



# Health and Care Act 2022

## 2022 CHAPTER 31

### PART 1

#### HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

##### *NHS England*

#### **1 NHS Commissioning Board renamed NHS England**

- (1) The National Health Service Commissioning Board is renamed NHS England.
- (2) Schedule 1 contains consequential amendments.

#### **2 Power to require commissioning of specialised services**

- (1) Section 3B of the National Health Service Act 2006 (Secretary of State's power to require commissioning of services) is amended as follows.
- (2) For subsection (2) substitute—
  - “(2) A service or facility may be prescribed under subsection (1)(d) only if the Secretary of State considers that it would be appropriate for NHS England to arrange for the provision of that service or facility (whether by NHS England making arrangements itself or by giving directions under section 13YB or making arrangements under section 65Z5).”
- (3) In subsection (3), omit paragraph (d).
- (4) After subsection (4) insert—
  - “(4A) If the Secretary of State refuses a request by NHS England to revoke provision made by regulations under subsection (1)(d) prescribing a service or facility, the Secretary of State must explain why to NHS England.”

### 3 Spending on mental health

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 12E insert—

#### **“12F Expected mental health spending**

- (1) The Secretary of State must, in respect of each financial year, publish and lay before Parliament a document—
- (a) stating, by comparison with the previous financial year—
    - (i) whether the Secretary of State expects there to be an increase in the amount of expenditure incurred by NHS England and integrated care boards (taken together) in relation to mental health, and
    - (ii) whether the Secretary of State expects there to be an increase in the proportion of the expenditure incurred by NHS England and integrated care boards (taken together) that relates to mental health, and
  - (b) explaining why.
- (2) The Secretary of State must publish and lay the document before the financial year to which it relates.”
- (3) In section 13U (annual report), after subsection (2A) (inserted by section 34 of this Act) insert—
- “(2B) The annual report must include—
- (a) a statement of the amount of expenditure incurred by NHS England and integrated care boards during the year (taken together) in relation to mental health,
  - (b) a calculation of the proportion of the expenditure incurred by NHS England and integrated care boards during the year (taken together) that relates to mental health, and
  - (c) an explanation of the statement and calculation.”

### 4 NHS England mandate: general

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 13A (mandate)—
- (a) in subsection (1), omit “Before the start of each financial year.”;
  - (b) in subsection (2), in paragraph (a), omit from “during that financial year” to the end of that paragraph (but not the final “and”);
  - (c) omit subsections (3) and (4);
  - (d) in subsection (5), omit “in relation to the first financial year to which the mandate relates”;
  - (e) after subsection (6) insert—
- “(6A) The Secretary of State may revise the mandate.
- (6B) If the Secretary of State revises the mandate, the Secretary of State must publish and lay before Parliament the mandate as revised.”

- (3) In section 13B (the mandate: supplementary provision)—
- (a) for the heading substitute “Review of NHS England’s performance in implementing the mandate”;
  - (b) omit subsections (2) to (5).
- (4) In section 13T (business plan)—
- (a) in subsection (3), omit “for the first financial year to which the plan relates”;
  - (b) after subsection (3) insert—
 

“(3A) The fact that the mandate is revised during the period to which a business plan relates does not require NHS England to revise the plan.”
- (5) In section 13U (annual report), in subsection (2), for paragraph (a) substitute—
- (a) the extent to which, in that year, it met any objectives or requirements specified in the mandate.”.

## **5 NHS England mandate: cancer outcome targets**

- (1) Section 13A of the National Health Service Act 2006 (mandate) is amended in accordance with subsection (2).
- (2) After subsection (2), insert the following new subsection—
- (2A) The objectives specified by the Secretary of State under subsection (2)(a) for NHS England must include objectives relating to outcomes for cancer patients, and those objectives are to be treated by NHS England as having priority over any other objectives relating specifically to cancer.”

