

EXPLANATORY MEMORANDUM TO

THE NHS BODIES AND LOCAL AUTHORITIES PARTNERSHIP ARRANGEMENTS (AMENDMENT) REGULATIONS 2015

2015 No. 1940

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These regulations amend the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (“the 2000 regulations”) to make it possible for NHS bodies and local authorities to enter into partnership arrangements with regards to primary medical services. They also remove a need to consult before entering into partnership arrangements where the arrangements are required as a result of legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2000 Regulations set out which functions can be subject to partnership arrangements between NHS bodies and local authorities under section 75 of the National Health Service Act 2006 (“the 2006 Act”). Currently, these functions do not include the function of NHS England¹ in relation to primary medical services under section 83 of the 2006 Act. This amendment will add that function, thereby enabling NHS England, clinical commissioning groups (CCGs) and local authorities to enter into partnership arrangements with regards to primary medical services. (Primary medical services are those services provided by General Practitioners under contractual arrangements with NHS England).
- 4.2 Under regulation 4 of the 2000 Regulations, partners may not enter into partnership arrangements without jointly consulting those who appear to be affected by the arrangement. However, where such arrangements are entered into as part of the Better Care Fund (see paragraph 7.4 below) they are in effect a requirement. In those cases, these regulations will remove the need to consult before entering into the arrangement.

¹ NHS England is the name by which the National Health Service Commissioning Board is more generally known. The National Health Service Commissioning Board was established by section 1H of the 2006 Act.

4.3 These regulations also make an amendment to regulation 7 of the 2000 Regulations to reflect the fact that the Audit Commission has been abolished.

5. Extent and Territorial Application

5.1 This instrument extends only to England.

5.2 This instrument applies only to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The change to the 2000 Regulations will drive progress towards greater levels of integration across health and social care services in two ways. Firstly, the change looks to build in further flexibility into the 2000 Regulations at a time when many CCGs and local authorities are considering what more they can do at a local level to drive integration. Secondly, it looks to encourage greater investment in primary medical services at a local level by making it easier for CCGs, local authorities and NHS England to do so together.

7.2 General practice has an important role to play in delivering more integrated out-of-hospital care but the existing regulations do not allow commissioners of health and social care services to pool budgets with regards to primary medical services (i.e. GP services). The changes to the 2000 Regulations will provide the legal flexibility for the inclusion of primary medical care budgets in pooled funds, where there is an agreement across all parties. This will allow NHS England to be party to a pooled budget in respect of its primary medical care function, which in turn will expand the scope of the Better Care Fund in the future and support investment in primary medical care services at local level.

7.3 Under section 75 arrangements, all parties retain accountability for their health functions. NHS England would, therefore, retain accountability for the overall provision of primary medical care services.

7.4 The 2000 Regulations underpin the operation of the Better Care Fund (BCF), which requires clinical commissioning groups (CCGs) and local authorities to support joint commissioning of services and the integration of health and social care through pooling budgets by way of arrangements made under section 75 of the 2006 Act.

7.5 The amendments will also remove the requirement for partners to consult on whether they should enter into a partnership arrangement where they have in effect been required to do so under the BCF. CCGs and local authorities are still expected to consult and engage widely with their local populations as to how they plan to spend their BCF pooled budget.

7.6 The requirement to consult would still apply where partnership arrangements are entered into outside of the Better Care Fund.

7.7 The 2000 Regulations require the Audit Commission to certify an annual return of the accounts of a pooled fund held under arrangements under section 75. Following the

abolition of the Audit Commission, the amendments make provision for its successor to carry out that function

- 7.8 The 2006 Act places duties on the Secretary of State for Health under sections 1 to 1G which have been taken into consideration when making the regulations. The regulations are consistent with these duties

Consolidation

- 7.9 The Department does not intend to consolidate the 2000 regulations at this time.

8. Consultation outcome

- 8.1 In the last Parliament the Government ran a four week consultation on the proposed changes. Four weeks was deemed to be proportionate in this instance as it is a relatively minor amendment to existing regulations and does not impose new requirements or burdens. The Department highlighted the consultation to those with particular interests in the consultation directly and, in addition, publicised it through existing communication channels in order to reach a broad audience.
- 8.2 The consultation asked respondents for views on: whether the amendment would provide a helpful flexibility; whether respondents agreed with the proposed scope of the amendment; whether the safeguards are sufficient; and whether there would have any impact (adverse or positive) on people sharing protected characteristics, as defined in the Equality Act 2010.
- 8.3 The Department received 47 responses from a wide range of individuals and organisations with different interests and expertise, including: CCGs, County Councils, Health and Wellbeing Boards, local medical councils, national professional representative bodies, charities and consultancy groups.
- 8.4 Approximately two thirds of respondents gave a positive or neutral response, agreeing that the proposed change would provide additional flexibility and that it would support efforts to build on existing work to provide integrated and out of hospital care.
- 8.5 More details on the responses to the consultation can be found at <https://www.gov.uk/government/consultations/partnership-arrangements-between-nhs-bodies-and-local-authorities>

9. Guidance

- 9.1 The proposed changes to the regulations are not complex and do not impose any new obligations as they are permissive in nature. Therefore, the Department does not intend to issue specific guidance.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is not expected to be significant. It is conceivable that there will be a cost borne by Local Authorities and NHS Bodies in terms of the staff time spent on familiarisation with the changes and updating internal guidelines. However, this cost would be too minimal to offset the benefits of flexibility. The direct impact of the proposed changes would be limited to the organisations choosing to enter into partnership agreements and is not expected to extend to businesses.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 There will be no official monitoring and review process as the proposed amendment does not regulate business.

13. Contact

13.1 Dani Lee at the Department of Health Tel: 0207 9723279 or email:
dani.lee@dh.gsi.gov.uk can answer any queries regarding the instrument.