
STATUTORY INSTRUMENTS

2013 No. 261

**NATIONAL HEALTH SERVICE, ENGLAND
MENTAL HEALTH, ENGLAND
PUBLIC HEALTH, ENGLAND**

**The National Health Service and Public Health (Functions
and Miscellaneous Provisions) Regulations 2013**

Made - - - - 11th February 2013

Laid before Parliament 13th February 2013

Coming into force - - 1st April 2013

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by section 130A of the Mental Health Act 1983 ^{M1} and section 2(2) of the European Communities Act 1972 ^{M2} and sections 3B(1)(c), 6D(1), 7(1), 8, 14Z4, 14, 19, 73A(1)(f), 73B(2)(e), 75, 236, 269(2), (3) and (4), and 272(7) and (8) and 273(1) and (4) of the National Health Service Act 2006 ^{M3} and section 300(3) of, and Schedule 23 to, the Health and Social Care Act 2012 ^{M4}.

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the National Health Service ^{M5}.

Marginal Citations

M1 1983 c. 20. Section 130A of the Mental Health Act 1983 is inserted by section 30 of the [Mental Health Act 2007 \(c. 12\)](#) and amended by section 43 of the [Health and Social Care Act 2012 \(c. 7\)](#) (“the 2012 Act”).

M2 1972 c. 68.

M3 2006 c. 41. Section 3B of the National Health Service Act 2006 (“the 2006 Act”) is inserted by section 15 of the 2012 Act. Section 6D of the 2006 Act is inserted by section 19 of the 2012 Act. Section 7 of the 2006 Act is amended by section 21 of the 2012 Act, but continues to be exercisable in relation to Strategic Health Authorities and Primary Care Trusts by virtue of paragraph 3 of Schedule 6 to the 2012 Act. Section 14Z4 of the 2006 Act is inserted by section 26 of the 2012 Act. Section 73A(1)(f) of the 2006 Act is inserted by section 30 of the 2012 Act. Section 73B(2)(e) of the 2006 Act is inserted by section 31 of the 2012 Act. Section 236 of the 2006 Act is amended by section 55(1) of, and paragraph 123 of Schedule 4 to, the 2012 Act. Section 269(2) of the 2006 Act is substituted by, and section 269(4) is amended by, section 284(1) to (3) of the 2012 Act. Section 273(4) of the 2006 Act is amended by section 55(1) of, and paragraph 137(1) and (3) of Schedule 4 to, the 2012 Act.

Status: Point in time view as at 25/10/2013.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013. (See end of Document for details)

By virtue of section 271(1) of the 2006 Act, the powers exercised in making these Regulations are exercisable by the Secretary of State in relation to England only. *See* section 275(1) of the 2006 Act for the definitions of “prescribed” and “regulations”.

M4 [2012 c. 7.](#)

M5 [S.I. 2001/3495.](#)

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013, and come into force on 1st April 2013.

(2) In these Regulations—

“the 2006 Act” means the National Health Service Act 2006;

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

“the Board” means the National Health Service Commissioning Board ^{M6};

“CCG” means clinical commissioning group ^{M7}.

Marginal Citations

M6 The National Health Service Commissioning Board is established by section 1H of the 2006 Act. Section 1H is inserted by section 9(1) of the 2012 Act.

M7 A clinical commissioning group is a body established under section 14D of the 2006 Act. Section 14D is part of an insertion made by section 25(1) of the 2012 Act. *See also* section 1I of the 2006 Act, inserted by section 10 of the 2012 Act.

PART 2

Exercise of EU functions by the Board

Interpretation of Part 2

2.—(1) In this Part—

(a) “Article 20” and “Article 27(3)” respectively mean Article 20 and Article 27(3) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 (authorisation for treatment in another Member State) ^{M8};

(b) a CCG has responsibility for a person if in relation to the service that is the subject of an application as mentioned in regulation 4, it is responsible for that person under or by virtue of section 3 or 3A of the 2006 Act (duties of clinical commissioning groups as to commissioning certain health services and power of clinical commissioning groups to commission certain health services) ^{M9}.

(2) “working day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England under section 1 of the Banking and Financial Dealings

Act 1971 ^{M10} and any application or information received on a day that is not a working day is to be treated as having been received on the next working day.

Marginal Citations

M8 OJ L166, 30.4.2004, p. 1.

