
STATUTORY INSTRUMENTS

2022 No. 734

**The Health and Care Act 2022 (Commencement No. 2
and Transitional and Saving Provision) Regulations 2022**

PART 1

Citation and interpretation

Citation and interpretation

1.—(1) These Regulations may be cited as the Health and Care Act 2022 (Commencement No. 2 and Transitional and Saving Provision) Regulations 2022.

(2) In these Regulations—

“the 2006 Act” means the National Health Service Act 2006(1);

“the 2012 Act” means the Health and Social Care Act 2012(2);

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

“the Authority” means the Special Health Authority established in accordance with article 2 of the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012(3);

“financial year” has the meanings given in section 14Z52(8) and 275(1) of the 2006 Act(4);

“predecessor clinical commissioning group”, in relation to an integrated care board, means—

- (a) a clinical commissioning group whose area, as it was immediately before 1st July 2022, is wholly contained within the area of the integrated care board, or
- (b) a clinical commissioning group in relation to which an integrated care board is a transferee specified in a transfer scheme made pursuant to section 14Z28 of the NHS Act 2006(5);

“successor integrated care board”, in relation to a clinical commissioning group, means—

- (a) where the area of an integrated care board contains the entirety of a clinical commissioning group’s area as it was immediately before 1st July 2022, that integrated care board;
- (b) where the area of an integrated care board does not contain the entirety of a clinical commissioning group’s area as it was immediately before 1st July 2022—
 - (i) in relation to—
 - (aa) regulation 22 (transitional provision in relation to primary care services);

(1) 2006 c. 41.

(2) 2012 c. 7.

(3) S.I. 2012/901.

(4) Section 14Z52 of the 2006 Act is inserted by section 25 of the 2022 Act.

(5) Section 14Z28 was inserted by section 19 of the 2022 Act.

- (bb) regulation 31 (transitional and saving provision: complaints about clinical commissioning groups); or
- (cc) regulation 32 (transitional provision: applications to court in respect of children in secure accommodation),
(the “relevant regulation”), the integrated care board which has responsibility (within the meaning of section 14Z31 of the 2006 Act and the National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022⁽⁶⁾) for persons affected by any act or omission under the relevant regulation for which that clinical commissioning group, prior to its abolition, was responsible;
- (ii) in relation to—
 - (aa) regulation 23 (transitional and saving provision: annual reports of clinical commissioning groups);
 - (bb) regulation 28 (transitional and saving provision: clinical commissioning group accounts);
 - (cc) regulation 30 (transitional provision: winding up of the affairs of clinical commissioning groups); or
 - (dd) regulation 33 (transitional provision: joint forward plans and joint capital resource use plans),
the integrated care board which is the primary transferee of the assets and liabilities of that clinical commissioning group specified in a transfer scheme made pursuant to section 14Z28 of the 2006 Act.

PART 2

Provisions coming into force on 1st July 2022

Provisions coming into force on 1st July 2022

2. The following provisions of the 2022 Act come into force on 1st July 2022—
 - (a) the provisions set out in the Schedule to these Regulations;
 - (b) section 77 and Schedule 10, only in so far as they are required for the purposes of conducting a consultation in accordance with section 114C(2) of the 2012 Act⁽⁷⁾, including for the purposes of dealing with objections to the proposed NHS payment scheme received in accordance with section 114D of the 2012 Act⁽⁸⁾.

PART 3

Provision coming into force on 31st July 2022

Provision coming into force on 31st July 2022

3. Section 99 of the 2022 Act comes into force on 31st July 2022, only in so far as it inserts sections 277A(1) to (5) and (7), 277B and 277C into the 2012 Act.

⁽⁶⁾ S.I. 2022/635.

⁽⁷⁾ 2012 c. 7. Section 114C(2) is inserted by paragraph 3 of Schedule 10 to the 2022 Act.

⁽⁸⁾ Section 114D is inserted by paragraph 3 of Schedule 10 to the 2022 Act.

PART 4

Provision coming into force on 30th August 2022

Provision coming into force on 30th August 2022

4. Section 178 of the 2022 Act comes into force on 30th August 2022.

PART 5

Transitional provision in relation to the Secretary of State's power to require commissioning of services

Transitional provision in relation to the Secretary of State's power to require commissioning of services

5.—(1) The following modification applies during the period beginning with 1st July 2022 and ending when section 13YB (directions in respect of functions relating to provision of services) of the 2006 Act⁽⁹⁾ comes into force for all purposes.

