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STATUTORY INSTRUMENTS

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**2007 No. 559**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) (Amendment) Regulations 2007**

*Made* - - - - 26th February 2007  
*Laid before Parliament* 2nd March 2007  
*Coming into force* - - 1st April 2007

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 16D, 17, 18 and 126(4) of the National Health Service Act 1977(1):

**Citation, commencement, interpretation and application**

1.—(1) These Regulations may be cited as the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) (Amendment) Regulations 2007 and shall come into force on 1<sup>st</sup> April 2007.

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(1) [1977 c.49](#). Section 16D was substituted by the Health Act [1999 \(c.8\)](#) (“the 1999 Act”), section 12(1) and amended by the National Health Service Reform and Health Care Professions Act [2002 \(c.17\)](#) (“the 2002 Act”), section 3(2) and Schedule 1, paragraph 6. Section 17 was substituted by the 1999 Act, section 12(1) and amended by the 2002 Act, Schedule 1, paragraph 7; section 17(3) was substituted by the Health and Social Care Act [2001 \(c.15\)](#) (“the 2001 Act”), Schedule 5, paragraph 5(3). Section 18(1) to (1B) was substituted by the 1999 Act, section 12(3); section 18(1A) was amended by the 2002 Act, section 3(5) and Schedule 1, paragraph 9 and Schedule 9 and the Health (Wales) Act [2003 \(c.4\)](#), Schedule 3, paragraph 3; section 18(1B) was amended by the 2002 Act, Schedule 1, paragraph 9; section 18(2) was repealed by the Health Authorities Act [1995 \(c.17\)](#) (“the 1995 Act”), Schedule 1, paragraph 9 and Schedule 3; and section 18(3) was amended by the 1995 Act, section 3(8) and Schedule 1, paragraph 9 and Schedule 3. Section 126(4) was amended by the 1990 Act, section 65(2), the 1999 Act, Schedule 4, paragraph 37, the 2001 Act, Schedule 5, paragraph 5(13)(b), the 2002 Act, section 6(3)(c) and Schedule 8, paragraph 10 and the Health and Social Care (Community Care and Standards) Act [2003 \(c.43\)](#) (“the 2003 Act”), Schedule 11, paragraph 38 and Schedule 14, Part 4. *See* section 128(1) as amended by the 1990 Act, section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of, and the entry for the National Health Service Act 1977 in Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, [S.I.1999/672](#), as amended by the 1999 Act, section 66(4) and (5)(a), the 2001 Act, section 67(1) and Schedule 5, paragraph 12, and the 2003 Act, section 196 and Schedule 14, Part 4. *See* also the 2001 Act, section 68, the 2002 Act, section 40 and the 2003 Act, section 197. Sections 16D, 17, 18 and 126 of the National Health Service Act 1977 are repealed by the National Health Service (Consequential Provisions) Act [2006 \(c. 43\)](#), section 6 and Schedule 4, with effect from 1st March 2007. For corresponding provisions, which come into force on the same date, *see* sections 7, 8, 73, 272(7) to (9) and 273(1), (3) and (4) of the National Health Service Act [2006 \(c. 41\)](#).

(2) In these Regulations, “the principal Regulations” means the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002(2).

(3) These Regulations apply in relation to England.

### **Amendment of regulation 2 of the principal Regulations**

2. In regulation 2 of the principal Regulations (interpretation), in paragraph (1), in the appropriate alphabetical position, insert—

““the 1989 Act” means the Children Act 1989;”(3);

““adult” means a person who has attained the age of eighteen;”;

““child” means a person under the age of eighteen;”;

““children’s home” has the same meaning as in the 2000 Act;”;

““young people” means persons who have attained the age of twelve but are under the age of twenty.”.

### **Amendment of regulation 3 of the principal Regulations**

3.—(1) Regulation 3 of the principal Regulations (functions of the Secretary of State exercisable by Strategic Health Authorities and Primary Care Trusts) shall be amended as follows.

(2) In paragraph (2)(b), after “Strategic Health Authorities but” insert “, subject to paragraph (2A),”.

(3) After paragraph (2), insert—

“(2A) Subject to regulation 6, the Secretary of State’s functions relating to the health service under section 3(1) of the National Health Service Act 2006(4) (services generally) are to be exercisable by Strategic Health Authorities for the purpose of securing, by arrangement with any person or body, the provision of any service specified in Schedule 5.”.

(4) In paragraph (7)(a), for “paragraph (7B)” substitute “paragraphs (7B), (7E) and (7G)”.

(5) After paragraph (7A), insert—

“(7AA) For the purposes of paragraph (7A), an arrangement includes an arrangement made jointly by the placing PCT and a local authority.”.