M9 Section 3 of the 2006 Act is amended by section 13 of the 2012 Act. Section 3A is inserted by section 14 of the 2012 Act.

M10 1971 c. 80.

Exercise of functions

3. The following functions of the Secretary of State are to be exercised by the Board—
- (a) functions under sections 6A and 6B of the 2006 Act (prior authorisation of and reimbursement of costs of services provided in another EEA state) [^{F1}or sections 6BA and 6BB of the 2006 Act (reimbursement of the cost of services provided in another EEA state where expenditure incurred on or after 25 October 2013 and prior authorisation for the purposes of section 6BA)];
 - (b) functions exercisable for the purposes of Article 20 or Article 27(3).

Textual Amendments

F1 Words in reg. 3(a) inserted (25.10.2013) by [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), regs. 1(1), **15(a)**

Procedure for applications

- 4.—(1) The Board must establish and publish procedures for the determination of applications—
- (a) for reimbursement of costs of services under section 6A [^{F2}or 6BA] of the 2006 Act;
 - (b) for prior authorisation of treatment under section 6B [^{F3}or 6BB] of the 2006 Act; and
 - (c) for prior authorisation of treatment pursuant to Article 20 or Article 27(3).
- (2) The procedures for the determination of such applications must include provision for a review of the determination by the Board.
- (3) The Board must publish—
- (a) information about the procedures the Board has in place for [^{F4}reimbursement under section 6A or 6BA of the 2006 Act and prior authorisation under section 6B or 6BB of the 2006 Act] or pursuant to Article 20 or Article 27(3);
 - (b) a copy of the form in which an application must be made; and
 - (c) a description of the information to be supplied in support of an application.

Textual Amendments

F2 Words in reg. 4(1)(a) inserted (25.10.2013) by [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), regs. 1(1), **15(b)(i)**

F3 Words in reg. 4(1)(b) inserted (25.10.2013) by [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), regs. 1(1), **15(b)(ii)**

F4 Words in [reg. 4\(3\)\(a\)](#) substituted (25.10.2013) by [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), [regs. 1\(1\), 15\(b\)\(iii\)](#)

Time for determination of an application

5.—(1) Subject to paragraph (2), the Board must determine an application before the end of the period of 20 working days beginning on the day the Board receives the application.

(2) If the application does not contain sufficient information to enable the Board to determine the application, the Board must, before the end of the period of 10 working days beginning with the day on which it receives the application, inform the applicant of the information it needs to determine the application.

(3) Where the additional information referred to in paragraph (2) is supplied by the applicant, the Board must determine the application before the end of the period of 10 working days beginning with the day it receives the information requested.

Form and content of determination

6.—(1) The Board must inform the applicant in writing of its determination of the application.

(2) Paragraph (3) applies if the determination is not—

- (a) to reimburse the full amount claimed by the applicant under section 6A [^{F5}or 6BA] of the 2006 Act;
- (b) to give prior authorisation for treatment under section 6B [^{F6}or 6BB] of the 2006 Act; or
- (c) to give prior authorisation for treatment pursuant to Article 20 or Article 27(3).

(3) The determination must—

- (a) set out the information considered by the Board in reaching its determination;
- (b) the reasons for its determination; and
- (c) the steps an applicant must take if the applicant disagrees with the decision and wishes to request a review of the determination by the Board.

Textual Amendments

F5 Words in [reg. 6\(2\)\(a\)](#) inserted (25.10.2013) by [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), [regs. 1\(1\), 15\(c\)\(i\)](#)

F6 Words in [reg. 6\(2\)\(b\)](#) inserted (25.10.2013) by [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), [regs. 1\(1\), 15\(c\)\(ii\)](#)

CCGs

7.—(1) This regulation applies if a patient for whom a CCG has responsibility makes an application to the Board as mentioned in regulation 4.

(2) The CCG must, not later than the end of the period of 7 working days beginning on the day it receives a request for information from the Board—

- (a) provide the Board with the information requested, or
- (b) tell the Board that it does not have the information requested.

(3) Paragraph (4) applies if—

- (a) the Board reimburses the patient under section 6A [^{F7} or 6BA] of the 2006 Act in respect of qualifying EEA expenditure within the meaning of that section, and
 - (b) the CCG would have been responsible for meeting the cost if the same or equivalent service had been made available to the patient under the 2006 Act.
- (4) The CCG must reimburse the Board for the amount reimbursed by the Board to the patient.

