
STATUTORY INSTRUMENTS

2023 No. 1431 (C. 102)

**NATIONAL HEALTH SERVICE, ENGLAND
PUBLIC PROCUREMENT, ENGLAND
HEALTH SERVICES, ENGLAND**

**The Health and Care Act 2022 (Commencement No. 8
and Transitional and Saving Provision) Regulations 2023**

Made - - - - 19th December 2023

The Secretary of State makes these Regulations in exercise of the powers conferred by section 186(6), (7), (9) and (11) of the Health and Care Act 2022⁽¹⁾.

Citation and extent

1.—(1) These Regulations may be cited as the Health and Care Act 2022 (Commencement No. 8 and Transitional and Saving Provision) Regulations 2023.

(2) These Regulations extend to England and Wales.

Interpretation

2. In these Regulations—

“the 2006 Act” means the National Health Service Act 2006⁽²⁾;

“the 2022 Act” means the Health and Care Act 2022;

“the 2013 Regulations” means the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013⁽³⁾.

Provisions coming into force on 1st January 2024

3. The following provisions of the 2022 Act come into force on 1st January 2024—

(a) section 78 (regulations as to patient choice);

(b) section 79 (procurement regulations);

(c) section 80 (procurement and patient choice: consequential amendments etc);

⁽¹⁾ 2022 c. 31.

⁽²⁾ 2006 c. 41.

⁽³⁾ S.I. 2013/500, amended by S.I. 2015/102, 1862 and 1879, 2016/275 and 2023/1071.

- (d) Schedule 11 (patient choice: undertakings by integrated care boards).

Provisions coming into force on 31st January 2024

4. The following provisions of the 2022 Act come into force on 31st January 2024—
- (a) section 46(1) (reconfiguration of services: intervention powers);
 - (b) section 46(2) in so far as it relates to the provisions brought into force by paragraph (c);
 - (c) Schedule 6 (intervention powers over the reconfiguration of NHS services) in so far as it inserts the following paragraphs of Schedule 10A (intervention powers in relation to the reconfiguration of NHS services) into the 2006 Act—
 - (i) paragraphs 1 to 4;
 - (ii) paragraphs 6 and 7 save for the extent to which they relate to the functions in paragraph 5 of Schedule 10A.

Transitional and saving provision: procurement, patient choice and competition

5.—(1) Notwithstanding the repeal of section 6E(2)(c) of the 2006 Act (regulations as to the exercise of functions by NHS England or integrated care boards)⁽⁴⁾ and section 75 of the 2012 Act (requirements as to procurement, patient choice and competition), any provision of the 2012 Regulations made under either of those provisions, and in force immediately before 1st January 2024—

- (a) continues in force and has effect as if made under section 6E(1A) or (1B) of the 2006 Act⁽⁵⁾, and
- (b) may be varied or revoked accordingly.

(2) Subject to paragraphs (3) to (5), the following continue to have effect as they had effect immediately before 1st January 2024 (including as modified by regulation 21 of the 2022 Regulations) for the purposes of any contract award procedure or process for the procurement of a framework agreement which was commenced but had not ended before 1st January 2024—

- (a) sections 75, 76 and 77 of, and Schedule 9 to, the 2012 Act (requirements as to procurement, patient choice and competition), so far as they apply in relation to the 2013 Regulations;
- (b) the 2013 Regulations.

(3) For the purposes of paragraph (2), the 2013 Regulations have effect as if—

- (a) regulations 11 and 12 were omitted;
- (b) in regulation 13(1), for “12, or by regulations 39, 42 or 43 of the 2012 Regulations (choice of health service provider)”, there were substituted “10”;
- (c) in regulation 15(1)(a), for “12, or by regulations 39, 42 or 43 of the 2012 Regulations”, there were substituted “10”;
- (d) in regulation 15A(1)⁽⁶⁾, in both places it occurs, for “12, or by regulations 39, 42 or 43 of the 2012 Regulations”, there were substituted “10”.

