
STATUTORY INSTRUMENTS

2013 No. 160

The Health and Social Care Act 2012 (Commencement No.4, Transitional, Savings and Transitory Provisions) Order 2013

Citation and interpretation

1.—(1) This Order may be cited as the Health and Social Care Act 2012 (Commencement No.4, Transitional, Savings and Transitory Provisions) Order 2013.

(2) In this Order—

“the 2012 Act” means the Health and Social Care Act 2012;

“the 2006 Act” means the National Health Service Act 2006⁽¹⁾;

“financial year” means the period which begins on 1st April and ends on the following 31st March.

Commencement of provisions

2.—(1) Insofar as they are not already in force⁽²⁾, the following provisions of the 2012 Act shall come into force in accordance with this Order.

(2) 1st April 2013 is the day appointed for the coming into force of—

section 1 (Secretary of State’s duty to promote a comprehensive health service);

section 2 (the Secretary of State’s duty as to improvement in quality of services);

section 3 (the Secretary of State’s duty as to the NHS constitution);

section 4 (the Secretary of State’s duty as to reducing inequalities);

section 5 (the Secretary of State’s duty as to promoting autonomy);

section 6 (the Secretary of State’s duty as to research);

section 7 (the Secretary of State’s duty as to education and training);

section 9 and Schedule 1 (the NHS Commissioning Board);

section 10 (clinical commissioning groups);

section 11 (the Secretary of State’s duty as to protection of public health);

section 12 (duties as to improvement of public health);

section 13 (duties of clinical commissioning groups as to commissioning certain health services);

section 14 (power of clinical commissioning groups as to commissioning certain health services);

section 16 (secure psychiatric services);

(1) 2006 c. 41.

(2) See section 306(1) of the 2012 Act for the provisions which came into force on the day that Act was passed, and [S.I. 2012/1319 \(C. 47\)](#), [2012/1831 \(C. 71\)](#) and [2012/2657 \(C. 107\)](#) for provisions of the 2012 Act which came into force by Order on earlier dates.

section 17 (other services etc. provided as part of the health service);
section 18 (regulations as to the exercise by local authorities of certain public health functions);
section 19 (regulations relating to EU obligations);
section 22 (exercise of public health functions of the Secretary of State);
section 23 (the NHS Commissioning Board: further provision);
section 24 (financial arrangements for the Board);
section 25 and Schedule 2 (clinical commissioning groups: establishment etc.);
section 26 (clinical commissioning groups: general duties etc.);
section 27 (financial arrangements for clinical commissioning groups);
section 28 (requirement for primary medical services provider to belong to clinical commissioning group);
section 29 (other health service functions of local authorities under the 2006 Act);
section 30 (appointment of directors of public health);
section 31 (exercise of public health functions of local authorities);
section 32 (complaints about exercise of public health functions by local authorities);
sections 33 and 34 (abolition of Strategic Health Authorities and Primary Care Trusts);
section 35, other than subsection (6), and sections 36 and 37 (functions relating to fluoridation of water), in relation to England only;
sections 38, 40, 41, 43 and 45 (functions relating to mental health matters);
sections 46 and 47 (emergency powers);
section 48 (new special health authorities);
section 49 (primary care services: directions as to exercise of functions);
section 50 (charges in respect of certain public health functions);
section 51 and Schedule 3 (pharmaceutical services expenditure);
section 52 (Secretary of State's duty to keep health service functions under review);
section 53 (Secretary of State's annual report);
section 54 (certification of death);
section 56 and Schedule 7 (abolition of Health Protection Agency);
section 57 (functions in relation to biological substances);
section 58 (radiation protection functions);
section 60 (co-operation with bodies exercising functions in relation to public health);
section 62 (general duties of Monitor);
sections 72 and 73 (functions under the Competition Act 1998 and Part 4 of the Enterprise Act 2002);
section 74(1) to (6) (competition functions: supplementary);
section 75 (requirements as to procurement, patient choice and competition);
section 76 (requirements under section 75: investigations, declarations and directions);
section 77 and Schedule 9 (requirements under sections 75 and 77: undertakings);
section 80 (co-operation with the Office of Fair Trading);
section 104(2)(e) (power to require documents and information), and (4)(b) insofar as that subparagraph refers to Chapter 4 of the 2012 Act;