Textual Amendments

- F7** Words in [reg. 7\(3\)\(a\)](#) inserted (25.10.2013) by virtue of [The National Health Service \(Cross-Border Healthcare\) Regulations 2013 \(S.I. 2013/2269\)](#), [regs. 1\(1\), 15\(d\)](#)

Applications made before 1st April 2013

- 8.**—(1) This regulation applies to an application under section 6A or 6B of the Act which is—
- (a) made to a Primary Care Trust before 1st April 2013, and
 - (b) not determined before that date.
- (2) The application must be treated as if it is an application made to the Board on or after 1st April 2013.

PART 3

Notification of births and deaths

Relevant bodies

- 9.** The relevant bodies for the purposes of section 269(2) and (4) of the 2006 Act (special notices of births and deaths), are—
- (a) the Board;
 - (b) a local authority ^{M11} whose area includes the whole or part of the registrar's sub-district; and
 - (c) a CCG whose area coincides with or includes the whole or part of the registrar's sub-district.

Marginal Citations

- M11** See [section 2B\(5\)](#) of the 2006 Act inserted by section 12 of the 2012 Act for the meaning of local authority.

Manner and time for furnishing particulars

- 10.**—(1) The registrar must furnish the particulars of each birth and death entered in a register of births or deaths kept by the registrar for that sub-district, to each of the relevant bodies specified in regulation 9, by no later than 14 days from the date on which they are entered in that register.
- (2) Particulars furnished under paragraph (1) must be provided in writing.

Person to whom particulars of birth or death are to be given

- 11.** Particulars furnished under regulation 10 must be given, in the case of—

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- (a) the Board, to a person nominated for these purposes by the chief executive of the Board;
- (b) a local authority, to the director of public health for the authority ^{M12};
- (c) a CCG, to a person nominated for these purposes by the accountable officer ^{M13} of the CCG.

Marginal Citations

M12 By virtue of section 73A of the 2006 Act inserted by section 30 of the 2012 Act, each local authority must, acting jointly with the Secretary of State, appoint a director of public health.

M13 By virtue of paragraph 12(1) of Schedule 1A to the 2006 Act, inserted by section 25(2) of, and Schedule 2 to, the 2012 Act, each clinical commissioning group must have an accountable officer.

Revocation

12. The National Health Service (Notification of Births and Deaths) Regulations 1982 ^{M14} are revoked in relation to England.

Marginal Citations

M14 [S.I. 1982/286](#).

PART 4

CCG joint exercise of functions with Local Health Boards

Functions of a CCG exercisable jointly with a Local Health Board

13. The functions of a CCG exercisable under the provisions listed in the Schedule may, subject to such restrictions and conditions as the CCG considers appropriate, be exercised jointly with a Local Health Board.

Joint committees of a CCG and a Local Health Board

14. Any of the functions of a CCG that may be exercisable by a CCG jointly with a Local Health Board under regulation 13 may be exercised by a joint committee of the CCG and the Local Health Board.

PART 5

Staff transfer schemes

Prescribed public authorities

15. For the purposes of the seventh and sixteenth entries in column 2 of the Table in Schedule 23 to the 2012 Act (staff transfer schemes - permitted transferees), the prescribed public authorities exercising functions in relation to health are—

- (a) a National Health Service trust established under section 25 of the 2006 Act (NHS Trusts); and

- (b) an NHS foundation trust established under section 30 of the 2006 Act (NHS foundation trusts).

PART 6

Mental health

Amendment of the Mental Health Act 1983 (Independent Mental Health Advocates) (England) Regulations 2008

16.—(1) The Mental Health Act 1983 (Independent Mental Health Advocates) (England) Regulations 2008^{M15} are amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of “commissioning body” substitute—

““commissioning body” means a local social services authority whose area is in England;”;
and

(b) for the definition of “section 130A functions” substitute—

““section 130A functions” means the functions under section 130A of the Act of a local social services authority whose area is in England.”.

(3) For regulation 3 (directions in respect of section 130A functions), substitute—

“3 Circumstances in which a person may be appointed to be an Independent Mental Health Advocate

(1) A commissioning body, in exercising section 130A functions, may enter into arrangements to appoint an individual to act as an IMHA only if the commissioning body is satisfied that the conditions set out in regulation 6 are satisfied.