(4) For the purposes of paragraph (2), where, on or after 1st January 2024, NHS England commences or continues an investigation of an integrated care board under regulation 13(1) of the 2013 Regulations which—

(4) Section 6E was inserted by section 20(1) of the Health and Social Care Act 2012 (c. 7). Section 6E(2)(c) was amended by paragraph 1(1) of Schedule 1 and paragraph 89(3) of Schedule 4 to the Health and Care Act 2022 (“the 2022 Act”), and is repealed by section 78(2)(c) of the 2022 Act, as commenced by these Regulations.

(5) Subsections (1A) and (1B) of section 6E are inserted by section 78(2)(b) of the Health and Care Act 2022, as commenced by these Regulations.

(6) Regulation 15A is treated as inserted after regulation 15 by regulation 21(4)(e) of S.I. 2022/734.

(a) relates to a determination of a kind referred to in regulation 7(2)(a) or (b) of the 2013 Regulations, and
(b) does not fall within regulation 43B of the 2012 Regulations(7),
that investigation may be commenced or continued as though it were an investigation under section 6F(1) of the 2006 Act (enforcement of section 6E regulations relating to patient choice)(8) (and accordingly section 6F of, and Schedule 1ZA to, the 2006 Act apply to that investigation as appropriate).

(5) For the purposes of paragraph (2)—

(a) a contract award procedure has been commenced before 1st January 2024 if, before that date—

(i) a relevant body has published a contract notice in accordance with regulation 4(2) of the 2013 Regulations;

(ii) a relevant body has contacted a provider in order to—

(aa) seek an expression of interest or offer in respect of a proposed contract; or

(bb) respond to an unsolicited expression of interest or offer received from that provider in respect of a proposed contract; or

(iii) in the case of a contract to be based on a framework agreement or other technique or instrument for electronic or aggregated procurement concluded before 1st January 2024, a relevant body has taken any step with a view to making an award of such a contract;

(b) a process for the procurement of a framework agreement has been commenced before 1st January 2024 if, before that date—

(i) a relevant body has published any form of advertisement seeking offers or expressions of interest in a proposed framework agreement; or

(ii) a relevant body has contacted a provider in order to—

(aa) seek an expression of interest or offer in respect of a proposed framework agreement; or

(bb) respond to an unsolicited expression of interest or offer received from that provider in respect of a proposed framework agreement;

(c) a contract award procedure has ended before 1st January 2024 if, before that date—

(i) the contract has been awarded; or

(ii) the relevant body has taken a decision not to award the contract to any provider;

(d) a process for the procurement of a framework agreement has ended before 1st January 2024 if, before that date—

(i) the framework agreement has been concluded; or

(ii) the relevant body has taken a decision not to conclude the framework agreement with any provider.

(6) For the purposes of section 13SC of the 2006 Act (provision of regulatory information or assistance to the CMA)(9), any information held by NHS England in connection with its functions under—

(a) sections 76 and 77 of, and Schedule 9 to, the 2012 Act; or

(7) Regulation 43B is inserted by regulation 2(6) of [S.I. 2023/1105](#).

(8) Section 6F is inserted by section 78(3) of the Health and Care Act 2022, as commenced by these Regulations.

(9) Section 13SC was inserted by section 82(1) of the Health and Care Act 2022. It was modified by regulation 20 of [S.I. 2022/734](#) for the period beginning with 1st July 2022 and ending when section 78 of the Health and Care Act 2022 came into force.

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(b) measures made under those provisions in the 2013 Regulations, in so far as those provisions are saved by paragraph (2), continues to be treated as “regulatory information”.

(7) In this regulation—

“the 2012 Act” means the Health and Social Care Act 2012⁽¹⁰⁾;

“the 2012 Regulations” means the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012⁽¹¹⁾;

“the 2022 Regulations” means the Health and Care Act 2022 (Commencement No. 2 and Transitional and Saving Provision) Regulations 2022⁽¹²⁾;

“framework agreement” has the meaning given in regulation 7(7) of the 2013 Regulations as they had effect immediately before 1st January 2024;

“integrated care board” means an integrated care board established under Chapter A3 of Part 2 of the 2006 Act;

“NHS England” means the body corporate established under section 1H of the 2006 Act;

“provider” has the meaning given in regulation 1(2) of the 2013 Regulations as they had effect immediately before 1st January 2024;

“relevant body” means an integrated care board or NHS England.

