

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (MANDATE REQUIREMENTS)**  
**REGULATIONS 2016**

**2016 No. 51**

**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 The Secretary of State for Health publishes an annual mandate for the National Health Service Commissioning Board (subsequently referred to in this document by its operational name, NHS England). Through the mandate, the Secretary of State sets the objectives to be achieved and any requirements necessary to ensure that NHS England achieves those objectives for the year ahead. These Regulations give effect to requirements in the mandate for the 2016-17 financial year.

**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 Section 13A of the National Health Service Act 2006 (the “NHS Act 2006”) requires the Secretary of State to publish and lay before Parliament a mandate to NHS England before the start of each financial year (1 April to the following 31 March).
- 4.2 The mandate sets out objectives that NHS England must seek to achieve, and any requirements with which it must comply. Under section 13A(9) of the NHS Act 2006, requirements in the mandate must be underpinned by regulations.
- 4.3 Amendments to the NHS Act 2006, made by section 121 of the Care Act 2014, make provision at section 223B(6) to (8) and section 223GA for a fund for the integration of health and social care services, and for particular requirements relating to expenditure on integration to be included in the mandate.
- 4.4 The mandate for 2016-17, laid before Parliament and published on 17<sup>th</sup> December 2015, includes objectives and requirements relating to integration of health and social care.

**5. Extent and Territorial Application**

- 5.1 This instrument extends to England.

5.2 This instrument applies 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 With an ageing population and higher prevalence of people living with one or more long term conditions there is a greater need for integrated services across health and social care settings.

7.2 In the last Parliament in order to encourage more integrated commissioning the Government established the Better Care Fund (“BCF”). The BCF requires every clinical commissioning group (“CCG”) to hold a pooled fund with a local authority, and agree a joint plan to commission services which are more joined up and person centred. This was underpinned by the mandate to NHS England for 2015-16.

7.3 The mandate to NHS England for 2016-17 establishes key requirements in relation to the creation and management of the BCF. As with 2015-16 this further detail about the funding, planning and assurance, national conditions and metrics for the BCF are contained in the BCF Policy Framework which can be found online (<https://www.gov.uk/government/publications/better-care-fund-how-it-will-work-in-2016-to-2017>) or by writing to the Department at the address at paragraph 9.3.

7.4 In relation to the BCF, the mandate requires NHS England to:

- ring-fence £3.519bn within its allocation to CCGs to establish the Better Care Fund, to be used for the purposes of integrated care;
- consult Department of Health (DH) and the Department of Communities and Local Government (DCLG) before approving spending plans drawn up by each local area; and
- consult DH and DCLG before exercising powers in relation to areas failing to meet specified conditions attached to the Better Care Fund as set out in the BCF Policy Framework.

### *Consolidation*

7.5 None.

## 8. **Consultation outcome**

8.1 There was no consultation on the regulations themselves. The Secretary of State must consult NHS England, Healthwatch England and any other persons he considers appropriate before specifying objectives or requirements in the mandate. NHS England and Healthwatch England were consulted, and are content with, the mandate and its objectives and requirements.

8.2 The Department of Health ran a public consultation from 29 October to 23 November which sought views on the proposed high level objectives to be set out in the NHS England mandate. The proposed objective to improve out-of-hospital care clearly proposed the continuation of the BCF and explained that this would need to be underpinned by the relevant requirements including for NHS England to ring-fence

funds to pool with local authorities. A large number of responses were returned to the Department and have been subsequently analysed. The Government's full response to the consultation is published alongside the mandate here <https://www.gov.uk/government/consultations/setting-the-mandate-to-nhs-england-for-2016-to-2017>. (Hard copies can be obtained by writing to the address at paragraph 9.3.) Respondents who mentioned integration were generally supportive of the Government's aims for integrating health and social care.

8.3 The requirements specified this year in relation to the Better Care Fund are consistent with those specified in the 2015-16 mandate.

## 9. **Guidance**

9.1 There is no guidance on the regulations. The mandate is published on the Department of Health section of the Government website:

<https://www.gov.uk/government/publications/nhs-mandate-2016-to-2017>.

9.2 The BCF Policy Framework sets out the approach agreed across Government departments and national partners for the implementation of the BCF. The BCF Policy Framework was published on 8 January 2016 and can be found at (<https://www.gov.uk/government/publications/better-care-fund-how-it-will-work-in-2016-to-2017>).

9.3 Hard copies of both the mandate and the BCF Policy Framework can be obtained by writing to: Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS.

## 10. **Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector relates to the requirements imposed on NHS England specifically to ring-fence the funding allocated to CCGs for the BCF, and consult with ministers or departments in certain situations. Beyond this, the impact will vary as the plans are locally defined, however the purpose of pooled budgets is to provide greater efficiency in the services provided and encourage conversations between different services in order to integrate care. An impact assessment for the BCF was prepared when the policy was designed and a link is provided below. Hard copies can be obtained by writing to the address at paragraph 9.3 above. However, it should be noted that the policy and the approach to delivery has evolved considerably since this was written at the outset of the passage of the Care Act 2014 through Parliament.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/275531/Better\\_Care\\_Fund.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275531/Better_Care_Fund.pdf)

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 NHS England's progress against the mandate's objectives, and its compliance with the requirements, is monitored throughout the financial year. The mandate to NHS England is renewed on an annual basis and a new mandate must be laid and published

before the next financial year. These Regulations will therefore expire on 31st March 2017, when the mandate to which they apply expires.

13. **Contact**

- 13.1 Lucy Witter at the Department of Health, tel: 020 7210 4368 or email: [lucy.witter@dh.gsi.gov.uk](mailto:lucy.witter@dh.gsi.gov.uk) can answer any queries regarding the instrument.