

SCHEDULES

SCHEDULE 10

Section 77

THE NHS PAYMENT SCHEME

- 1 The Health and Social Care Act 2012 is amended as follows.
- 2 In section 97 (conditions of licences for health care service providers), in subsection (1)(g), for “the national tariff (see section 116)” substitute “the NHS payment scheme (see section 114A)”.
- 3 In Part 3, for Chapter 4 substitute—

“CHAPTER 4

THE NHS PAYMENT SCHEME

114A The NHS payment scheme

- (1) NHS England must publish a document, to be known as “the NHS payment scheme”, containing rules for determining the price that is to be payable by a commissioner—
 - (a) for the provision of health care services for the purposes of the NHS;
 - (b) for the provision of services in pursuance of arrangements made by NHS England or an integrated care board in the exercise of any public health functions of the Secretary of State, within the meaning of the National Health Service Act 2006, by virtue of any provision of that Act.
- (2) The commissioner and the provider of services mentioned in subsection (1) must comply with rules under that subsection.
- (3) Rules under subsection (1) may, in particular—
 - (a) specify prices;
 - (b) specify amounts, formulae or other matters on the basis of which prices are to be determined;
 - (c) provide for prices to be determined for, or by reference to, components of services or groups of services;
 - (d) make different provision for different services or provision for some services but not others;
 - (e) make different provision for the same service by reference to different circumstances or areas, different descriptions of provider, or other factors relevant to the provision of the service or the arrangements for its provision;
 - (f) confer a discretion on the commissioner of a service or on NHS England.

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- (4) Rules under subsection (1) may allow or require a price to be agreed between the commissioner and the provider of a service.
- (5) Rules made by virtue of subsection (4) may—
 - (a) make provision about how the price is to be agreed;
 - (b) allow the agreement to make any provision that could be made by rules by virtue of subsection (3);
 - (c) provide for the publication by the commissioner, the provider or NHS England of information relevant to the agreement.
- (6) For the purpose of securing that the prices payable for the provision of services mentioned in subsection (1)(a) or (b) result in a fair level of pay for providers of those services, NHS England must, in exercising functions under subsection (1), have regard to—
 - (a) differences in the costs incurred in providing those services to persons of different descriptions, and
 - (b) differences between providers with respect to the range of those services that they provide.
- (7) The NHS payment scheme may contain rules relating to the making of payments to the provider of a service for the provision of that service.
- (8) The NHS payment scheme may contain guidance as to the application of rules under subsection (1).
- (9) A commissioner of a service mentioned in subsection (1) must have regard to any such guidance.
- (10) The NHS payment scheme has effect for the period specified in the NHS payment scheme or, where a new edition of the NHS payment scheme takes effect before the end of that period, until that new edition takes effect.

114B The NHS payment scheme: enforcement

Where the commissioner of a service fails to comply with rules contained in the NHS payment scheme, NHS England may direct the commissioner to take steps specified in the direction, within a period specified in the direction—

- (a) to secure that the failure does not continue or recur, or
- (b) to secure that the position is (so far as practicable) restored to what it would have been if the failure was not occurring or had not occurred.

114C The NHS payment scheme: impact assessment and consultation

- (1) Before publishing the NHS payment scheme, NHS England must—
 - (a) carry out an assessment of the likely impact of the proposed scheme, or
 - (b) publish a statement setting out its reasons for concluding that such assessment is not needed.
- (2) Before publishing the NHS payment scheme, NHS England must consult the following—
 - (a) each integrated care board;