Signed by authority of the Secretary of State for Health and Social Care

Andrew Stephenson
Minister of State

Department of Health and Social Care

19th December 2023

⁽¹⁰⁾ 2012 c. 7.

⁽¹¹⁾ S.I. 2012/2996, amended by S.I. 2013/2891, 2014/1611, 2019/248, 2022/634 and 635, 2023/1071 and 1105. There are other amending instruments but none is relevant.

⁽¹²⁾ S.I. 2022/734.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force specified provisions of the Health and Care Act 2022 (c. 31) (“the 2022 Act”) on 1st January 2024 (regulation 3) and 31st January 2024 (regulation 4). They are the eighth set of commencement regulations to be made under the 2022 Act. These Regulations also make transitional and saving provision in connection with the coming into force of provisions brought into force by these Regulations.

Regulation 3 brings into force sections 78 (regulations as to patient choice), 79 (procurement regulations) and 80 (procurement and patient choice: consequential amendments etc) of, and Schedule 11 (patient choice: undertakings by integrated care boards) to, the 2022 Act. Section 78 of, and Schedule 11 to, the 2022 Act make amendments to the National Health Service Act 2006 (c. 41) (“the 2006 Act”) in relation to patient choice, and section 79 makes amendments to the 2006 Act in relation to the procurement of health care services for the purposes of the health service. Section 80 of the 2022 Act makes amendments which are consequential on sections 78 and 79.

Regulation 4 brings into force section 46(1) (reconfiguration of NHS services: intervention powers) of the 2022 Act, and partially brings into force section 46(2) of, and Schedule 6 (intervention powers over the reconfiguration of NHS services) to, the 2022 Act. These provisions are commenced except in so far as they relate to a power of the Secretary of State to direct NHS commissioning bodies to consider a reconfiguration of NHS services.

Regulation 5 makes transitional and saving provision in connection with the provisions commenced by regulation 3. Regulation 5(1) saves any provision of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) which was made under section 6E(2)(c) of the 2006 Act or section 75 of the Health and Social Care Act 2012 (c. 7) (repealed by sections 78(2)(c) and 80(2) of the 2022 Act respectively). Such provisions are treated from 1st January 2024 as made under section 6E(1A) or (1B) of the 2006 Act (inserted by section 78(2)(b) of the 2022 Act).

Transitional and saving provision is also made in relation to the procurement of health care services for the purposes of the NHS where a procurement process has started, but has not ended, before 1st January 2024, under the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (S.I. 2013/500) (“the 2013 Regulations”) (revoked by section 80(4) of the 2022 Act). The 2013 Regulations are saved with modifications with the result that the requirements in regulations 2 to 10 of the 2013 Regulations continue to apply to such processes, and investigations and enforcement action can continue to be carried out in relation to them under regulations 13 to 17 of the 2013 Regulations.

Regulation 5(4) enables NHS England to carry out investigations in relation to determinations of a kind referred to in regulation 7(2)(a) or (2)(b) of the 2013 Regulations (which relate to patient choice) under the new patient choice enforcement powers in section 6F of the 2006 Act, as inserted by section 78 of the 2022 Act, instead of the investigation powers in the 2013 Regulations.

Regulation 5(6) ensures that information held by NHS England in connection with its investigation and enforcement functions relating to procurement saved by these Regulations continues to be “regulatory information” for the purposes of section 13SC of the 2006 Act (such information was previously “regulatory information” by virtue of regulation 20 of the Health and Care Act 2022 (Commencement No. 2 and Transitional and Saving Provision) Regulations 2022 (S.I. 2022/734)).