## **6 Duties as to reducing inequalities**

- In section 13G of the National Health Service Act 2006 (NHS England’s duties in relation to the reduction of inequalities)—
- (a) in paragraph (a), for “patients” substitute “persons”;
  - (b) in paragraph (b), after “services” insert “(including the outcomes described in section 13E(3))”.

## **7 Duties in respect of research: business plan and annual report etc**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 13L (duty in respect of research), after “functions,” insert “facilitate or otherwise”.
- (3) In section 13T (business plan), in subsection (2)(a), after “13G” insert “, 13L”.
- (4) In section 13U (annual report), in subsection (2)(c) (as amended by section 78(4) of this Act), at the appropriate place insert—
- “section 13L;”.

## **8 NHS England: wider effect of decisions**

- After section 13N of the National Health Service Act 2006 insert—

### **“13NA Duty to have regard to wider effect of decisions**

- (1) In making a decision about the exercise of its functions, NHS England must have regard to all likely effects of the decision in relation to—
  - (a) the health and well-being of the people of England;
  - (b) the quality of services provided to individuals—
    - (i) by relevant bodies, or
    - (ii) in pursuance of arrangements made by relevant bodies,
 for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2) In subsection (1)—
  - (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;
  - (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
  - (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (3) In discharging the duty under this section, NHS England must have regard to guidance published by it under section 13NB.
- (4) In this section “relevant bodies” means—
  - (a) NHS England,
  - (b) integrated care boards,
  - (c) NHS trusts established under section 25, and
  - (d) NHS foundation trusts.

### **13NB Guidance about discharge of duty**

- (1) NHS England may publish guidance about the discharge of—
  - (a) the duty imposed on it by section 13NA;
  - (b) the duty imposed on integrated care boards by section 14Z43;
  - (c) the duty imposed on NHS trusts by section 26A;
  - (d) the duty imposed on NHS foundation trusts by section 63A.
- (2) NHS England must consult any persons NHS England considers it appropriate to consult—
  - (a) before first publishing guidance under this section, and
  - (b) before publishing any revised guidance containing changes that are, in the opinion of NHS England, significant.”

## 9 NHS England: duties in relation to climate change etc

After section 13NB of the National Health Service Act 2006 (inserted by section 8 of this Act) insert—

### “13NC Duties as to climate change etc

- (1) NHS England must, in the exercise of its functions, have regard to the need to—
  - (a) contribute towards compliance with—
    - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
    - (ii) section 5 of the Environment Act 2021 (environmental targets), and
  - (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, NHS England must have regard to guidance published by it under section 13ND.

### 13ND Guidance about discharge of duty under section 13NC etc

NHS England may publish guidance about the discharge of—

- (a) the duty imposed on it by section 13NC;
- (b) the duty imposed on integrated care boards by section 14Z44;
- (c) the duty imposed on NHS trusts by section 26B;
- (d) the duty imposed on NHS foundation trusts by section 63B.”

## 10 Public involvement: carers and representatives

In section 13Q of the National Health Service Act 2006 (public involvement and consultation), in subsection (2), after “individuals to whom the services are being or may be provided” insert “, and their carers and representatives (if any),”.

## 11 Information about inequalities

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 13S insert—

### “13SA Information about inequalities

- (1) NHS England must publish a statement setting out—
  - (a) a description of the powers available to relevant NHS bodies to collect, analyse and publish information relating to—
    - (i) inequalities between persons with respect to their ability to access health services;
    - (ii) inequalities between persons with respect to the outcomes achieved for them by the provision of health services (including the outcomes described in section 13E(3)); and