section 116 (the national tariff) for the purpose only of undertaking consultation under sections 118 and 119 (consultation on proposals for the national tariff);

section 117(1) to (3) (the national tariff: further provision), only insofar as it relates to the national tariff published by Monitor under section 116 of the 2012 Act, and only insofar as it relates to consultation on a proposal for the national tariff pursuant to sections 118 and 119;

sections 118 and 119 (consultation on proposals for the national tariff) only insofar as they relate to the national tariff published by Monitor under section 116 of the 2012 Act;

section 147 (Secretary of State's duty as respects variation in provision of health services);

section 151 (governors), except subsection (7);

section 152 (directors);

section 153 (members);

section 157 (meetings);

section 161 (amendment of constitution);

section 162 (panel for advising governors);

section 163(1) (financial powers etc.) for the purpose only of the first report of the Secretary of State for the financial year ending 31st March 2014 and subsequent financial years, and 163(3) to (6);

section 167 (significant transactions);

section 181 (Healthwatch England);

sections 182 to 189 (Local Healthwatch organisations);

sections 190 and 191 (scrutiny functions of local authorities), except section 190(9);

sections 192 and 193 (joint strategic needs assessments and strategies);

sections 194 to 199 (Health and Wellbeing Boards);

section 200 (care trusts);

sections 202 to 207 (primary care services);

sections 232 to 249 and Schedules 16 and 17 (the National Institute for Health and Care Excellence);

sections 250 and 251 (health and adult social care services: information);

sections 252 to 277 and Schedules 18 and 19 (the Health and Social Care Information Centre);

section 280 and Part 3 of Schedule 20 (the National Information Governance Board for Health and Social Care);

section 282 (the NHS Institute for Innovation and Improvement);

sections 284 to 287 (information relating to births and deaths etc.);

section 288(3) (Monitor: duty to co-operate with Care Quality Commission);

section 290 (other duties to co-operate);

sections 292 and 293 (the Care Quality Commission);

section 295 (arrangements between the Board and Northern Ireland Ministers);

section 296 (arrangements between the Board and Scottish Ministers etc.);

sections 300 to 302 and Schedules 22 and 23 (transfer schemes);

Schedule 4 and section 55(1) (further amendments of the 2006 Act in consequence of provision made in Part 1 of the 2012 Act);

Schedule 5 (amendments of other enactments in consequence of the provision made in Part 1 of the 2012 Act), except paragraphs 157(b) and (c), 159(b), 163 and 164 of that Schedule and paragraph 154 insofar as it relates to those paragraphs, and section 55(2) insofar as it relates to the paragraphs of Schedule 5 being brought into force;

Schedule 13, except paragraph 10, and section 150(5) insofar as it relates to the provisions of Schedule 13 being brought into force;

In Schedule 21 (amendments relating to relationships between the health services)—

- (a) paragraph 2(2), (3)(d), (g), (i) and (j) and (4), 3 and 4(a) and (c), and paragraph 1 insofar as it relates to those paragraphs,
- (b) paragraphs 7 and 11, and paragraph 5 insofar as it relates to those paragraphs,
- (c) paragraph 13 to 17, 22 to 32, 34 to 37, 38, and 39 to 42, and paragraph 12 insofar as it relates to those paragraphs,
- (d) paragraph 43(2)(a)(i) and (ii) and (f), and paragraph 43(1) insofar as it relates to those paragraphs,

and section 297 insofar as it relates to those paragraphs.

Transitory modification in respect of the commencement of paragraph 4(c) of Schedule 21

3. Notwithstanding the commencement of paragraph 4(c) of Schedule 21 to the 2012 Act, until the commencement of paragraph 4(b) of that Schedule, section 17D of the National Health Service (Scotland) Act 1978 (persons with whom agreements under section 17C may be made)(3) has effect as if in subsection (2), in paragraph (b) of the definition of “NHS employee”, the words from “and in this paragraph” to the end continue to have effect in so far as they relate to NHS trusts and NHS foundation trusts.