(2) A commissioning body, in exercising section 130A functions, may enter into arrangements with a provider of advocacy services only if such arrangements include a term that the provider is satisfied that the conditions set out in regulation 6 are satisfied in respect of an individual made available by the provider to act as an IMHA.

(3) A commissioning body may only enter into the arrangements described in paragraphs (1) or (2) above where it has had due regard to the diverse circumstances (including but not limited to the ethnic, cultural and demographic needs) of qualifying patients.”

(4) Omit regulation 4 (amendment of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000^{M16}).

(5) Omit regulation 5 (amendment of the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002^{M17}).

Marginal Citations

M15 S.I. 2008/3166.

M16 S.I. 2000/617, as amended by S.I. 2009/2376.

M17 S.I. 2002/2375.

Status: Point in time view as at 25/10/2013.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013. (See end of Document for details)

Prescribed CCG for the purposes of section 236 of the 2006 Act

17. The CCG prescribed for the purposes of section 236 of the 2006 Act (payments for certain medical examinations), for the purpose of paying a medical practitioner who carries out a medical examination of any person with a view to an application for admission to hospital for assessment or treatment being made under Part 2 of the Mental Health Act 1983, is as follows—

- (a) where the person examined is usually resident in the area of a CCG, the CCG for that area;
- (b) where sub-paragraph (a) does not apply, the CCG for the area in which the person was examined.

PART 7

Amendments to the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012

Interpretation of Part 7

18. In this Part—
“the Principal Regulations” means the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 ^{M18}.

Marginal Citations

M18 [S.I. 2012/2996](#).

Amendment of regulation 5 of the Principal Regulations

19. In regulation 5 of the Principal Regulations (interpretation of Part 3)—

- (a) after the definition of “emergency services”, insert the following definition—
 ““mandatory dental services” means dental services which are equivalent in nature to services which must be provided under a general dental services contract by virtue of provision in regulation 14 of the National Health Services (General Dental Services Contracts) Regulations 2005 (mandatory services);”
^{M19}
 ; and
- (b) after the definition of “secondary care services”, insert the following definition—
 ““sedation services” means a course of treatment provided to a patient in connection with the provision to that patient of mandatory dental services during which the provider of that treatment administers one or more drugs to the patient which produce a state of depression of the central nervous system to enable treatment to be carried out, and during and in respect of that period of sedation—
 (a) the drugs and techniques used to provide the sedation are deployed by the provider of the treatment in a manner that ensures loss of consciousness is rendered unlikely; and
 (b) verbal contact with the patient is maintained in so far as is reasonably possible;”.

Marginal Citations

M19 [S.I. 2005/3361](#).

Amendment of regulation 10 of the Principal Regulations

20. In regulation 10 of the Principal Regulations (services for prisoners and other detainees)—
- (a) in paragraph (1), for sub-paragraph (a) substitute the following sub-paragraph—
 - “(a) community services (including mandatory dental services and sedation services);”; and
 - (b) in paragraph (2)(e), delete the words “(except Ashfield Young Offender Institution)”.

PART 8

Public health

Amendment of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

21. In regulation 14 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 ^{M20} (responsibilities of directors of public health), after paragraph (b) insert—

- “(c) any of the authority's functions arising from its duty to provide, or arrange the provision of, healthy start vitamins under regulation 8A of the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005.”

^{M21}

Marginal Citations

M20 [S.I. 2012/3094](#).

M21 [S.I. 2005/3262](#), as amended by [S.I. 2013/235](#)

Signed by authority of the Secretary of State for Health.

Department of Health

Earl Howe
Parliamentary Under-Secretary of State,

Status: Point in time view as at 25/10/2013.

Changes to legislation: There are currently no known outstanding effects for the *The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013*. (See end of Document for details)

SCHEDULE

Regulation 13

PART 1

Provisions of the 2006 Act

1. Section 2 (general power) ^{M22};

Marginal Citations

M22 Section 2 of the 2006 Act was substituted by section 55(1) of, and paragraph 1 of Schedule 4 to, the 2012 Act. See also section 25(2) of, and Schedule 2 to, the 2012 Act which inserts new Schedule 1A into the 2006 Act. Paragraph 20 of new Schedule 1A to the 2006 Act makes provision about the extent of a clinical commissioning group's powers under section 2 of the 2006 Act.

