year,

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- (b) the extent to which it gave effect to the proposals for that year in its business plan, and
 - (c) how effectively it discharged its duties under sections 13E, 13G and 13Q.
- (3) The Board must—
- (a) lay the annual report before Parliament, and
 - (b) once it has done so, send a copy of it to the Secretary of State.
- (4) The Secretary of State must, having considered the annual report, set out in a letter to the Board the Secretary of State's assessment of the Board's performance of its functions in the financial year in question.
- (5) The letter must, in particular, contain the Secretary of State's assessment of the matters mentioned in subsection (2)(a) to (c).
- (6) The Secretary of State must—
- (a) publish the letter to the Board, and
 - (b) lay it before Parliament.

Additional powers

13V Establishment of pooled funds

- (1) The Board and one or more clinical commissioning groups may establish and maintain a pooled fund.
- (2) A pooled fund is a fund—
- (a) which is made up of contributions by the bodies which established it, and
 - (b) out of which payments may be made, with the agreement of those bodies, towards expenditure incurred in the discharge of any of their commissioning functions.
- (3) In this section, “commissioning functions” means functions in arranging for the provision of services as part of the health service.

13W Board's power to generate income, etc.

- (1) The Board has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services, etc.) for the purpose of making additional income available for improving the health service.
- (2) The Board may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the Board of its functions.

13X Power to make grants etc.

- (1) The Board may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the Board has functions.
- (2) The payments may be made subject to such terms and conditions as the Board considers appropriate.

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13Y Board's incidental powers: further provision

The power conferred on the Board by section 2 includes, in particular, power to—

- (a) enter into agreements,
- (b) acquire and dispose of property, and
- (c) accept gifts (including property to be held on trust for the purposes of the Board).

Exercise of functions of Board

13Z Exercise of functions

- (1) This section applies to functions exercisable by the Board under or by virtue of this Act or any prescribed provision of any other Act.
- (2) The Board may arrange for any such function to be exercised by or jointly with—
 - (a) a Special Health Authority,
 - (b) a clinical commissioning group, or
 - (c) such other body as may be prescribed.
- (3) Regulations may provide that the power in subsection (2) does not apply in relation to a function of a prescribed description.
- (4) Where any functions are (by virtue of subsection (2)) exercisable jointly by the Board and another body, they may be exercised by a joint committee of the Board and the other body.
- (5) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the other party to the arrangements.
- (6) Arrangements made under this section do not affect the liability of the Board for the exercise of any of its functions.

Power to confer additional functions

13Z1 Power to confer additional functions on the Board

- (1) Regulations may provide that the Board is to have such additional functions in relation to the health service as may be specified in the regulations.
- (2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of the Board.

Intervention powers

13Z2 Failure by the Board to discharge any of its functions

- (1) The Secretary of State may give a direction to the Board if the Secretary of State considers that—
 - (a) the Board—
 - (i) is failing or has failed to discharge any of its functions, or

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- (ii) is failing or has failed properly to discharge any of its functions, and
 - (b) the failure is significant.
- (2) A direction under subsection (1) may direct the Board to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
 - (3) If the Board fails to comply with a direction under subsection (1), the Secretary of State may—
 - (a) discharge the functions to which it relates, or
 - (b) make arrangements for any other person to discharge them on the Secretary of State's behalf.
 - (4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.
 - (5) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

Disclosure of information

13Z3 Permitted disclosures of information

- (1) The Board may disclose information obtained by it in the exercise of its functions if—
 - (a) the information has previously been lawfully disclosed to the public,
 - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),
 - (c) the disclosure is made in accordance with any enactment or court order,
 - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
 - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,
 - (f) the disclosure is made for the purpose of facilitating the exercise of any of the Board's functions,
 - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
 - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

13Z4 Interpretation

- (1) In this Chapter—
 - “the health service” means the health service in England;

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“health services” means services provided as part of the health service and, in sections 13O and 13Q, also includes services that are to be provided as part of the health service.

- (2) Any reference (however expressed) in the following provisions of this Act to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—
- section 6E(7) and (10)(b),
 - section 13A(2),
 - section 13C(1),
 - section 13D,
 - section 13E(1),
 - section 13F,
 - section 13G,
 - section 13H,
 - section 13I,
 - section 13J,
 - section 13K(1),
 - section 13L,
 - section 13M,
 - section 13N(1) and (2),
 - section 13O(2),
 - section 13Q(1),
 - section 13T(1),
 - section 13U(1) and (4),
 - section 13W(2),
 - section 13X(1),
 - section 13Z2(1),
 - section 13Z3(1),
 - section 72(1),
 - section 75(1)(a) and (2),
 - section 82,
 - section 223C(2)(a),
 - in Schedule A1, paragraph 13.
- (3) Any reference (however expressed) in the following provisions of other Acts to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—
- sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),
 - section 197(6) of the Health and Social Care Act 2012 (participation of the Board in work of Health and Wellbeing Boards),
 - section 199(4) of that Act (supply of information to Health and Wellbeing Boards),
 - section 290(1) and (2) of that Act (duties to co-operate),
 - section 291(2)(d) of that Act (breaches of duties to co-operate).

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- (4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).]

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