Saving and transitional provision in respect of Schedule 15 to the 2006 Act (accounts and audit)

4.—(1) Subject to the modification in paragraph (2), paragraphs 3, 4, 5(3)(b) and (4) and 8 of Schedule 15 to the 2006 Act, as they have effect prior to any amendment made by paragraph 125(1) to (3) of Schedule 4 to the 2012 Act, continue to apply in relation to the accounts of each Primary Care Trust and each Strategic Health Authority for the financial year ending 31st March 2013.

(2) On and after 1st April 2013, any duty in relation to accounts and audit of those accounts that is conferred on a Primary Care Trust or a Strategic Health Authority by virtue of paragraphs 3, 4, 5(3)(b) and (4) and 8 of Schedule 15 to the 2006 Act is to be conferred instead on the Secretary of State.

(3) Notwithstanding the commencement of paragraph 125(1) to (3) of Schedule 4 to the 2012 Act, on and after 1st April 2013 the provisions of the Audit Commission Act 1998(4) continue to apply in relation to the accounts of Primary Care Trusts and Strategic Health Authorities for the financial year ending 31st March 2013.

(3) 1978 c. 29; section 17D was inserted by section 21(2) of the National Health Service (Primary Care) Act 1997 (c. 46) and the relevant amendment to the definition of “NHS employee” was made by section 2(3)(d)(iv) of the Primary Medical Services (Scotland) Act 2004 (asp 1).

(4) 1998 c.18; the Audit Commission Act 1998 applies to the accounts of “health service bodies” meaning NHS bodies within the meaning of Schedule 15 to the National Health Service Act 2006 (c. 41), other than a Special Health Authority or NHS Direct National Health Service Trust.

Transitional provision in relation to the winding up of the affairs of Primary Care Trusts and Strategic Health Authorities

5. Subject to the provision made in relation to accounts in article 4, the Secretary of State may do anything which appears necessary or appropriate for the winding up of the affairs of any Primary Care Trust or Strategic Health Authority.

Saving and transitional provision in relation to the Health Service Commissioner, the Care Quality Commission and the abolition of Primary Care Trusts and Strategic Health Authorities

6.—(1) A complaint made under the Health Service Commissioners Act 1993⁽⁵⁾ to the Health Service Commissioner for England in relation to a Primary Care Trust or a Strategic Health Authority, whether made before, on or after 1st April 2013, may be investigated by the Commissioner notwithstanding the abolition of the Trust or Authority.

(2) A review or investigation in relation to a Primary Care Trust or a Strategic Health Authority, whether begun before, on or after 1st April 2013, may be conducted by the Care Quality Commission, notwithstanding the abolition of the Trust or Authority, and the Commission must send a copy of the report of the result of the investigation to the Secretary of State.

Saving and transitional provision concerning continuity in relation to the affairs of Primary Care Trusts and Strategic Health Authorities

7.—(1) Anything done before 1st April 2013 by or in relation to a Primary Care Trust or a Strategic Health Authority in connection with the exercise of a function which from 1st April 2013 falls to be performed by a relevant new body, shall be treated on and after that date as if done by or in relation to the relevant new body.

(2) Any instrument made by or in relation to a Primary Care Trust or a Strategic Health Authority which relates to a function which from 1st April 2013 falls to be performed by a relevant new body continues in force in relation to the relevant new body until it is varied or revoked by the relevant new body.

(3) Any form supplied by a Primary Care Trust or a Strategic Health Authority which relates to a function which from 1st April 2013 falls to be performed by a relevant new body, continues to be a valid form until it is cancelled or varied by the relevant new body, as if any reference in that form to the Trust or Authority in question were a reference to the relevant new body.

(4) So far as is necessary or appropriate, a reference in an agreement or other instrument to a Primary Care Trust or a Strategic Health Authority which relates to a function which from 1st April 2013 falls to be performed by a relevant new body, shall be treated on or after that date as a reference to the relevant new body.