2. Section 3 (duties of clinical commissioning groups as to commissioning certain health services) ^{M23};

Marginal Citations

M23 Section 3 of the 2006 Act is amended by section 13 of the 2012 Act.

3. Section 3A (power of clinical commissioning groups to commission certain health services) ^{M24};

Marginal Citations

M24 Section 3A of the 2006 Act is inserted by section 14 of the 2012 Act.

4. Section 7A (exercise of Secretary of State's public health functions) ^{M25};

Marginal Citations

M25 Section 7A of the 2006 Act is inserted by section 22 of the 2012 Act. By virtue of section 14Z24(2) of the 2006 Act which is inserted by section 26 of the 2012 Act, the reference to the functions of a clinical commissioning group in section 14Z4(1) includes a reference to the functions of the Secretary of State that are exercisable by a clinical commissioning group by virtue of arrangements made under section 7A.

5. Section 12ZA (commissioning arrangements by the Board or clinical commissioning groups) ^{M26};

Marginal Citations

M26 Section 12ZA of the 2006 Act is inserted by section 55(1) of, and paragraph 9 of Schedule 4 to, the 2012 Act.

6. Section 14W (duty to obtain appropriate advice) ^{M27};

Marginal Citations

M27 [Section 14W](#) of the 2006 Act is inserted by section 26 of the 2012 Act.

7. Section 14Z2 (public involvement and consultation by clinical commissioning groups) ^{M28};

Marginal Citations

M28 [Section 14Z2](#) of the 2006 Act is inserted by section 26 of the 2012 Act.

8. Section 80 (supply of goods and services by Secretary of State, the Board and clinical commissioning groups) ^{M29};

Marginal Citations

M29 [Section 80](#) of the 2006 Act is amended by section 55(1) of, and paragraph 28 of Schedule 4 to, the 2012 Act.

9. Section 98A (exercise of functions) ^{M30};

Marginal Citations

M30 [Section 98A](#) of the 2006 Act is inserted by section 49(1) of the 2012 Act.

10. Section 125A (exercise of functions) ^{M31};

Marginal Citations

M31 [Section 125A](#) of the 2006 Act is inserted by section 49(3) of the 2012 Act.

11. Section 222 (power to raise money) ^{M32};

Marginal Citations

M32 [Section 222](#) of the 2006 Act is amended by section 55(1) of, and paragraph 116 of Schedule 4 to, the 2012 Act.

12. Section 252A (emergency powers) ^{M33};

Marginal Citations

M33 [Section 252A](#) of the 2006 Act is inserted by section 46 of the 2012 Act.

13. Section 256 (power of Primary Care Trusts to make payments towards expenditure on community services) ^{M34};

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Marginal Citations

M34 Section 256 of the 2006 Act is amended by section 55(1) of, and paragraph 129 of Schedule 4 to, the 2012 Act.

14. Section 257 (payments in respect of voluntary organisations under section 256) ^{M35};

Marginal Citations

M35 Section 257 of the 2006 Act is amended by section 55(1) of, and paragraph 130 of Schedule 4 to, the 2012 Act.

15. Paragraphs 9 and 10 of Schedule 1 (provision of vehicles for disabled persons) ^{M36};

Marginal Citations

M36 Paragraphs 9 and 10 of Schedule 1 to the 2006 Act are amended by section 17(2), (10) and (11) of the 2012 Act.

16. Paragraph 13 of Schedule 1 (powers in relation to research etc) ^{M37};

Marginal Citations

M37 Paragraph 13 of Schedule 1 to the 2006 Act is substituted by section 17(2) and (13) of the 2012 Act.

17. Paragraph 16 of Schedule 1A (externally financed development agreements) ^{M38}.

Marginal Citations

M38 Paragraph 16 of Schedule 1A to the 2006 Act is inserted by section 25(2) of the 2012 Act.

PART 2

Provisions of other enactments

18. Section 117 of the Mental Health Act 1983 (after-care) ^{M39};

Marginal Citations

M39 1983 c. 20. Relevant amendments are made by section 40 of the 2012 Act.

19. Section 27 of the Children Act 1989 (co-operation between authorities) ^{M40};

Marginal Citations

M40 1989 c. 41. Relevant amendments are made by section 55(2) of, and paragraphs 47 and 51 of Schedule 5 to, the 2012 Act.