(2) Section 3B(2) (Secretary of State's power to require commissioning of services) of the 2006 Act⁽¹⁰⁾ is to be read as if the words “or by giving directions under section 13YB” were omitted.

PART 6

Transitional and saving provision in relation to the abolition of Monitor and the Authority

Transitional and saving provision: licensing criteria set by Monitor

6. Any criteria which—
 - (a) have been set under section 86(1) (licensing criteria) of the 2012 Act; and
 - (b) are in force immediately before 1st July 2022,

are to be treated on and after that date as if they were set by NHS England.

Transitional provision: investigations of Monitor by the Parliamentary Commissioner of Administration

7.—(1) The amendment made by paragraph 3 of Schedule 5 (abolition of Monitor and transfer of its functions) to the 2022 Act does not prevent the Parliamentary Commissioner Act 1967⁽¹¹⁾ (the “1967 Act”) from applying to an action taken by or on behalf of Monitor before 1st July 2022 (a “relevant action”).

- (2) For the purposes of an investigation—
 - (a) in respect of a relevant action; and
 - (b) which is commenced on or after 1st July 2022,

⁽⁹⁾ Section 13YB is inserted by section 13(2) of the 2022 Act.

⁽¹⁰⁾ Section 3B is inserted by section 15 of the 2012 Act. Subsection (2) is substituted by section 2(2) of the 2022 Act.

⁽¹¹⁾ 1967 c. 13.

Schedule 2 to the Parliamentary Commissioner Act 1967 applies as if it includes an entry for NHS England.

(3) Where—

- (a) an investigation in respect of a relevant action is concluded on or after 1st July 2022, and
- (b) section 10(2) of the 1967 Act(12) would, had the investigation concluded before 1st July 2022, have required the Commissioner to send a report of the results of the investigation to the principal officer of Monitor,

the Commissioner must instead send such a report to the principal officer of NHS England.

(4) In this regulation, “Commissioner” has the meaning given by section 12(1) of the 1967 Act(13).

Transitional provision: investigations of the Authority by the Health Service Commissioner

8.—(1) Where—

- (a) an investigation in respect of an action taken by or on behalf of the Authority before 1st July 2022 is concluded on or after 1st July 2022, and
- (b) section 14 of the Health Service Commissioners Act 1993(14) (“the 1993 Act”) would, had the investigation concluded before 1st July 2022, have required the Commissioner to send a report of the results of the investigation to the Authority,

the Commissioner must instead send such a report to NHS England.

(2) In this regulation, “Commissioner” has the meaning given by section 1(2) of the 1993 Act(15).

Transitional provision in relation to requests from Monitor to the Health and Social Care Information Centre to establish information systems

9.—(1) Paragraph (2) applies where, before 1st July 2022, Monitor has requested the Health and Social Care Information Centre(16) (“the Information Centre”) to establish and operate a system for the collection or analysis of information under section 255 of the 2012 Act (powers to request Information Centre to establish information systems) and the request—

- (a) has not been complied with;
- (b) has been partially complied with; or
- (c) continues to be complied with.

(2) In the circumstances described in paragraph (1), the request is to be treated as a direction by NHS England to the Information Centre under section 254 of the 2012 Act (powers to direct Information Centre to establish information systems) to establish and operate a system for the collection or, as the case may be, analysis of the information.

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

(12) Section 10 was amended by paragraph 5(2) to (6) of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

(13) There are amendments to section 12(1), but none is relevant.

(14) 1993 c. 46. Section 14 was amended by S.I. 1996/970; paragraph 11(5) of Schedule 9 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43); S.I. 2004/1823; paragraphs 44 and 45(2) and (3) of Schedule 6 to the Public Services Ombudsman (Wales) Act 2005 (c. 10); section 12(6) of the Health Act 2009 (c. 21); section 201 of, and paragraph 70(2), (3), (4) and (5) of Schedule 5 to, the 2012 Act; and section 1(2) and (3) of the Health Service Commissioner for England (Complaint Handling) Act 2015 (c. 29).

(15) Section 1 was amended by S.I. 2004/1823 and paragraphs 29 and 30(2) to (4) of Schedule 6 to the Public Services Ombudsman (Wales) Act 2005.

(16) The Health and Social Care Information Centre (known as NHS Digital) is a body corporate established under section 252(1) of the 2012 Act.

- (a) section 254 of the 2012 Act is to be read as if subsection (3) and, insofar as it refers to NHS England(17), subsection (5), were omitted;
- (b) section 258 of the 2012 Act (information systems: supplementary) is to be read as if subsection (1) were omitted.

