
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a range of matters relating to the functions of [^{F1}NHS England] (“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

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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 [^{F1}NHS England] 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 (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.

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