20. Section 47 of the Children Act 1989 (local authority's duty to investigate) ^{M41};

Marginal Citations

M41 Relevant amendments are made by section 55(2) of, and paragraphs 47 and 53 of Schedule 5 to, the 2012 Act.

21. Section 322 of the Education Act 1996 (duty of certain bodies to help local authorities) ^{M42};

Marginal Citations

M42 1996 c. 56. Relevant amendments are made by section 55(2) of, and paragraphs 77 and 78 of Schedule 5 to, the 2012 Act.

22. Section 5 of the Crime and Disorder Act 1998 (authorities responsible for crime and disorder strategies) ^{M43};

Marginal Citations

M43 1998 c. 37. Relevant amendments are made by section 55(2) of, and paragraphs 83 and 84 of Schedule 5 to, the 2012 Act.

23. Section 38 of the Crime and Disorder Act 1998 (local provision of youth justice services) ^{M44};

Marginal Citations

M44 Relevant amendments are made by section 55(2) of, and paragraphs 83 and 85 of Schedule 5 to, the 2012 Act.

24. Section 4 of the Adoption and Children Act 2002 (assessments etc for adoption support services) ^{M45};

Marginal Citations

M45 2002 c. 38. Relevant amendments are made by section 55(2) of, and paragraphs 104 and 105 of Schedule 5 to, the 2012 Act.

25. Section 3 of the Carers (Equal Opportunities) Act 2004 (co-operation between authorities) ^{M46};

Marginal Citations

M46 2004 c. 15. Relevant amendments are made by section 55(2) of, and paragraph 125 of Schedule 5 to, the 2012 Act.

26. Section 10 of the Children Act 2004 (co-operation to improve wellbeing) ^{M47};

Status: Point in time view as at 25/10/2013.

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Marginal Citations

M47 2004 c. 31. Relevant amendments are made by section 55(2) of, and paragraphs 127 and 128 of Schedule 5 to, the 2012 Act.

27. Section 11 of the Children Act 2004 (arrangements to safeguard and promote welfare) ^{M48}.

Marginal Citations

M48 Relevant amendments are made by section 55(2) of, and paragraphs 127 and 129 of Schedule 5 to, the 2012 Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a range of matters relating to the functions of the National Health Service Commissioning Board (“the Board”) and clinical commissioning groups (“CCGs”). They also make provision related to the transfer of staff between NHS bodies, the appointment of Independent Mental Health Advocates (IMHAs), payment of certain medical expenses and public health functions of local authorities. They are made under powers in the European Communities Act 1972 (c. 68); the National Health Service Act 2006 (c. 41) (“the 2006 Act”) and the Mental Health Act 1983 (“the 1983 Act”), as amended by the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”), and powers in the 2012 Act.

Part 2 of the Regulations makes provision in relation to the exercise of the Secretary of State's EU health functions by the Board and CCGs. Sections 6A and 6B of the 2006 Act place a duty on the Secretary of State to reimburse the cost of healthcare services provided to a patient by an authorised provider in another EEA State and to decide an application by a patient for prior authorisation where this is a condition of reimbursement. Regulation 3 provides that the functions of the Secretary of State under these provisions and Articles 20 and 27(3) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 (authorisation for treatment in another Member State), are to be exercisable by the Board. Regulations 4 and 5 place requirements on the Board as to procedures in relation to applications for reimbursement of costs of services and prior authorisation. Regulation 6 imposes requirements as to the form and content of the Board's determination of the application. Regulation 7 imposes requirements on a CCG in relation to the provision of information to the Board in connection with applications made under regulation 4. Regulation 8 makes transitional provision in relation to applications under section 6A or 6B of the 2006 Act that are made before 1st April 2013 and have not been determined by that date.

