



Health and Care Act 2022

2022 CHAPTER 31

PART 1

HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

Patient choice and procurement

VALID FROM 01/01/2024

78 Regulations as to patient choice

(1) The National Health Service Act 2006 is amended as follows.

(2) In section 6E (standing rules)—

- (a) in subsection (1)—
 - (i) for “may” substitute “must”;
 - (ii) for “or” substitute “and”;
- (b) after subsection (1) insert—

“(1A) The regulations must make provision as to the arrangements that NHS England and integrated care boards must make, in exercising their commissioning functions, for enabling persons to whom specified treatments or other specified services are to be provided to make choices with respect to specified aspects of them.

(1B) The regulations may make other provision for the purpose of securing that, in exercising their commissioning functions, NHS England and integrated care boards protect and promote the rights of persons to make choices in relation to treatments or other services, where those rights—

- (a) arise by virtue of regulations under subsection (1A), or
- (b) are described in the NHS Constitution.”;

Status: Point in time view as at 01/07/2022. This version of this cross heading contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Health and Care Act 2022, Cross Heading: Patient choice and procurement. (See end of Document for details)

(c) omit subsection (2)(c).

(3) After section 6E insert—

“6F Enforcement of section 6E regulations relating to patient choice

- (1) NHS England may investigate whether an integrated care board has failed or is likely to fail to comply with a requirement imposed by regulations under section 6E(1A) or (1B) (a “patient choice requirement”).
- (2) NHS England may direct an integrated care board—
 - (a) to put in place measures for the purpose of preventing failures to comply with patient choice requirements or mitigating the effect of such failures, or
 - (b) where an investigation under subsection (1) has been carried out, to remedy a failure to comply with patient choice requirements.
- (3) Where an investigation under subsection (1) is being or has been carried out, NHS England may accept from the integrated care board an undertaking that it will take any action falling within subsection (2)(a) or (b) that is specified in the undertaking, within a period that is so specified.
- (4) Where NHS England accepts an undertaking under subsection (3), NHS England may not—
 - (a) continue to carry out any ongoing investigation under subsection (1) so far as relating to matters to which the undertaking relates, or
 - (b) give a direction under subsection (2) in relation to those matters, unless the integrated care board fails to comply with the undertaking.
- (5) If an integrated care board from which NHS England has accepted an undertaking under subsection (3) complies partially with the undertaking, NHS England must take the partial compliance into account in deciding whether to do something mentioned in subsection (4)(a) or (b).
- (6) Schedule 1ZA makes further provision about undertakings.

6G Guidance relating to patient choice

- (1) NHS England must publish guidance about how it intends to exercise powers conferred on it by section 6F and Schedule 1ZA.
 - (2) Before publishing guidance under this section, NHS England must obtain the approval of the Secretary of State.”
- (4) In section 13U (annual report), in subsection (2)(c), for the words from “sections” to the end substitute “or by virtue of—
section 6E(1A) and (1B);
section 13E;
section 13G;
section 13I;
section 13Q.”

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(5) Schedule 11 inserts into the National Health Service Act 2006 a new Schedule 1ZA (undertakings by integrated care boards).

Commencement Information

II S. 78 not in force at Royal Assent, see [s. 186\(6\)](#)

VALID FROM 01/01/2024

79 Procurement regulations

After section 12ZA of the National Health Service Act 2006 insert—

“Procurement

12ZB Procurement regulations

- (1) Regulations may make provision in relation to the processes to be followed and objectives to be pursued by relevant authorities in the procurement of—
 - (a) health care services for the purposes of the health service in England, and
 - (b) other goods or services that are procured together with those health care services.
- (2) Regulations under subsection (1) must include provision specifying steps to be taken when following a competitive tendering process.
- (3) Regulations under subsection (1) must, in relation to the procurement of all health care services to which they apply, make provision for the purposes of—
 - (a) ensuring transparency;
 - (b) ensuring fairness;
 - (c) ensuring that compliance can be verified;
 - (d) managing conflicts of interest.
- (4) NHS England must publish such guidance as it considers appropriate about compliance with the regulations.
- (5) A relevant authority must have regard to guidance published under this section.
- (6) Before publishing guidance under this section, NHS England must obtain the approval of the Secretary of State.
- (7) In this section—

“health care service” has the same meaning as in Part 3 of the Health and Social Care Act 2012 (see section 150 of that Act);

“relevant authority” means—

 - (a) a combined authority;

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- (b) an integrated care board;
- (c) a local authority in England;
- (d) NHS England;
- (e) an NHS foundation trust;
- (f) an NHS trust established under section 25.”

Commencement Information

I2 S. 79 not in force at Royal Assent, see [s. 186\(6\)](#)

VALID FROM 01/01/2024

80 Procurement and patient choice: consequential amendments etc

- (1) In the National Health Service Act 2006—
 - (a) in section 12E (Secretary of State’s duty as respects variation in provision of health services), for subsection (2) substitute—

“(2) The functions mentioned in this subsection are the functions of the Secretary of State under—

 - (a) section 6E;
 - (b) section 12ZB;
 - (c) section 13A.”;
 - (b) in section 272 (orders, regulations, rules and directions), in subsection (6), after paragraph (zzd), insert—

“(zze) regulations under section 12ZB.”.
- (2) Omit sections 75 to 78 of, and Schedule 9 to, the Health and Social Care Act 2012 (regulations etc relating to procurement, patient choice and competition).
- (3) In section 40 of the Small Business, Enterprise and Employment Act 2015 (investigation of procurement functions), in subsection (7), omit paragraph (b) and the “or” before it.
- (4) The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 ([S.I. 2013/500](#)) are revoked.

Commencement Information

I3 S. 80 not in force at Royal Assent, see [s. 186\(6\)](#)

81 Eradicating slavery and human trafficking in supply chains

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 12ZB (inserted by section 79) insert—

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“12ZC Eradicating slavery and human trafficking in supply chains

(1) The Secretary of State must by regulations make such provision as the Secretary of State thinks appropriate with a view to eradicating the use in the health service in England of goods or services that are tainted by slavery and human trafficking.

(2) The regulations may, in particular, include—

- (a) provision in connection with the processes to be followed by public bodies in the procurement of goods or services for the purposes of the health service in England (including provision as to circumstances in which a supplier is excluded from consideration for the award of a contract);
- (b) provision as to steps that must be taken by public bodies for assessing and addressing the risk of slavery and human trafficking taking place in relation to people involved in health service supply chains;
- (c) provision as to matters for which provision must be made in contracts for goods or services entered into by public bodies for the purposes of the health service in England.

(3) In this section—

“health service supply chains” means supply chains for providing goods or services for the purposes of the health service in England;

“public body” means a body exercising functions of a public nature;

“slavery and human trafficking” has the meaning given by section 54(12) of the Modern Slavery Act 2015;

“tainted”: goods or services are “tainted” by slavery and human trafficking if slavery and human trafficking takes place in relation to anyone involved in the supply chain for providing those goods or services.”

(3) In section 272 (orders, regulations, rules and directions), in subsection (6), after paragraph (zze) (inserted by section 80), insert—

“(zzf) regulations under section 12ZC.”.

Commencement Information

I4 S. 81 not in force at Royal Assent, see [s. 186\(6\)](#)

I5 S. 81 in force at 1.7.2022 by [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

Status:

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Changes to legislation:

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