(6) After paragraph (7B), insert—

“(7C) Paragraph (7E) applies where—

(a) under arrangements made on or after 1st April 2007—

(i) by a Primary Care Trust in exercise of its functions under paragraph (7)(a);

(ii) by a local authority; or

(iii) jointly by a Primary Care Trust in exercise of its functions under paragraph (7)(a) and a local authority,

a child to whom paragraph (7D) applies is provided with services which consist of or include the provision of accommodation situated in the area of another Primary Care Trust or a Local Health Board(5); and

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(2) [S.I. 2002/2375](#). Relevant amending instruments are [S.I. 2003/1497](#), [2004/865](#) and [2006/359](#).

(3) [1989 c. 41](#).

(4) [2006 \(c. 41\)](#). Section 3(1) comes into force on 1<sup>st</sup> March 2007 and re-enacts (with modifications) section 3(1) of the National Health Service Act [1977 \(c. 49\)](#).

(5) See sections 16BB and 16BC of, and Schedule 5B to, the National Health Service Act 1977 for the functions of Local Health Boards.

- (b) the child—
  - (i) is thereby resident in such accommodation; and
  - (ii) does not fall under the responsibility of the originating Primary Care Trust under paragraph (7)(a)(i).

(7D) This paragraph applies to a child who—

- (a) is looked after by a local authority within the meaning of section 22 of the 1989 Act;
- (b) is a relevant child within the meaning of section 23A of the 1989 Act<sup>(6)</sup>;
- (c) qualifies for advice and assistance under section 24(1A) or (1B)(7) of the 1989 Act;
- (d) is provided with accommodation at a school to which he is admitted in accordance with a statement of special educational needs made under section 324 of the Education Act 1996<sup>(8)</sup> that names the school; or
- (e) requires accommodation in a care home<sup>(9)</sup>, a children’s home or an independent hospital<sup>(10)</sup> to meet his continuing care<sup>(11)</sup> needs.

(7E) The originating Primary Care Trust shall continue to exercise the functions referred to in paragraphs (1) and (2) for the benefit of a child referred to in paragraph (7C).

(7F) Subject to regulation 3A, in paragraphs (7C) and (7E) “the originating Primary Care Trust” in relation to a child means the Primary Care Trust which—

- (a) makes, in respect of that child, an arrangement referred to in paragraph (7C)(a)(i) or (iii); or
- (b) was responsible for exercising the functions under paragraph (7)(a) on behalf of that child immediately before a local authority makes, in respect of that child, an arrangement referred to in paragraph (7C)(a)(ii).

(7G) Where a Primary Care Trust has made an arrangement referred to in paragraph (7C)(a)(i) or (iii) by virtue of which a child is, immediately before he attains the age of eighteen years, provided with—

- (a) accommodation in a care home, a children’s home or an independent hospital situated in the area of another Primary Care Trust, and
- (b) nursing and another service which is a planned service<sup>(12)</sup>, as part of the health service,

to meet his continuing care needs, when the child attains the age of eighteen years that arrangement shall, for the purposes of these Regulations, be treated as an arrangement which falls within paragraph (7A).”.

(7) After paragraph (10), add—

“(11) In this regulation, “local authority” means—

- (a) a county council;
- (b) a district council for an area for which there is no county council;
- (c) a London borough council;

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<sup>(6)</sup> Section 23A was inserted by the [Children \(Leaving Care\) Act 2000 \(c. 35\)](#), section 2(4).

<sup>(7)</sup> Section 24(1A) and (1B) was inserted by the [Adoption and Children Act 2002 \(c. 38\)](#), Schedule 3, paragraph 60(a).

<sup>(8)</sup> [1996 c.56](#). Section 324 was amended by the [School Standards and Framework Act 1998 \(c.31\)](#), section 140(1), Schedule 30, paragraphs 77(a) and (b), and by the [Special Educational Needs and Disability Act 2001 \(c.10\)](#), section 9.

<sup>(9)</sup> The definition of “care home” was inserted by [S.I. 2006/359](#).

<sup>(10)</sup> The definition of “independent hospital” was inserted by [S.I. 2006/359](#).

<sup>(11)</sup> The definition of “continuing care” was inserted by [S.I. 2006/359](#).

<sup>(12)</sup> The definition of “planned service” was inserted by [S.I. 2006/359](#).

- (d) the Common Council of the City of London; or
- (e) the Council of the Isles of Scilly.”.

**Transitional provisions**

4. After regulation 3 of the principal Regulations insert—

**“3A Application of regulation 3 to local authority arrangements made prior to 1<sup>st</sup> April 2007**

- (1) Paragraph (2) applies where—
  - (a) before 1st April 2007 a local authority has made an arrangement which, had it been made on or after that date, would be an arrangement which meets the requirements of regulation 3(7C)(a) and (b); and
  - (b) on or after 1st April 2007, that local authority has, under those arrangements, provided the child with accommodation in the area of a Primary Care Trust or Local Health Board different to the one in which accommodation was being provided immediately before that date.
- (2) In a case to which this paragraph applies, “the originating Primary Care Trust” shall be—
  - (a) the Primary Care Trust in whose area the placing local authority is situated; or
  - (b) if there is more than one such Primary Care Trust, the Primary Care Trust which was responsible for exercising the functions under paragraph (7)(a) of regulation 3 on behalf of the child immediately before the commencement of the placing local authority’s provision of accommodation to that child.”.