Part 3 of the Regulations makes provision in relation to notification of births and deaths. Section 269(2) of the 2006 Act as amended by section 284 of the 2012 Act imposes obligations on each registrar of births and deaths to furnish prescribed information to such relevant bodies as may be determined by regulations. Section 269(4) of the 2006 Act imposes obligations in the case of a home birth on a father resident at the place of birth and persons attending the mother as to notification of the birth to a relevant body. Regulation 9 provides that the Board, a local authority whose area includes the whole or part of the registrar's sub-district, and any CCG whose area

coincides with or includes the whole or part of the registrar's sub-district are relevant bodies for the purposes of section 269(2) and (4) of the 2006 Act. Regulation 10 makes provision for the furnishing of the particulars entered in the register of births and deaths by registrars to these relevant bodies. Such information must be provided within 14 days of entry in the register of births and deaths and must be in writing. Regulation 11 identifies the person to whom the notification must be given. Regulation 12 revokes the National Health Service (Notification of Births and Deaths) Regulations 1982 (S.I.1982/286), in relation to England.

Part 4 of the Regulations is made under the powers in section 14Z4 of the 2006 Act, inserted by section 26 of the 2012 Act, and makes provision for the functions that a CCG may exercise jointly with a Local Health Board. Those functions are the functions of a CCG under the provisions listed in the Schedule (regulation 13). By virtue of regulation 14 any of those functions may be exercised by a joint committee of a CCG and a Local Health Board.

Part 5 of the Regulations is made under the powers in section 300(3) of and Schedule 23 to the 2012 Act which make provision for staff transfer schemes to be made in connection with the establishment or abolition of a body by that Act. Section 300(3) of the 2012 Act provides that a staff transfer scheme may be made by the Secretary of State for the transfer from one body or other person mentioned in the first column of the Table in Schedule 23 of any rights or liabilities under or in connection with a contract of employment to a body or other person mentioned in the corresponding entry in the second column of that Table. The seventh and sixteenth entries in the second column of the Table in Schedule 23 to the 2012 Act enable the Secretary of State to prescribe in regulations the bodies which are to constitute public authorities exercising functions in relation to health so that they may be permitted transferees from Primary Care Trusts and Strategic Health Authorities for the purposes of staff transfer schemes made under section 300(3) of the 2012 Act. Regulation 15 of these Regulations provides that NHS trusts and NHS foundation trusts established under sections 25 and 30 of the 2006 Act are to constitute public authorities for these purposes.

Part 6 of the Regulations amends the definitions of “commissioning body” and “section 130A functions” in the Mental Health Act 1983 (Independent Mental Health Advocates) Regulations 2008 (S.I.2008/3166) (“the 2008 Regulations”), following amendments made by the 2012 Act to the commissioning arrangements for IMHAs in section 130A of the 1983 Act. A new regulation 3 is substituted in the 2008 Regulations by regulation 16 of these Regulations to provide for the circumstances in which a person may be appointed to be an IMHA. Regulations 4 and 5 of the 2008 Regulations are also revoked: the amendment made by regulation 4 is spent; and regulation 5 amends a regulation that has been revoked. Regulation 17 provides for which CCG shall pay a medical practitioner who carries out a medical examination of a person with a view to an application being made to detain them in hospital under Part 2 of the 1983 Act.

Part 7 of the Regulations is made under section 3B(1)(c) of the 2006 Act. It makes amendments to Part 3 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) (“the Principal Regulations”) which requires the Board to make arrangements for the provision, as part of the health service, of specified services or facilities to specified people or groups of people. Regulation 19 amends regulation 5 of the Principal Regulations (interpretation of Part 3) to include definitions of “mandatory dental services” and “sedation services”. Regulation 20 amends regulation 10(1) of the Principal Regulations (services for prisoners and other detainees) by substituting a new sub-paragraph (a) which clarifies that the community services which the Board must commission in respect of prisoners and persons detained in other accommodation of a prescribed description (such as a secure children's home, a secure training centre or a young offender institution) are to include mandatory dental services and related sedation services as defined in regulation 5. Regulation 20 also amends regulation 10(2)(e) of the Principal Regulations to remove the exception from the application of that regulation in respect of Ashfield Young Offender Institution.

Part 8 of the Regulations, regulation 21, amends the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

Status: Point in time view as at 25/10/2013.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013. (See end of Document for details)

(S.I. 2012/3094) to provide that the function of local authorities of providing vitamins under the Healthy Start Scheme is the responsibility of each authority's director of public health. An impact assessment has not been produced for this instrument as the instrument itself has no impact on the private sector or civil society organisations. A full impact assessment has been produced in relation to the provisions of the 2012 Act and a copy is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583.

Status:

Point in time view as at 25/10/2013.

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service and Public Health (Functions and Miscellaneous Provisions) Regulations 2013.