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A full impact assessment has been prepared in relation to the 2022 Act, and a copy is available at <https://www.gov.uk/government/publications/health-and-care-bill-combined-impact-assessments>. A hard copy can be obtained by writing to the Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU.

NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

(This note is not part of the Regulations)

The following provisions of the Health and Care Act 2022 (c. 31) have been brought into force by commencement Regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 1(1) (partially)	9th May 2022	S.I. 2022/515 (C. 20)
Section 1 (so far as not already in force)	1st July 2022	S.I. 2022/734 (C. 45)
Section 2	1st July 2022	S.I. 2022/734 (C. 45)
Section 3	1st July 2022	S.I. 2022/734 (C. 45)
Section 4	1st July 2022	S.I. 2022/734 (C. 45)
Section 5	14th June 2023	S.I. 2023/648 (C. 35)
Section 6	1st July 2022	S.I. 2022/734 (C. 45)
Section 7	1st July 2022	S.I. 2022/734 (C. 45)
Section 8	1st July 2022	S.I. 2022/734 (C. 45)
Section 9	1st July 2022	S.I. 2022/734 (C. 45)
Section 10	1st July 2022	S.I. 2022/734 (C. 45)
Section 11	1st July 2022	S.I. 2022/734 (C. 45)
Section 12	1st July 2022	S.I. 2022/734 (C. 45)
Section 13	1st April 2023	S.I. 2023/371 (C. 17)
Section 14	1st July 2022	S.I. 2022/734 (C. 45)
Section 15	1st July 2022	S.I. 2022/734 (C. 45)
Section 16	1st July 2022	S.I. 2022/734 (C. 45)
Section 17	1st July 2022	S.I. 2022/734 (C. 45)
Section 18	1st July 2022	S.I. 2022/734 (C. 45)
Section 19(1)	9th May 2022	S.I. 2022/515 (C. 20)
Section 19(2) (partially)	9th May 2022	S.I. 2022/515 (C. 20)
Section 19(3)	9th May 2022	S.I. 2022/515 (C. 20)
Section 19(4) (partially)	9th May 2022	S.I. 2022/515 (C. 20)
Section 19 (so far as not already in force)	1st July 2022	S.I. 2022/734 (C. 45)
Section 20	1st July 2022	S.I. 2022/734 (C. 45)

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 21	1st July 2022	S.I. 2022/734 (C. 45)
Section 22 (partially)	1st July 2022	S.I. 2022/734 (C. 45)
Section 24	1st July 2022	S.I. 2022/734 (C. 45)
Section 25	1st July 2022	S.I. 2022/734 (C. 45)
Section 26	1st July 2022	S.I. 2022/734 (C. 45)
Section 27	1st July 2022	S.I. 2022/734 (C. 45)
Section 29	1st July 2022	S.I. 2022/734 (C. 45)
Section 31	1st April 2023	S.I. 2023/371 (C. 17)
Section 32	1st July 2022	S.I. 2022/734 (C. 45)
Section 33	1st July 2022	S.I. 2022/734 (C. 45)
Section 34	1st July 2022	S.I. 2022/734 (C. 45)
Section 35	1st July 2022	S.I. 2022/734 (C. 45)
Section 36	1st July 2022	S.I. 2022/734 (C. 45)
Section 37	1st July 2022	S.I. 2022/734 (C. 45)
Section 38	9th May 2022	S.I. 2022/515 (C. 20)
Section 38 (so far as not already in force)	1st July 2022	S.I. 2022/734 (C. 45)
Section 39	1st July 2022	S.I. 2022/734 (C. 45)
Section 40	1st July 2022	S.I. 2022/734 (C. 45)
Section 41	1st July 2022	S.I. 2022/734 (C. 45)
Section 42	1st July 2022	S.I. 2022/734 (C. 45)
Section 43	1st July 2022	S.I. 2022/734 (C. 45)
Section 44	1st July 2022	S.I. 2022/734 (C. 45)
Section 45	1st July 2022	S.I. 2022/734 (C. 45)
Section 47	1st July 2022	S.I. 2022/734 (C. 45)
Section 48	1st July 2022	S.I. 2022/734 (C. 45)
Section 49	1st July 2022	S.I. 2022/734 (C. 45)
Section 50	1st July 2022	S.I. 2022/734 (C. 45)
Section 51	1st April 2023	S.I. 2023/371 (C. 17)
Section 52	1st July 2022	S.I. 2022/734 (C. 45)
Section 53	1st July 2022	S.I. 2022/734 (C. 45)
Section 54	1st July 2022	S.I. 2022/734 (C. 45)
Section 55	1st July 2022	S.I. 2022/734 (C. 45)
Section 56	1st July 2022	S.I. 2022/734 (C. 45)
Section 57	1st July 2022	S.I. 2022/734 (C. 45)

