

Draft Regulations laid before Parliament under section 272(6)(zza) of the National Health Service Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. 0000

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Clinical Commissioning Groups
— Disapplication of Responsibility) Regulations 2012**

Made - - - - *****
Coming into force - - *1st April 2013*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 3(1D) and 272(7) and (8)(a) of the National Health Service Act 2006⁽¹⁾.

In accordance with section 272(6)(zza) of that Act⁽²⁾, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Clinical Commissioning Groups—Disapplication of Responsibility) Regulations 2012 and come into force on 1st April 2013.

(2) In these Regulations—

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

“CCG” means clinical commissioning group⁽³⁾;

“immigration removal centre” means a removal centre within the meaning of section 147 of the Immigration and Asylum Act 1999⁽⁴⁾;

“the Responsibilities Regulations” means the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012⁽⁵⁾;

(1) [2006 c. 41](#). Subsection (1D) of section 3 is part of an insertion made by section 13(3) of the Health and Social Care Act 2012 ([c. 7](#)) (“the 2012 Act”). By virtue of section 271(1) of the National Health Service Act 2006 (“the 2006 Act”), the powers exercised in making these Regulations are exercisable by the Secretary of State only in relation to England. *See* section 275(1) of the 2006 Act for the definitions of “prescribed” and “regulations”.

(2) Paragraph (zza) of section 272(6) of the 2006 Act was inserted by section 13(8) of the 2012 Health Act.

(3) 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 11 of the 2006 Act, inserted by section 10 of the 2012 Act.

(4) [1999 c. 33](#). Relevant amendments were made by section 66(1) of the Nationality, Immigration and Asylum Act 2002 ([c. 41](#)).

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

“secure training centre” means a place in which offenders subject to detention and training orders under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18: detention and training orders)(6) may be detained and given training and education and prepared for their release;

“walk-in centre” means a centre at which information and treatment for minor conditions is provided to the public under arrangements made by the National Health Service Commissioning Board(7) or a CCG;

“young offender institution” means a place for the detention of offenders sentenced to detention in a young offender institution or to custody for life.

Persons for whom a CCG does not have responsibility in relation to its duty to commission services

2.—(1) For the purposes of section 3 of the 2006 Act(8) (duties of CCGs as to commissioning certain health services), subsection (1A) of that section(9) does not apply—

- (a) to the persons listed in paragraph (2); or
- (b) in the circumstances prescribed in paragraph (3).

(2) The list of persons referred to in paragraph (1)(a) is as follows—

- (a) a person usually resident in Northern Ireland who is provided with primary medical services by a member of the CCG;
- (b) a person usually resident in Scotland who is provided with primary medical services by a member of the CCG;
- (c) a person usually resident in Wales who is provided with primary medical services by a member of the CCG;
- (d) a person for whom the CCG would normally have responsibility under section 3(1A)(a) of the 2006 Act but who has been accepted as a temporary resident by a member of another CCG;
- (e) a person provided, by a member of the CCG, only with primary medical services other than those of a description prescribed under section 14A(4) of the 2006 Act(10)(general duties of Board in relation to clinical commissioning groups);
- (f) a person detained in—
 - (i) an immigration removal centre;
 - (ii) a secure training centre; or
 - (iii) a young offender institution;
- (g) a person for whom another CCG is responsible by virtue of—
 - (i) regulation 4 of, and paragraph 2(c) of Schedule 1 to, the Responsibilities Regulations 2012;

(6) 2000 c. 6. Section 100 was amended by paragraph 184 of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c.43), by paragraph 111 of Schedule 32 to the Criminal Justice Act 2003 (c.44), and by paragraph 11 of Schedule 26 and paragraph 13 of Schedule 21 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10).

(7) 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.

(8) Section 3 is amended by section 13 of the 2012 Act.

(9) Subsection (1A) is part of the insertion made by section 13(3) of the 2012 Act.

(10) Section 14A is part of the insertion into the 2006 Act of a new Chapter A2. The insertion is made by section 25(1) of the 2012 Act. By virtue of section 14A(4), a “provider of primary medical services” for the purposes of Chapter A2 is a party to an arrangement to provide primary medical services of a prescribed description. That power has been exercised in making the [National Health Service \(Clinical Commissioning Groups\) Regulations 2012 S.I 2012/1631](#) - see regulation 2.