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- (b) the views of NHS England about how those powers should be exercised in connection with such information.
- (2) NHS England may from time to time publish a revised statement under subsection (1).
- (3) In this section “relevant NHS bodies” means—
  - (a) integrated care boards,
  - (b) NHS trusts established under section 25, and
  - (c) NHS foundation trusts.”
- (3) In Schedule 4 (NHS trusts: constitution etc), in paragraph 12, after sub-paragraph (1A) (inserted by Schedule 4 to this Act) insert—
  - “(1B) The annual report must, in particular, review the extent to which the NHS trust has exercised its functions consistently with NHS England’s views set out in the latest statement published under section 13SA(1) (views about how functions relating to inequalities information should be exercised).”
- (4) In Schedule 7 (constitution of public benefit corporations), in paragraph 26, after sub-paragraph (1A) (inserted by Schedule 4 to this Act) insert—
  - “(1B) The reports must, in particular, review the extent to which the public benefit corporation has exercised its functions consistently with NHS England’s views set out in the latest statement published under section 13SA(1) (views about how functions relating to inequalities information should be exercised).”

## 12 Support and assistance by NHS England

After section 13Y of the National Health Service Act 2006 insert—

### *“Assistance and support*

#### **13YA Power of NHS England to provide assistance and support**

- (1) NHS England may provide assistance or support to—
  - (a) any person providing or proposing to provide services as part of the health service;
  - (b) any person, not within paragraph (a), exercising functions in relation to the health service.
- (2) The assistance that may be provided under subsection (1)(a) or (b) includes making available the services of NHS England’s employees or any other resources of NHS England.
- (3) The assistance that may be provided under subsection (1)(a), or that may be provided under subsection (1)(b) to integrated care boards, also includes financial assistance.
- (4) Assistance or support provided under this section may be provided on such terms, including terms as to payment, as NHS England considers appropriate.”

### **13 Exercise of functions relating to provision of services**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 13YA (inserted by section 12 of this Act) insert—

#### *“Discharge of functions*

#### **13YB Directions in respect of functions relating to provision of services**

- (1) NHS England may by direction provide for any of its relevant functions to be exercised by one or more integrated care boards.
- (2) In this section “relevant function” means—
  - (a) any function of NHS England under section 3B(1) (commissioning functions);
  - (b) any function of NHS England, not within paragraph (a), that relates to the provision of—
    - (i) primary medical services,
    - (ii) primary dental services,
    - (iii) primary ophthalmic services, or
    - (iv) services that may be provided as pharmaceutical services, or as local pharmaceutical services, under Part 7;
  - (c) any function of NHS England by virtue of section 7A or 7B (exercise of Secretary of State’s public health functions);
  - (d) any other functions of NHS England so far as exercisable in connection with any functions within paragraphs (a) to (c).
- (3) Regulations may—
  - (a) provide that the power in subsection (1) does not apply, or applies only to a prescribed extent, in relation to a prescribed function;
  - (b) impose conditions on the exercise of the power.
- (4) A direction under subsection (1) may include provision prohibiting or restricting the integrated care board from making delegation arrangements in relation to a function that is exercisable by it by virtue of the direction.
- (5) In subsection (4) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (6) NHS England may make payments to an integrated care board in respect of the exercise by it of a function by virtue of a direction under subsection (1).
- (7) NHS England may give directions to an integrated care board as to the exercise by it of any functions in pursuance of a direction under subsection (1).
- (8) As soon as reasonably practicable after giving a direction under subsection (1), NHS England must publish it.
- (9) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by an integrated care board of any function by virtue of this section are enforceable by or against it (and no other person).”

- (3) In section 73 (directions and regulations under Part 2), in subsection (1), after paragraph (b) insert—

“(ba) section 13YB.”.

## 14 Preparation of consolidated accounts for providers

Before section 66 of the National Health Service Act 2006 (and the italic heading before it) insert—

### *“Consolidated accounts*

#### **65Z4 Consolidated accounts for NHS trusts and NHS foundation trusts**

- (1) NHS England must, in respect of each financial year, prepare a set of accounts that consolidates the annual accounts of—
  - (a) all NHS trusts established under section 25, and
  - (b) all NHS foundation trusts.
- (2) The Secretary of State may give NHS England directions as to—
  - (a) the content and form of the consolidated accounts, and
  - (b) the methods and principles to be applied in preparing them.
- (3) NHS England must, within such period as the Secretary of State may direct, send a copy of the consolidated accounts to—
  - (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General.
- (4) The accounts must be accompanied by such reports or other information as the Secretary of State may direct.
- (5) The Comptroller and Auditor General must—
  - (a) examine, certify and report on the consolidated accounts, and
  - (b) send a copy of the report to the Secretary of State and NHS England.
- (6) NHS England must lay before Parliament a copy of—
  - (a) the consolidated accounts, and
  - (b) the Comptroller and Auditor General’s report on them.”