Transitional and saving provision: Monitor’s annual accounts and annual report

10.—(1) This regulation applies where, immediately before 1st July 2022, a duty (the “undischarged duty”) imposed under the following provisions of Schedule 8 to the 2012 Act had not been discharged in respect of any period before 1st July 2022—

- (a) paragraph 19 (Monitor annual accounts);
 - (b) paragraph 21(1) to (3) (Monitor annual report).
- (2) The provision which imposes the undischarged duty continues to apply—
- (a) so far as it relates to the undischarged duty; and
 - (b) where the duty is imposed on Monitor, as if the undischarged duty were imposed on NHS England.

Transitional and saving provision: the Authority’s annual accounts

11.—(1) This regulation applies where, immediately before 1st July 2022, a duty (the “undischarged duty”) imposed under the following provisions of Schedule 15 (accounts and audit) to the 2006 Act had not been discharged in relation to the Authority in respect of any period before 1st July 2022—

- (a) paragraph 3 (NHS bodies annual accounts);
 - (b) paragraph 5(3)(18) (transmission of annual accounts);
 - (c) paragraph 6(19) (auditing of certain Special Health Authority accounts).
- (2) The provision which imposes the undischarged duty continues to apply—
- (a) so far as it relates to the undischarged duty; and
 - (b) where the duty is imposed on the Authority, as if the undischarged duty were imposed on NHS England.

Transitional and saving provision: the Authority’s reports

12.—(1) This regulation applies where, immediately before 1st July 2022, the Authority had not complied with the duty to prepare an annual report in respect of any period before 1st July 2022 imposed under—

- (a) direction 8(b) (the “direction”) of the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016(20), together with
 - (b) regulation 14 of the National Health Service Trust Development Authority Regulations 2012(21) (the “2012 Regulations”).
- (2) Regulation 14 of the 2012 Regulations continues to apply—

(17) Paragraph 1 of Schedule 1 to the 2022 Act substitutes “NHS England” for references to “the Board” in section 254 of the 2012 Act.

(18) Paragraph 5(3) was amended by [S.I. 2008/817](#).

(19) Paragraph 6 was amended by [S.I. 2008/817](#).

(20) An electronic copy of these Directions is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/511610/Directions_2016.pdf.

(21) [S.I. 2012/922](#). These Regulations are revoked by section 36 of the 2022 Act.

- (a) so far as it relates to the requirement to comply with the direction; and
- (b) as if the requirement to comply with the direction (and, accordingly, to make the report) were imposed on NHS England.

Supplementary provision: general continuity

13.—(1) NHS England may do anything which appears necessary or appropriate for the winding up of the affairs of Monitor and the Authority.

(2) Any—

- (a) act or omission; or
- (b) other thing (including legal proceedings)—
 - (i) done; or
 - (ii) which, immediately before this provision comes into force, is in the process of being done,

by or in relation to Monitor or the Authority is to be treated as an act, omission or thing done or in the process of being done, and capable of being continued, by or in relation to NHS England.

(3) Paragraph (2) does not apply in relation to a complaint or an investigation described in regulation 13(8) of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013⁽²²⁾.

(4) Any reference to—

- (a) Monitor or the Authority in an agreement (whether written or otherwise); or
- (b) the Authority in an instrument or other document,

made before this provision comes into force is to be read, in relation to any time after this provision comes into force, as a reference to NHS England.

PART 7

Transitional provision in relation to the financial control and reporting of certain NHS bodies

Saving provision: financial objectives

14. The amendment made by section 60 (financial objectives for NHS trusts) of the 2022 Act does not apply in relation to a financial objective which was set under paragraph 2(2) (financial obligations of NHS trusts) of Schedule 5 to the 2006 Act before 1st July 2022.

Transitional provision: consolidated accounts for NHS trusts and NHS foundation trusts

15.—(1) Section 65Z4(1) and (3) to (6) of the 2006 Act⁽²³⁾ applies in respect of the financial year ending 31st March 2022.

(2) Any directions—

- (a) given under—
 - (i) in relation to the Authority, sections 7(1)⁽²⁴⁾ and 8(1) (functions of, and directions to, the Authority etc.) of the 2006 Act;

⁽²²⁾ *S.I. 2013/500.* Regulation 13(8) is inserted by regulation 21(4)(c)(iii) of these Regulations.

⁽²³⁾ Section 65Z4 is inserted by section 14 of the 2022 Act.

⁽²⁴⁾ Section 7(1) was substituted by section 21(2) of the 2012 Act.