- (ii) regulation 4 of, and paragraph 2(g) of Schedule 1 to, the Responsibilities Regulations 2012; or
 - (iii) regulation 4 of, and paragraph 2(j) of Schedule 1 to, the Responsibilities Regulations 2012.
- (3) The circumstances referred to in paragraph (1)(b) are—
- (a) the provision to a person of ambulance services or accident and emergency services, whether provided at a hospital accident and emergency department, a minor injuries unit, a walk-in centre or elsewhere (but excluding any services provided after the person has been accepted as an in-patient, or at an out-patient appointment) where another CCG has responsibility for such provision by virtue of regulation 4 of, and paragraph 2(a) of Schedule 1 to, the Responsibilities Regulations 2012;
 - (b) the provision of accommodation or services in a care home, children’s home or independent hospital where another CCG has responsibility for such provision by virtue of regulation 4 of, and paragraph 2(b), 2(d), 2(e) or 2(f) of Schedule 1 to, the Responsibilities Regulations 2012.
- (4) In paragraph (2)(d), the reference to a person who has been accepted as a temporary resident means—
- (a) a person accepted by a contractor as a temporary resident under paragraph 16 of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004⁽¹¹⁾ or under paragraph 15 of Schedule 5 to the National Health Service (Personal Medical Services Agreements) Regulations 2004⁽¹²⁾, and for whom that contractor’s responsibility has not been terminated in accordance with the relevant one of those two paragraphs, or
 - (b) a person accepted by a provider of services as a temporary resident under the terms of an arrangement under section 83 of the 2006 Act (primary medical services), and for whom that contractor’s responsibility has not been terminated in accordance with that arrangement.

Usual residence

3.—(1) This regulation applies if there is a doubt about where a person (“P”) is usually resident for the purposes of regulation 2(2)(a), (b) or (c).

(2) If P gives an address of usual residence, P is to be treated as usually resident at that address.

(3) If P gives instead his or her most recent address, P is to be treated as usually resident at that address.

(4) If P gives neither of those addresses, or gives no address, P is to be treated as usually resident at the place where P is present.

(5) References in this regulation to P’s giving an address include another person giving an address for P on P’s behalf.

(11) [S.I. 2004/291](#) to which there are amendments not relevant to these Regulations.

(12) [S.I. 2004/627](#) to which there are amendments not relevant to these Regulations.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The National Health Service (Clinical Commissioning Groups) Regulations 2012 No. 1631

Signed by authority of the Secretary of State for Health.

Date

Name
Parliamentary Under-Secretary of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 3(1A) of the National Health Service Act 2006 (“the 2006 Act”) (as inserted by section 13(3) of the Health and Social Care Act 2012 (“the 2012 Act”)) provides for a clinical commissioning group (“CCG”) to have the duty to commission health services for persons who are provided with primary medical services by a member of the CCG, and persons who usually reside in the CCG’s area and who are not provided with primary medical services by a member of any CCG. However, by virtue of section 3(1D) of the 2006 Act, inserted by the same provision of the 2012 Act, regulations may provide for certain exceptions to this.

These Regulations provide, by way of exception, that a CCG does not have the duty to commission services for certain groups of people or persons in specified circumstances, even if they would otherwise be the responsibility of the CCG. These groups and circumstances are provided for in regulation 2.

However, the CCG still has responsibility for commissioning accident and emergency services for all persons if present in the CCG’s area: see regulation 4 of, and paragraph 2 (a) of Schedule 1 to, the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (“the Responsibilities Regulations 2012”).

By virtue of section 3(1E) of the 2006 Act, also inserted by section 13(3) of the 2012 Act, a CCG does not have responsibility for commissioning a service or facility for a person it would otherwise have responsibility for if the National Health Service Commissioning Board (“the Board”) has a duty to arrange that provision. In that regard see regulations 7 to 17 of the Responsibilities Regulations 2012 which make provision in respect of the services which the Board is required to arrange, to the extent which it considers necessary to meet all reasonable requirements, for the provision as part of the health service.

Regulation 3 sets out rules for determining where a person is usually resident for the purposes of regulation 2.

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