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STATUTORY INSTRUMENTS

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**2012 No. 3094**

**The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012**

**PART 2**

**CARE TRUSTS AND MISCELLANEOUS AMENDMENTS**

**2.** In this Part—

“the Board” means the National Health Service Commissioning Board<sup>(1)</sup>;

“the body” means, in relation to a Care Trust designation or proposed Care Trust designation, the clinical commissioning group, NHS trust or NHS foundation trust which is, or is to be, designated;

“the Partnership Regulations” means the NHS Bodies and Local Authorities Partnership Regulations 2000<sup>(2)</sup>.

**Prescribed functions for the purposes of section 77(1) of the 2006 Act**

**3.—(1)** Subject to paragraphs (3) and (4), the health-related functions of local authorities specified in regulation 6 of the Partnership Regulations<sup>(3)</sup> are prescribed for the purposes of section 77(1) of the 2006 Act<sup>(4)</sup> (designation of a body as a Care Trust).

(2) The NHS functions specified in regulation 5 of the Partnership Regulations<sup>(5)</sup> are prescribed for the purposes of section 77(1) of the 2006 Act.

(3) Where the body exercising a health-related function is, or is to be, a clinical commissioning group and the function consists of providing or securing the provision of services, that function is prescribed for the purposes of section 77(1) only if it is to be exercised by that clinical commissioning group securing the provision of those services.

(4) Where the body exercising a health-related function is, or is to be, an NHS trust or NHS foundation trust and the function consists of providing or securing the provision of services, that function is prescribed for the purposes of section 77(1) only if it is to be exercised (whether wholly or in part) by that trust providing those services.

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(1) 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.

(2) [S.I. 2000/617](#) as amended by [S.I. 2001/2237](#), [2002/2469](#), [2003/629](#), [2004/696](#), [2005/3504](#), [2009/278](#), [2010/1000](#) and [2010/1172](#).

(3) Regulation 6 was amended by [S.I. 2003/629](#), [2005/3504](#), [2010/1172](#) and by regulation 12 of these Regulations.

(4) Section 77(1) was amended by section 200(1) of the 2012 Act.

(5) Regulation 5 was amended by [S.I. 2009/278](#), [2010/1000](#) and by regulation 12 of these Regulations.

### **Consultation requirements**

4.—(1) This regulation applies where a clinical commissioning group, NHS trust or NHS foundation trust and a local authority propose to designate a body as a Care Trust under section 77(1) of the 2006 Act, or propose to revoke such designation.

(2) Where this regulation applies, the body and the local authority must, before designating or revoking the designation, as the case may be, consult jointly such persons as appear to them to be affected by the proposed designation or revocation.

### **Combination of consultations**

5. Where the body and the local authority agree, the consultation required by regulation 4 of these Regulations may be combined with any consultation carried out by the body in relation to proposals for changes in the way in which services are provided by, or provided under arrangements made by, the body.

### **Prescribed form and manner for publication**

6.—(1) The reasons and information referred to in section 77(1A)(a) of the 2006 Act (reasons for designation and information about proposed governance arrangements) must be published before the consultation required by regulation 4 and in the form and manner prescribed by paragraph (2).

(2) The reasons and information referred to in paragraph (1) must be published—

- (a) in writing; and
- (b) on the websites of the body and the local authority.

### **Action following consultation**

7. The body and the local authority must, following the consultation prior to designation or revocation of designation of the body as a Care Trust, publish—

- (a) a summary of responses to the consultation; and
- (b) a written statement setting out how the responses received as part of the consultation have influenced the decision to designate the body as a Care Trust or revoke the designation.

### **Publication requirements following the decision to designate**

8.—(1) The body and the local authority must publish the following information as soon as practicable following the decision to designate the body as a Care Trust.

(2) The body and the local authority must publish—

- (a) the date on which the Care Trust designation takes effect;
- (b) the names of the body and the local authority;
- (c) the proposed name of the Care Trust;
- (d) the LA delegation arrangements<sup>(6)</sup> between the body and the local authority;
- (e) the proposed governance arrangements of the body following designation as a Care Trust; and
- (f) the services which it is proposed that the body would provide, or arrange for the provision of, in the exercise of—
  - (i) the functions specified in the LA delegation arrangements, and

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<sup>(6)</sup> See section 77(12) of the 2006 Act for the meaning of “LA delegation arrangements”.

(ii) the NHS functions to be exercised in conjunction with those functions.

### **Publication requirements following the decision to revoke the designation**

**9.**—(1) The body and the local authority must publish the following information as soon as practicable following the decision to revoke the designation of the body as a Care Trust.