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Section 58	1st July 2022	S.I. 2022/734 (C. 45)
Section 59	1st July 2022	S.I. 2022/734 (C. 45)
Section 60	1st July 2022	S.I. 2022/734 (C. 45)
Section 61	1st July 2022	S.I. 2022/734 (C. 45)
Section 62	1st July 2022	S.I. 2022/734 (C. 45)
Section 63	1st July 2022	S.I. 2022/734 (C. 45)
Section 64	1st July 2022	S.I. 2022/734 (C. 45)
Section 65	1st July 2022	S.I. 2022/734 (C. 45)
Section 66	1st July 2022	S.I. 2022/734 (C. 45)
Section 67	1st July 2022	S.I. 2022/734 (C. 45)
Section 68	1st July 2022	S.I. 2022/734 (C. 45)
Section 69	1st July 2022	S.I. 2022/734 (C. 45)
Section 70	1st July 2022	S.I. 2022/734 (C. 45)
Section 71	1st July 2022	S.I. 2022/734 (C. 45)
Section 72	1st July 2022	S.I. 2022/734 (C. 45)
Section 73	1st July 2022	S.I. 2022/734 (C. 45)
Section 74	1st July 2022	S.I. 2022/734 (C. 45)
Section 75	1st July 2022	S.I. 2022/734 (C. 45)
Section 76	1st July 2022	S.I. 2022/734 (C. 45)
Section 77 (partially)	1st July 2022	S.I. 2022/734 (C. 45)
Section 77 (so far as not already in force)	1st April 2023	S.I. 2023/371 (C. 17)
Section 81	1st July 2022	S.I. 2022/734 (C. 45)
Section 82	1st July 2022	S.I. 2022/734 (C. 45)
Section 83	1st July 2022	S.I. 2022/734 (C. 45)
Section 84	1st July 2022	S.I. 2022/734 (C. 45)
Section 85	1st July 2022	S.I. 2022/734 (C. 45)
Section 86	1st July 2022	S.I. 2022/734 (C. 45)
Section 87	1st July 2022	S.I. 2022/734 (C. 45)
Section 88	1st July 2022	S.I. 2022/734 (C. 45)
Section 89	1st July 2022	S.I. 2022/734 (C. 45)
Section 90	1st July 2022	S.I. 2022/734 (C. 45)
Section 91	1st July 2022	S.I. 2022/734 (C. 45)
Section 92	1st July 2022	S.I. 2022/734 (C. 45)
Section 93	1st July 2022	S.I. 2022/734 (C. 45)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 94	1st July 2022	S.I. 2022/734 (C. 45)
Section 97	1st October 2022	S.I. 2022/1003 (C. 77)
Section 99 (partially)	31st July 2022	S.I. 2022/734 (C. 45)
Section 99 (partially)	1st October 2022	S.I. 2022/1003 (C. 77)
Section 100	1st October 2022	S.I. 2022/1003 (C. 77)
Section 101	1st July 2022	S.I. 2022/734 (C. 45)
Section 102	1st July 2022	S.I. 2022/734 (C. 45)
Section 103	1st July 2022	S.I. 2022/734 (C. 45)
Section 104	1st July 2022	S.I. 2022/734 (C. 45)
Section 105	1st July 2022	S.I. 2022/734 (C. 45)
Section 106	1st July 2022	S.I. 2022/734 (C. 45)
Section 107	1st July 2022	S.I. 2022/734 (C. 45)
Section 108	1st July 2022	S.I. 2022/734 (C. 45)
Sections 109 to 135	1st October 2023	S.I. 2023/1035 (C. 63)
Section 136	1st July 2022	S.I. 2022/734 (C. 45)
Section 137	1st July 2022	S.I. 2022/734 (C. 45)
Section 138	1st July 2022	S.I. 2022/734 (C. 45)
Section 139	1st July 2022	S.I. 2022/734 (C. 45)
Section 140	1st July 2022	S.I. 2022/734 (C. 45)
Section 141	1st July 2022	S.I. 2022/734 (C. 45)
Section 142	1st July 2022	S.I. 2022/734 (C. 45)
Section 143	1st July 2022	S.I. 2022/734 (C. 45)
Section 144	1st July 2022	S.I. 2022/734 (C. 45)
Section 145	1st July 2022	S.I. 2022/734 (C. 45)
Section 146	1st July 2022	S.I. 2022/734 (C. 45)
Section 147	1st July 2022	S.I. 2022/734 (C. 45)
Section 148	1st July 2022	S.I. 2022/734 (C. 45)
Section 149	1st July 2022	S.I. 2022/734 (C. 45)
Section 150	1st July 2022	S.I. 2022/734 (C. 45)
Section 151	1st July 2022	S.I. 2022/734 (C. 45)
Section 152	1st July 2022	S.I. 2022/734 (C. 45)
Section 153	1st July 2022	S.I. 2022/734 (C. 45)
Section 154	1st July 2022	S.I. 2022/734 (C. 45)
Section 155	1st July 2022	S.I. 2022/734 (C. 45)

