
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose requirements on the National Health Service Commissioning Board (“the Board”) and clinical commissioning groups (“CCGs”) in order to ensure good practice in relation to the procurement of health care services for the purposes of the NHS, to ensure the protection of patients’ rights to make choices regarding their NHS treatment and to prevent anti-competitive behaviour by commissioners with regard to such services.

Part 2 of the Regulations imposes requirements on the Board and CCGs (together referred to as “relevant bodies”) in relation to procurement, patient choice and anti-competitive behaviour.

Regulation 2 lays down a general objective for relevant bodies when procuring health care services for the purposes of the NHS.

Regulation 3 lays down general requirements which are to apply to the procurement of health care services for the purposes of the NHS. This includes requirements for procurement to be carried out in a transparent and proportionate manner and for providers to be treated equally and in a non-discriminatory way.

Regulations 4 and 5 provide for requirements relating to transparency in the award of contracts for the provision of health care services for the purposes of the NHS. Where a relevant body is advertising an intention to seek offers from providers to provide services it must publish a contract notice on a website to be maintained by the Board (regulation 4(1)). A relevant body need not advertise an intention to seek such offers where it is satisfied that the services are only capable of being provided by a particular provider (regulation 5).

Regulation 6 prohibits the award of a contract by a relevant body for the provision of NHS health care services where conflicts between the interests in commissioning the services and the interests in providing them affect, or appear to affect, the integrity of the award of the contract. Regulation 7 requires a relevant body to establish and apply transparent, proportionate and non-discriminatory criteria for the purposes of taking certain decisions in relation to the provision of health care services for the purposes of the NHS.

Regulation 9 requires relevant bodies to maintain and publish a record of all contracts entered into by them for the provision of health care services for the purposes of the NHS.

Regulation 10 lays down a general prohibition on anti-competitive behaviour by relevant bodies which is against the interests of people who use NHS health care services.

Regulation 11 requires the Board not to restrict the ability of a person to apply for inclusion in the list of patients of a practice providing primary medical services, or to express a preference to receive such services from a particular medical practitioner or class of medical practitioner.

Regulation 12 places a requirement on relevant bodies to offer a choice of alternative provider in accordance with regulation 48(4) of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (“the 2012 Regulations”), in the circumstances laid down in regulation 47 of the 2012 Regulations.

Part 3 of the Regulations provides Monitor with powers to investigate and take enforcement action in relation to breaches of the requirements imposed on relevant bodies by these Regulations and regulations 39, 42 and 43 (choice of health service provider) of the 2012 Regulations. These include powers for Monitor to declare arrangements for the provision of health care services for the purposes

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

of the NHS to be ineffective (regulation 14), to give directions to a relevant body (regulation 15), and to accept undertakings from a relevant body (regulation 16).

Regulation 17 provides that a person who has brought an action for loss or damages under the Public Contracts Regulations 2006 may not bring an action for the same loss or damage resulting from a breach of these Regulations or of regulation 39, 42 or 43 of the 2012 Regulations.

An impact assessment of the effect these Regulations will have on the costs of the business and the voluntary sector is available from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and at <http://transparency.dh.gov.uk/category/transparency/ias/>.