(5) In this article, “relevant new body” means—

- (a) in relation to a function which falls to be performed by the National Health Service Commissioning Board⁽⁶⁾, that Board;
- (b) in relation to a function which falls to be performed by a clinical commissioning group, that clinical commissioning group;
- (c) in relation to a function which falls to be performed by a local authority in exercise of its public health functions (within the meaning of section 1H(5)(b) of the 2012 Act), that local authority;

⁽⁵⁾ 1993 c. 46.

⁽⁶⁾ The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006 (c. 41).

(d) in relation to a function which falls to be performed by the Secretary of State, the Secretary of State.

(6) In this article, a reference to a function of a Primary Care Trust or Strategic Health Authority which from 1st April 2013 falls to be performed by a relevant new body includes a reference to the provision of, or the arrangement of the provision of, a service by a Trust or Authority which from 1st April 2013 is provided, or its provision arranged, by a relevant new body.

(7) Paragraphs (1) to (4) apply subject to any provision for continuity in—

- (a) a transfer scheme under section 300 of the 2012 Act (transfer schemes);
- (b) an order made under section 303 of the 2012 Act (power to make consequential provision);
or
- (c) any other enactment.

Saving and transitional provision in respect of the abolition of various bodies by provisions of the 2012 Act

8.—(1) It is the duty of each relevant new body to take such action as may be necessary for the winding up of the affairs of the old body in respect of which it is the relevant new body, including the preparation of any outstanding accounts or annual reports and the performance of all statutory duties relating to those accounts or reports.

(2) Notwithstanding the repeal of the Health Protection Agency Act 2004⁽⁷⁾ by section 56(2) of the 2012 Act, paragraphs 22 to 27 of Schedule 1 to that Act continue to apply in relation to the accounts and annual reports of the Health Protection Agency for the financial year ending 31st March 2013, with the modification that any duty of the Agency under those paragraphs is conferred instead on the Secretary of State.

(3) A complaint made under the Health Service Commissioners Act 1993⁽⁸⁾ to the Health Service Commissioner for England in relation to an old body (other than the Health Protection Agency), whether made before, on or after 1st April 2013, may be investigated by the Commissioner notwithstanding the abolition of the body, and the Commissioner must send a copy of the report of the result of the investigation to the relevant new body.

(4) Anything done before 1st April 2013 by or in relation to an old body is to be treated on and after that date as if done by or in relation to the relevant new body.

(5) Any instrument made by or in relation to an old body continues in force until it is varied or revoked by the relevant new body.

(6) Any form supplied by an old body continues to be a valid form until it is cancelled or varied by the relevant new body, as if any reference in that form to the old body were a reference to the relevant new body.

(7) So far as is necessary or appropriate, a reference in an agreement or other instrument to an old body is to be treated on or after 1st April 2013 as a reference to the relevant new body.

(8) Paragraphs (4) to (7) apply subject to—

- (a) in the case of the National Institute for Health and Clinical Excellence, section 249 of the 2012 Act (consequential and transitional provision);
- (b) in the case of the Health and Social Care Information Centre, article 9; and
- (c) in all cases, any provision for continuity in—
 - (i) a transfer scheme under section 300 of the 2012 Act,
 - (ii) an order made under section 303 of that Act, or

(7) 2004 c. 17.

(8) 1993 c. 46.

- (iii) any other enactment.
- (9) In this article—
- (a) “old body” means—
 - (i) the Health Protection Agency,
 - (ii) the Special Health Authority known as the National Institute for Health and Clinical Excellence,
 - (iii) the Special Health Authority known as the Health and Social Care Information Centre, or
 - (iv) the NHS Institute for Innovation and Improvement; and
 - (b) “relevant new body” means—
 - (i) in the case of the Health Protection Agency, the Secretary of State,
 - (ii) in the case of the Special Health Authority known as the National Institute for Health and Clinical Excellence, the National Institute for Health and Care Excellence established by section 232 of the 2012 Act;
 - (iii) in the case of the Special Health Authority known as the Health and Social Care Information Centre, the Health and Social Care Information Centre established by section 252 of the 2012 Act;
 - (iv) in the case of the NHS Institute for Innovation and Improvement, the National Health Service Commissioning Board.