(2) The body and the local authority must publish—

- (a) the date on which the Care Trust designation comes to an end;
- (b) the names of the body and the local authority;
- (c) the proposed new name of the body following the revocation of the designation; and
- (d) details of how the LA delegation arrangements between the body and the local authority would be operated following the revocation of the designation.

### **Notification requirements following designation or revocation of designation**

**10.**—(1) Where a body has been designated as a Care Trust or the designation has been revoked, the body and the local authority must notify the persons mentioned in paragraph (2) of that fact as soon as practicable following the designation or revocation.

(2) The persons to be notified are—

- (a) the Board;
- (b) Monitor(7);
- (c) every member of the local authority;
- (d) the Care Quality Commission(8); and
- (e) the Local Healthwatch organisation for the area of the local authority.

### **Revocations and amendment relating to Care Trusts**

**11.**—(1) The Care Trusts (Application and Consultation) Regulations 2001(9) are revoked.

(2) In the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 2010(10), in regulation 2 (consultation relating to orders under section 25 of the Act and dissolution orders), in paragraph (4) for “to designate” substitute “to revoke a designation of”.

### **Amendment of the NHS Bodies and Local Authorities Partnership Regulations 2000**

**12.**—(1) The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000(11) are amended as follows.

(2) In regulation 2 (interpretation)(12)—

- (a) omit the definition of “the 1977 Act”;
- (b) after the definition of “the 1983 Act” insert—  
““the 2006 Act” means the National Health Service Act 2006”;

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(7) Monitor is the body corporate, formerly known as the Independent Regulator of NHS Foundation Trusts, continued under section 61 of the 2012 Act.

(8) Established by section 1 of the Health and Social Care Act 2008 (c. 14) (“the 2008 Act”).

(9) S.I. 2001/3788. The Care Trusts (Application and Consultation) Regulations 2001 were amended by S.I. 2002/2469 and S.I. 2010/743.

(10) S.I. 2010/743.

(11) S.I. 2000/617.

(12) Regulation 2 was amended by S.I. 2000/629.

- (c) omit the definition of “health improvement plan”;
- (d) before the definition of “health-related functions” insert—
  - ““the Board” means the National Health Service Commissioning Board;”;
- (e) in the definition of “NHS contract” for “section 4(1) of the National Health Service and Community Care Act 1990” substitute “section 9 of the 2006 Act(13)”.
- (3) In regulation 3 (prescribed NHS bodies and local authorities)(14) in paragraph (1)—
  - (a) omit paragraph (b);
  - (b) after paragraph (d) insert—
    - “(e) a clinical commissioning group;
    - (f) the Board.”.
- (4) In regulation 4 (partnership arrangements between NHS bodies and local authorities)(15)—
  - (a) in paragraph (2A), omit from the words “regulation 4” to the end and insert—
    - “section 77(1A)(b) of the 2006 Act and regulation 4 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (consultation requirements).”;
  - (b) omit paragraph (3).
- (5) In regulation 5 (functions of NHS bodies)(16)—
  - (a) for paragraph (a), substitute—
    - “(a) the functions of arranging for the provision of services under sections 3, 3A and 3B of, and paragraphs 9 to 11 of Schedule 1, to the 2006 Act, including rehabilitation services and services intended to avoid admission to hospital but excluding surgery, radiotherapy, termination of pregnancies, endoscopy, the use of Class 4 laser treatments and other invasive treatments and emergency ambulance services; and
    - (aa) the functions of providing the services referred to in paragraph (a), pursuant to arrangements made by a clinical commissioning group or the Board;”;
  - (b) for paragraph (b) substitute—
    - “(b) the functions of arranging for the provision of services under section 117 of the Mental Health Act 1983; and
    - (ba) the functions of providing services referred to in paragraph (b) pursuant to arrangements made by a clinical commissioning group or the Board;”;
  - (c) in paragraph (bb)(ii), omit “regulation 2(7) of”.
- (6) In regulation 6 (health-related functions of local authorities)(17)—
  - (a) in paragraph (a), for “the Local Authorities Social Services Act 1970” substitute “the Local Authority Social Services Act 1970”;
  - (b) for paragraph (a)(ii) substitute—
    - “section 6 of the Local Authority Social Services Act 1970;”;
  - (c) in paragraph (a)(iva), after “1983 Act;” insert “and”;

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(13) Section 9 was amended by the 2008 Act, Schedule 5, paragraph 82 and by the 2012 Act, Schedule 4, paragraph 6, Schedule 7, paragraph 18, Schedule 14, paragraph 4, Schedule 17, paragraph 10(2), Schedule 19, paragraph 9(2), and Schedule 21, paragraph 6.