**Amendment of Schedule 1 to the principal Regulations**

5. In Schedule 1 to the principal Regulations, in the heading to Part 2, for “the Purpose of Performance Management Only” substitute “Specified Purposes Only”.

**Addition of Schedule to the principal Regulations**

6. After Schedule 4 to the principal Regulations, add:—

“SCHEDULE 5

Regulation 3(2A)

SECRETARY OF STATE’S FUNCTIONS UNDER SECTION 3(1) OF  
 THE NATIONAL HEALTH SERVICE ACT 2006 EXERCISABLE  
 BY STRATEGIC HEALTH AUTHORITIES FOR THE PURPOSE OF  
 SECURING THE PROVISION OF SERVICES: SPECIFIED SERVICES

1.	Alstrom syndrome service
2.	Bladder exstrophy service
3.	Choriocarcinoma service
4.	Complex tracheal disease service
5.	Diagnostic service for amyloidosis
6.	Diagnostic service for primary ciliary dyskinesia

7. Diagnostic service for rare neuromuscular disorders service
8. Craniofacial surgery service
9. Epidermolysis bullosa service
10. Extra corporeal membrane oxygenation service for adults
11. Extra corporeal membrane oxygenation service for children
12. Extra corporeal membrane oxygenation and ventricular assist devices as bridge to heart transplant service for children
13. Heart and lung transplantation service
14. Liver transplantation service
15. Lysosomal storage disorder service
16. Mental health service for deaf children: inpatient service
17. Mental health service for deaf children consisting of therapy and professional support provided by video-link
18. Ocular oncology service
19. Ophthalmic pathology service
20. Osteo odonto keratoprosthesis service for corneal blindness
21. Pancreas transplantation service
22. Persistent hyperinsulinaemic hypoglycaemia of infancy service
23. Primary malignant bone tumours service
24. Pseudomyxoma peritonei service
25. Pulmonary hypertension service for children
26. Pulmonary thromboendarterectomy service
27. Rare mitochondrial disorders service
28. Reconstructive surgery in adolescents for congenital malformation of the female genital tract service
29. Retinoblastoma service
30. Secure forensic mental health service for young people
31. Secure forensic mental health and learning disability service for young people
32. Severe combined immunodeficiency and related disorders service
33. Severe intestinal failure service
34. Severe obsessive compulsive disorder and body dysmorphic disorder service
35. Small bowel transplantation service for adults
36. Small bowel transplantation service for children
37. Specialist liver disease service for children
38. Stem cell transplantation service for juvenile idiopathic arthritis and related connective tissue disorders

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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39. Vein of Galen malformation service
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40. Ventricular assist devices as bridge to heart transplant service for adults”.
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Signed by authority of the Secretary of State for Health

26th February 2007

*Mr Ivan Lewis*  
Parliamentary Under Secretary of State  
Department of Health

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which apply in relation to England, further amend the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 (“the principal Regulations”).

Regulation 3(2) and (3) amends regulation 3 of the principal Regulations so as to provide that certain functions relating to health services are exercisable by Strategic Health Authorities for the purpose of securing the provision of specified health services. Regulation 6 adds Schedule 5 to the principal Regulations. A minor consequential amendment is made by regulation 5.

Regulation 3(4) to (7) amends regulation 3 of the principal Regulations which, amongst other things, determines for whose benefit a Primary Care Trust shall exercise the functions of providing or securing services to patients delegated to it under the principal Regulations. The amendments made by these Regulations provide for the circumstances in which a Primary Care Trust must continue to provide or secure certain services for the benefit of a child who is, under arrangements made by a Primary Care Trust or by a local authority or jointly by a Primary Care Trust and a local authority, provided with accommodation in the area of another Primary Care Trust or a Local Health Board in Wales.

Regulation 4 inserts a new regulation 3A into the principal Regulations to make transitional provision to provide for what is to happen where a local authority has made an arrangement to provide a child with accommodation in the area of another Primary Care Trust, or a Local Health Board in Wales, before 1 April 2007 and then provides the child with accommodation under those arrangements in the area of different Primary Care Trust or Local Health Board on or after 1 April 2007.

These Regulations also make amendments to provide for the circumstances in which a Primary Care Trust must continue to provide or secure certain services for a child who attains the age of 18 years and who is provided with accommodation in a care home, children’s home or independent hospital situated in the area of another Primary Care Trust to meet his continuing care needs.

These Regulations also make a clarificatory amendment in relation to regulation 3(7A) concerning arrangements made jointly between a placing Primary Care Trust and a local authority.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.