- (ii) in relation to Monitor, paragraph 17(2) and (3) of Schedule 8 to the 2012 Act;
 - (b) which specify the form and content of consolidated annual accounts of NHS trusts and NHS foundation trusts; and
 - (c) which are in force immediately before 1st July 2022,
- are to be treated as if they were given to NHS England under section 65Z4(2) of the 2006 Act.

Saving provision: NHS trust annual reports

16. The amendments made by the following provisions of the 2022 Act do not apply in relation to an annual report under paragraph 12(1) (annual reports of NHS trusts) of Schedule 4 to the 2006 Act for the accounting year ending 31st March 2022—

- (a) section 54(3)(a) (oversight and support of NHS trusts);
- (b) paragraph 136 of Schedule 4 (integrated care system: minor and consequential amendments).

Saving provision: public benefit corporation forward planning documents

17. The amendments made by section 63(1) (accounts, reports and forward plans) of the 2022 Act do not apply in relation to a document prepared under paragraph 27 (public benefit corporation forward planning information) of Schedule 7 to the 2006 Act in respect of the financial year ending 31st March 2023.

Saving provision: accounts and audit directions

18. Despite the amendment made by section 87(3)(b)(iii) (tidying up provisions about the accounts of certain NHS bodies) of the 2022 Act, any directions which—

- (a) were given under any provision of Schedule 15 (accounts and audit) to the 2006 Act; and
- (b) are in force immediately before 1st July 2022,

continue in force on and after that date, and any power to revoke such directions which was exercisable immediately before 1st July 2022 under Schedule 15 taken together with section 273(1) (power to revoke directions etc.) of the 2006 Act continues to be exercisable in relation to those directions.

PART 8

Transitional provision in relation to the NHS payment scheme

Transitional provision: the national tariff and the NHS payment scheme

19.—(1) The following modifications apply during the period beginning with 1st July 2022 and ending when section 77 (the NHS payment scheme) of the 2022 Act comes into force for all purposes.

(2) In section 13SB(3)(b)(ii) (minimising conflicts between regulatory and other functions) of the 2006 Act⁽²⁵⁾, is to be read as if for “(NHS payment scheme)” there were substituted “(pricing)”.

(3) Except as provided in paragraph (4), in sections 116 to 127⁽²⁶⁾ of, and Schedule 12 to, the 2012 Act—

⁽²⁵⁾ Section 13SB is inserted by section 34(2) of the 2022 Act.

⁽²⁶⁾ Section 77 of the 2022 Act will, once it comes into force for all purposes, cause Chapter 4 of Part 3 of the 2012 Act (which contains sections 116 to 127) to be replaced with the provisions set out in Schedule 10 of the 2022 Act.

- (a) any reference to Monitor is to be read as a reference to NHS England;
 - (b) any reference to a clinical commissioning group is to be read as a reference to an integrated care board.
- (4) The 2012 Act is to be read as if—
- (a) section 116(13) were omitted;
 - (b) in section 117(4) and (5), the references to the commissioner of a health care service do not include a reference to NHS England;
 - (c) section 118(7) to (12) were omitted;
 - (d) in section 119—
 - (i) in subsection (1), the words “the National Health Service Commissioning Board and” were omitted;
 - (ii) subsections (2) to (4) were omitted;
 - (e) section 121(9)(b) were omitted;
 - (f) in section 122(2), “and the National Health Service Commissioning Board” were omitted;
 - (g) in section 123(7), “and the National Health Service Commissioning Board” were omitted;
 - (h) in section 124—
 - (i) for subsection (3) there were substituted—

“(3) An agreement under this section by an integrated care board has effect only if it is approved by NHS England.”;
 - (ii) in subsection (5), for “Monitor may approve an agreement under this section” there were substituted “NHS England may approve an agreement under this section by an integrated care board”;
 - (i) in section 125(1), for “commissioner” there were substituted “integrated care board”;
 - (j) in section 126—
 - (i) in subsection (3), “the National Health Service Commissioning Board and” were omitted;
 - (ii) in subsection (5), the words “The Board and” were omitted;
 - (k) in section 127(1)—
 - (i) in paragraph (a)—
 - (aa) paragraph (3)(a) of this regulation does not apply to the reference to Monitor (and, accordingly, that reference continues to be read as a reference to Monitor);
 - (bb) after “concerned” there were inserted “before 1st July 2022”;
 - (ii) in paragraph (b), after “arbitration” there were inserted “before 1st July 2022”;
 - (l) in Schedule 12—
 - (i) paragraph 1(2)(a) (and the “and” after it) were omitted;
 - (ii) paragraph 4(3)(b) (but not the “and” after it) were omitted.