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- (b) each relevant provider;
 - (c) such other persons as NHS England considers appropriate.
- (3) NHS England must give those persons a notice—
 - (a) describing the proposed NHS payment scheme,
 - (b) setting out any impact assessment carried out under subsection (1)(a), and
 - (c) specifying when the period within which representations may be made about the proposed NHS payment scheme (“the consultation period”) will come to an end.
- (4) The consultation period is the period of 28 days beginning with the day after that on which the notice is published.
- (5) NHS England must publish the notice given under subsection (3)
- (6) If, having consulted under this section—
 - (a) NHS England decides to make amendments of the proposed NHS payment scheme that are, in its opinion, significant, and
 - (b) it would, in NHS England’s opinion, be unfair to make the amendments without further consultation,NHS England must consult again under this section.
- (7) Subsection (6) does not apply where section 114D applies.
- (8) In this section “relevant provider” means—
 - (a) a licence holder, or
 - (b) another person, of a prescribed description, that provides—
 - (i) health care services for the purposes of the NHS, or
 - (ii) services in pursuance of arrangements made by NHS England or an integrated care board by virtue of section 7A or 7B of the National Health Service Act 2006 (Secretary of State’s public health functions).

114D Objections to proposed NHS payment scheme

- (1) This section applies where—
 - (a) within the consultation period under section 114C, NHS England receives objections to the proposed NHS payment scheme from one or more integrated care boards or relevant providers, and
 - (b) either or both of the following apply—
 - (i) the objection percentage for integrated care boards exceeds the prescribed percentage;
 - (ii) the objection percentage for relevant providers exceeds the prescribed percentage.
- (2) In subsection (1)(b) the “objection percentage” is the proportion (expressed as a percentage) of integrated care boards or (as the case may be) relevant providers that objected.
- (3) NHS England must consult such persons as appear to NHS England to be representative of the integrated care boards or relevant providers from whom objections were received.

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- (4) If, having complied with subsection (3)—
- (a) NHS England decides to make amendments of the proposed NHS payment scheme that are, in its opinion, significant, and
 - (b) it would, in NHS England’s opinion, be unfair to make the amendments without further consultation,
- NHS England must consult again under section 114C.
- (5) If, having complied with subsection (3), NHS England decides not to amend the proposed NHS payment scheme, it may publish the scheme but, before doing so, must—
- (a) publish a notice stating that decision and setting out the reasons for it, and
 - (b) send a copy of the notice to—
 - (i) the persons consulted under subsection (3), and
 - (ii) the integrated care boards or relevant providers from whom objections were received.

114E Amendments of the NHS payment scheme

- (1) NHS England may amend the NHS payment scheme during the period for which it has effect, provided that, in the opinion of NHS England, the amendments are not so significant as to require publication of a new edition of the NHS payment scheme.
- (2) In deciding whether the amendments are so significant as to require the publication of a new edition of the NHS payment scheme, NHS England must have regard to—
- (a) the proportion of integrated care boards that would be affected by the proposed amendments;
 - (b) the proportion of relevant providers that would be affected by the proposed amendments;
 - (c) the impact that the proposed amendments would have on integrated care boards and relevant providers that would be affected by them;
 - (d) whether any integrated care boards or relevant providers would be disproportionately affected by the proposed amendments;
 - (e) the amount of any increase or decrease in prices that would result from the proposed amendments.
- (3) If NHS England amends the NHS payment scheme, it must publish the NHS payment scheme as amended.
- (4) Before amending the NHS payment scheme, NHS England must, in accordance with subsections (5) to (7), consult the following about the proposed amendments—
- (a) any integrated care boards that would be affected by the proposed amendments;
 - (b) any relevant providers that would be affected by the proposed amendments;
 - (c) such other persons as NHS England considers appropriate.
- (5) NHS England must publish a notice specifying—

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- (a) the proposed amendments, and
 - (b) when the period within which representations may be made about the proposed amendments (“the consultation period”) will come to an end.
- (6) The consultation period is the period of 28 days beginning with the day after that on which the notice is published.
- (7) NHS England must send a copy of the notice to each of the persons to be consulted under subsection (4).

114F Interpretation

In this Chapter—

“commissioner”, in relation to a service, means the person who arranges for the provision of the service;

“the NHS payment scheme” means the document published under section 114A(1);

“relevant provider” has the meaning given by section 114C(8).”

4 In section 304 (regulations, orders and directions), in subsection (5), for paragraph (g) substitute—

“(g) regulations under section 114D(1)(b)(i) or (ii) (percentage to be prescribed in cases of objections to proposals for NHS payment scheme);”.