Saving and transitional provision in relation to the commencement of provisions relating to the Health and Social Care Information Centre

9.—(1) Where, before 1st April 2013, the Health and Social Care Information Centre, in connection with the effective provision of services under the 2006 Act, has been directed by the Secretary of State to establish, develop, operate, manage or maintain a system—

- (a) to identify information that is required and by whom it is required; or
- (b) for the collection and dissemination of the information referred to in sub-paragraph (a),

on or after that date, the Information Centre is to operate the system as if the Secretary of State or (as the case may be) the National Health Service Commissioning Board had directed the Information Centre to do so in accordance with section 254 of the 2012 Act (powers to direct Information Centre to establish information systems).

(2) A direction under the 2005 Directions to provide and maintain the NHS Central Register is to be treated as a direction to which paragraph (1) applies.

(3) Paragraph (1) does not apply in relation to a direction under the 2005 Directions to establish, operate, manage or disseminate information in relation to a database of quality indicators.

(4) Where, before 1st April 2013, the Health and Social Care Information Centre, in connection with the effective provision of services under the 2006 Act, has been requested by the Secretary of State—

- (a) to provide advice and guidance as to standards to be observed in relation to the collection, analysis, use and management of information necessary for the provision of such services; or
- (b) to provide advice to the Secretary of State on any other matter,

but has not provided the advice or guidance, paragraph (5) applies.

(5) In the circumstances described in paragraph (4), on or after 1st April 2013, the Information Centre must provide the advice and guidance as if the request had been made in accordance with section 265(1)(b) of the 2012 Act (advice or guidance).

(6) Any system established, developed, operated or managed or any information collected or disseminated by the Health and Social Care Information Centre pursuant to a direction of the Secretary of State before 1st April 2013 is to be treated on and after the relevant date as if it were a system that the Secretary of State or the Board had directed the Information Centre to establish or operate under section 254 of the 2012 Act.

(7) The NHS Central Register is to be treated as a system to which paragraph (6) applies.

(8) Paragraph (6) does not apply to a database of quality indicators established, operated, managed or disseminated by the Health and Social Care Information Centre pursuant to a direction of the Secretary of State under the 2005 Directions.

(9) Any advice or guidance given as to standards to be observed in relation to the collection, analysis, use and management of information necessary for the provision of services under the 2006 Act by the Health and Social Care Information Centre before 1st April 2013 is to be treated on and after that date as advice or guidance given by the Information Centre pursuant to section 265(1)(a) of the Act to the persons mentioned in that paragraph.

(10) Any advice requested or notified by the Secretary of State on any matter other than as described in paragraph (9), including in relation to practitioners' remuneration, and given to the Secretary of State or an advisory committee of the Department of Health by the Health and Social Care Information Centre before 1st April 2013 is to be treated on and after that date as advice or guidance given by the Information Centre pursuant to section 265(1)(b) of the Act to the persons specified in sub-paragraph (b).

(11) Anything done by the Health and Social Care Information Centre in relation to the preparation of a code in respect of the practice to be followed in relation to the collection, analysis, publication and other dissemination of confidential information concerning or connected with the provision of health services before 1st April 2013 is to be treated on and after that date as having been done by the Information Centre in pursuance of its functions under section 263 of the Act (code of practice on confidential information).

(12) In this article—

- (a) “the 2005 Directions” means the Health and Social Care Information Centre Directions 2005⁽⁹⁾;
- (b) “the Health and Social Care Information Centre” means the Special Health Authority known as the Health and Social Care Information Centre.

Saving and transitional provisions in respect of the amendments made by Schedule 5 to the 2012 Act

10. The Schedule (which makes saving and transitional provision in respect of Schedule 5 to the 2012 Act) has effect.

(9) The Health and Social Care Information Centre Directions 2005 (“the 2005 Directions”) were signed on 24th March 2005: the 2005 Directions have been amended by the Health and Social Care Information Centre (Amendment) Directions 2008 (“the 2008 Directions”) which were signed on 31st March 2008. The 2005 Directions and the 2008 Directions can be obtained by applying in writing to James Doughty, Department of Health, Zone 5B, Skipton House, London SE1 6LH.

Signed by authority of the Secretary of State for Health.

28th January 2013

Anna Soubry
Parliamentary Under-Secretary of State,
Department of Health