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Section 156	1st July 2022	S.I. 2022/734 (C. 45)
Section 157	1st July 2022	S.I. 2022/734 (C. 45)
Section 158	1st July 2022	S.I. 2022/734 (C. 45)
Section 159	1st July 2022	S.I. 2022/734 (C. 45)
Section 160	1st July 2022	S.I. 2022/734 (C. 45)
Section 161(1)	1st July 2022	S.I. 2022/734 (C. 45)
Section 162	18th August 2023	S.I. 2023/821 (C. 45)
Section 163	1st April 2023	S.I. 2023/371 (C. 17)
Section 164	1st April 2023	S.I. 2023/371 (C. 17)
Section 165	1st April 2023	S.I. 2023/371 (C. 17)
Section 167	1st July 2022	S.I. 2022/734 (C. 45)
Section 168	1st July 2022	S.I. 2022/734 (C. 45)
Section 169 (partially)	1st October 2023	S.I. 2023/1035 (C. 63)
Section 170	1st July 2022	S.I. 2022/734 (C. 45)
Section 173	1st July 2022	S.I. 2022/734 (C. 45)
Section 174	1st July 2022	S.I. 2022/734 (C. 45)
Section 175	1st November 2022	S.I. 2022/1003 (C. 77)
Section 176 (partially)	1st November 2022	S.I. 2022/1003 (C. 77)
Section 177	1st October 2022	S.I. 2022/1003 (C. 77)
Section 178	30th August 2022	S.I. 2022/734 (C. 45)
Section 180	1st July 2022	S.I. 2022/734 (C. 45)
Section 181	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 1	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 2 (partially)	9th May 2022	S.I. 2022/515 (C. 20)
Schedule 2 (so far as not already in force)	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 3 (partially)	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 4	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 5	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 7	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 8	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 9	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 10 (partially)	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 10 (so far as not already in force)	1st April 2023	S.I. 2023/371 (C. 17)

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Schedule 12	1st July 2022	S.I. 2022/734 (C. 45)
Schedules 13 to 15	1st October 2023	S.I. 2023/1035 (C. 63)
Schedule 16	1st July 2022	S.I. 2022/734 (C. 45)
Schedule 19	1st July 2022	S.I. 2022/734 (C. 45)