PART 9

Transitional provision in relation to procurement, patient choice and competition

Transitional provision in relation to the provision of regulatory information or assistance to the CMA

20. During the period beginning with 1st July 2022 and ending when section 78 of the 2022 Act (regulations as to patient choice) comes into force, section 13SC of the 2006 Act⁽²⁷⁾ (provision of regulatory information or assistance to the CMA) is to be read as if, in subsection (2), in the definition of “regulatory information”, in paragraph (b), for sub-paragraph (i) there were substituted—

“(i) sections 76 and 77 of, and Schedule 9 to, the Health and Social Care Act 2012 (regulations etc relating to procurement, patient choice and competition), and measures made under those provisions in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013⁽²⁸⁾”.

Transitional provision: procurement, patient choice and competition

21.—(1) The following modifications apply during the period beginning with 1st July 2022 and ending when section 80(2) to (4) of the 2022 Act comes into force.

(2) Except in the provisions inserted by paragraph (4), in sections 75 to 78 of, and Schedule 9 to, the 2012 Act and in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013—

- (a) any reference to Monitor is to be read as a reference to NHS England;
- (b) any reference to a clinical commissioning group is to be read as a reference to an integrated care board.

(3) The 2012 Act is to be read as if—

- (a) in section 76(1)—
 - (i) in paragraph (c), the words “the Board or” were omitted;
 - (ii) in paragraph (d), the words “the Board or” were omitted;
- (b) in section 76(6), the words “the National Health Service Commissioning Board or” were omitted;
- (c) in section 77(1), the words “the National Health Service Commissioning Board or” were omitted;
- (d) in section 77(3), the words “the Board, or (as the case may be)” were omitted;
- (e) in section 77(4), the words “the Board, or (as the case may be)” were omitted;
- (f) in section 78(2), for “Monitor must consult” to the end, there were substituted “NHS England must consult such persons as it considers appropriate.”.

(4) The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 apply as if—

- (a) in regulation 1, in paragraph (2), at the appropriate place in the alphabetical order, there were inserted—

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

⁽²⁷⁾ Section 13SC is inserted by section 82(1) of the 2022 Act.

⁽²⁸⁾ S.I. 2013/500, amended by S.I. 2015/102, 1862, 1879 and 2016/275.

- (b) in regulation 3, in paragraph (5)(b), for “14Q, 14R and 14Z1”, there were substituted “14Z33, 14Z34 and 14Z42”;
- (c) in regulation 13—
 - (i) in paragraph (4), for “A relevant body”, there were substituted “An integrated care board”;
 - (ii) in paragraph (5), in paragraph (a), for “relevant body”, there were substituted “integrated care board”;
 - (iii) after paragraph (5), there were inserted—
 - “(6) Where an investigation under paragraph (1) or (2) relates to NHS England, NHS England must make arrangements—
 - (a) for any such investigation to be conducted by an employee of NHS England (“the investigating officer”) who has had no prior involvement with the conduct or alleged failure which is the subject of the investigation;
 - (b) for the investigating officer to be supplied with—
 - (i) such information as the investigating officer may specify for the purposes of an investigation carried out by virtue of paragraph (1) or (2), and
 - (ii) where necessary—
 - (aa) an explanation of such information as is provided by virtue of sub-paragraph (b)(i);
 - (bb) in relation to information kept by means of a computer, for that information to be provided in legible form.
 - (7) NHS England must make arrangements to—
 - (a) minimise the risk of conflicts between its investigatory functions under these Regulations and its other functions, and
 - (b) manage any conflicts that arise.
 - (8) Paragraph (9) applies where, before 1st July 2022—
 - (a) a complaint has been received by Monitor for the purposes mentioned in paragraph (1) but has not been determined by that date, or
 - (b) Monitor on its own initiative has commenced an investigation for the purpose mentioned in paragraph (2) but that investigation has not been concluded by that date.
 - (9) A complaint which has not been determined or investigation which has not been concluded—
 - (a) is to be continued by NHS England, and
 - (b) if it is a complaint or investigation into a clinical commissioning group, is to be treated as though it were a complaint or investigation relating to the integrated care board which has taken on the responsibility for exercising in relation to a person the functions of the clinical commissioning group to which the complaint or investigation relates.
 - (10) Paragraph (11) applies where, on or after 1st July 2022—
 - (a) a complaint is received by NHS England for the purposes mentioned in paragraph (1) in relation to conduct before that date, or