## 15 Funding for service integration

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 223B (funding of NHS England)—
  - (a) for subsection (6) substitute—
    - “(6) The Secretary of State may direct NHS England—
      - (a) that an amount of the sums paid to it under this section in respect of a financial year is to be used for purposes relating to service integration;
      - (b) about the use by NHS England of that amount for those purposes.”;



- (b) in subsection (7)—
  - (i) for “subsection (6)” substitute “subsection (6)(a)”;
  - (ii) in paragraph (b), for “mandate” substitute “direction”;
- (c) after subsection (7) insert—
  - “(7A) The power under subsection (6)(b) includes power to give NHS England directions about the exercise of any of its functions under or by virtue of section 223GA (including directions requiring consultation with the Secretary of State or other specified persons).
  - (7B) The Secretary of State must publish any direction under subsection (6).”
- (3) In section 223GA (expenditure on integration)—
  - (a) for subsections (1) and (2) substitute—
    - “(1) Where the Secretary of State has given NHS England a direction under section 223B(6)(a) about sums paid to it in respect of a financial year, NHS England may direct an integrated care board that an amount (a “designated amount”) of the sums paid to the board under section 223G in respect of that year is to be used for purposes relating to service integration.
    - (2) The designated amount—
      - (a) is to be determined in such manner as NHS England considers appropriate, and
      - (b) must be specified in the direction under subsection (1).”;
  - (b) in subsection (6), for paragraph (a) (but not the “and” at the end) substitute—
    - “(a) it may use the amount for any purposes relating to service integration.”;
  - (c) omit subsection (7).

## 16 Payments in respect of quality

In section 223K of the National Health Service Act 2006, omit subsections (4) and (5) (power of Secretary of State to make regulations about payments by NHS England in respect of quality).

## 17 Secondments to NHS England

- (1) The National Health Service Act 2006 is amended as follows.
- (2) In section 272 (orders, regulations, rules and directions), in subsection (6)—
  - (a) omit the “or” at the end of paragraph (b);
  - (b) after paragraph (c) insert—
    - “(d) regulations under paragraph 9A(5) of Schedule A1, or”.
- (3) In Schedule A1 (constitution of NHS England), after paragraph 9 insert—
  - “9A (1) NHS England may make arrangements for a person to be seconded to NHS England to serve as a member of NHS England’s staff.

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- (2) A period of secondment to NHS England does not affect the continuity of a person's employment with the employer from whose service the person is seconded.
- (3) In paragraphs 9, 10, and 13 a reference to an employee of NHS England includes a person seconded to NHS England.
- (4) In paragraph 3(3) the reference to an employee of NHS England includes any of the following seconded to NHS England—
  - (a) a person employed in the civil service of the State, or
  - (b) a person employed by—
    - (i) an integrated care board,
    - (ii) an NHS trust established under section 25,
    - (iii) an NHS foundation trust,
    - (iv) a Special Health Authority performing functions only or mainly in respect of England,
    - (v) the Care Quality Commission,
    - (vi) the Health and Social Care Information Centre,
    - (vii) the Health Services Safety Investigations Body,
    - (viii) the Human Tissue Authority,
    - (ix) the Human Fertilisation and Embryology Authority, or
    - (x) NICE.
- (5) The Secretary of State may by regulations amend this paragraph so as to provide that other references in this Act to an employee of NHS England include persons, or persons of a prescribed description, seconded to NHS England.”