(14) Regulation 3 was amended by S.I. 2002/2469, 2003/629 and 2004/696.

(15) Regulation 4 was amended by S.I. 2002/2469 and 2003/629.

(16) Regulation 5 was amended by S.I. 2009/278 and 2010/1000.

(17) Regulation 6 was amended by S.I. 2003/629, 2005/3504 and 2010/1172.

- (d) omit paragraph (a)(v);
  - (e) in paragraph (a)(vi), for “Parts VII to X” substitute “Parts VII to IX”;
  - (f) in paragraph (d), for “section 57 of the Education Act 1996” substitute “section 578 of the Education Act 1996”; and
  - (g) after paragraph (l) insert—
    - “(m) the functions of local authorities under or by virtue of sections 2B or 6C(1) of, or Schedule 1 to, the 2006 Act.”.
- (7) In regulation 7 (pooled fund arrangements)(**18**), in paragraph (2), for “Primary Care Trust” substitute “clinical commissioning group”.
- (8) In regulation 8 (exercise of functions by NHS body)(**19**), after paragraph (2)(h) insert—
  - “(i) the arrangements in place for the sharing of information between NHS bodies and local authorities.”.
- (9) In regulation 9 (exercise of functions by local authorities)(**20**)—
  - (a) in paragraph (2), for “Primary Care Trust” substitute “clinical commissioning group”; and
  - (b) after paragraph (3)(h), insert—
    - “(i) the arrangements in place for the sharing of information between NHS bodies and local authorities.”.

### **Payments by local authorities to specified NHS bodies in respect of prescribed functions**

**13.**—(1) Subject to paragraph (3) below, the following functions are prescribed functions of the Board, a clinical commissioning group or a Local Health Board for the purposes of section 76(1) of the 2006 Act (power of local authorities to make payments).

- (2) The prescribed functions are those of arranging for the provision of services under—
  - (a) sections 3, 3A and 3B of, and paragraphs 9 to 11 of Schedule 1 to, the 2006 Act, and sections 2 and 3(1) of, and paragraphs 1 to 6 and 8 of Schedule 1 to, the National Health Service (Wales) Act 2006(**21**) including rehabilitation services and services intended to avoid admission to hospital;
  - (b) directions under section 127 of the 2006 Act(**22**); and
  - (c) section 117 of the Mental Health Act 1983.
- (3) The functions prescribed under paragraph (2)(a) and (c) are prescribed only to the extent that they do not include arranging the provision of—
  - (a) surgery, radiotherapy, termination of pregnancies, endoscopy, the use of Class 4 laser treatments and other invasive treatments;
  - (b) emergency ambulance services;
  - (c) drugs and other substances which are listed in Schedule 1 to the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc) Regulations 2004(**23**) or which are listed in column 1 of Schedule 2 to those Regulations in circumstances in which the conditions specified in column 3 of that Schedule are not met; and

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(18) Regulation 7 was amended by [S.I. 2002/2469](#).

(19) Regulation 8 was amended by [S.I. 2003/629](#).

(20) Regulation 9 was amended by [S.I. 2002/2469](#) and [2003/629](#).

(21) [2006 c.42](#). Schedule 1 was amended by sections 144 and 160 of, and Schedule 14 to, the 2008 Act, [S.I. 2010/1158](#) and by section 72 of, and paragraphs 25 and 26 of Schedule 1 to, the Children and Families (Wales) Measure [2010 \(nawm 1\)](#).

(22) Section 127 was amended by section 55(1) of, and paragraph 64(1) to (4) of Schedule 4 to, the 2012 Act.

(23) [S.I. 2004/629](#). Schedule 2 was amended by [S.I. 2004/3215](#), [2009/2230](#), [2010/2389](#), [2011/680](#) and [2011/1043](#).

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- (d) appliances which are not listed in Part IX of the Drug Tariff which is published in accordance with regulation 89(1) (the Drug Tariff: general provisions) of the National Health Service (Pharmaceutical Services) Regulations 2012(**24**).
- (4) The National Health Service (Payments by Local Authorities to NHS Bodies) (Prescribed Functions) Regulations 2000(**25**) are revoked.

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(24) [S.I. 2012/1909](#).

(25) [S.I. 2000/618](#). The National Health Service (Payments by Local Authorities to NHS Bodies) (Prescribed Functions) Regulations was amended by [S.I. 2004/865](#), [2007/674](#), [2008/2828](#) and [2012/1909](#).