- (b) NHS England on its own initiative proposes to commence an investigation for the purpose mentioned in paragraph (2) in relation to conduct before that date.
- (11) On or after 1st July 2022—
 - (a) the conduct of a clinical commissioning group before that date it is to be treated as the conduct of the integrated care board which has taken on the responsibility for exercising in relation to a person the functions of the clinical commissioning group to which the complaint or investigation relates, and
 - (b) the complaint or investigation is to be pursued against the integrated care board concerned.”;
- (d) in regulation 15—
 - (i) in paragraph (1), for “a relevant body”, there were substituted “an integrated care board”;
 - (ii) in paragraph (2), for “a relevant body”, there were substituted “an integrated care board”;
- (e) after regulation 15, there were inserted—

“Compliance by NHS England

15A.—(1) Where, following an investigation, NHS England finds it has failed to comply with a requirement imposed by regulations 2 to 12, or by regulations 39, 42 or 43 of the 2012 Regulations, it must take such of the following steps as it deems appropriate in the circumstances—

- (a) put in place measures for the purpose of preventing failures by it to comply with a requirement imposed by regulations 2 to 12, or by regulations 39, 42 or 43 of the 2012 Regulations;
 - (b) put in place measures for the purpose of mitigating the effect of such failures;
 - (c) vary or withdraw an invitation to tender for the provision of health care services for the purposes of the NHS to prevent or remedy a failure by it to comply with a requirement imposed by regulations 2 to 8 and 10;
 - (d) vary an arrangement for the provision of health care services for the purposes of the NHS made in consequence of putting the provision of services out to tender to remedy a failure by it to comply with a requirement imposed by regulations 2 to 8;
 - (e) vary an arrangement for the provision of health care services for the purposes of the NHS to remedy a failure by it to comply with regulation 10;
 - (f) otherwise remedy a failure by it to comply with a requirement referred to in subparagraph (a).
- (2) Nothing in paragraph (1) requires NHS England to hold a competitive tender for a contract for the provision of health care services for the purposes of the NHS.”;
- (f) in regulation 16, for “a relevant body”, there were substituted “an integrated care board”.

PART 10

Transitional provision in relation to primary care services

Transitional provision in relation to primary care services

22.—(1) During the period beginning with 1st July 2022 and ending when section 13 (exercise of functions relating to provision of services) of, and paragraph 14 of Schedule 3 (substitution of section 98A of the 2006 Act) to, the 2022 Act come into force, section 98A of the 2006 Act⁽²⁹⁾ (medical services - exercise of functions) is to be read as if—

- (a) in subsection (4), for the words “a clinical commissioning group”, there were substituted “an integrated care board”;
- (b) in subsection (5)—
 - (i) for the words “a clinical commissioning group”, there were substituted “an integrated care board”; and
 - (ii) for the words “the group”, there were substituted “the integrated care board”;
- (c) in subsection (7)—
 - (i) for the words “clinical commissioning group”, there were substituted “integrated care board”; and
 - (ii) for the words “the group”, there were substituted “the integrated care board”;
- (d) in subsection (8)—
 - (i) for the words “A clinical commissioning group”, there were substituted “An integrated care board”; and
 - (ii) for the word “group’s”, there were substituted “integrated care board’s”.

(2) During the period beginning with 1st July 2022 and ending when section 13 of, and paragraph 39 of Schedule 3 (substitution of section 125A of the 2006 Act) to, the 2022 Act come into force, section 125A of the 2006 Act⁽³⁰⁾ (ophthalmic services – exercise of functions) is to be read as if in subsections (4) and (5), for the words “a clinical commissioning group”, there were substituted “an integrated care board”.

(3) Any direction given to a clinical commissioning group under section 98A(4) or (5) of the 2006 Act prior to 1st July 2022, which is still in force immediately prior to 1st July 2022, is to continue to apply to a successor integrated care board as if the direction had been given to that successor integrated care board.

(4) Any direction given to a clinical commissioning group under section 125A(4) or (5) of the 2006 Act prior to 1st July 2022, which is still in force immediately prior to 1st July 2022, is to continue to apply to a successor integrated care board as if the direction had been given to that successor integrated care board.

⁽²⁹⁾ Section 98A was inserted by section 49(1) of the 2012 Act.

⁽³⁰⁾ Section 125A was inserted by section 49(3) of the 2012 Act.

PART 11

Transitional provision in relation to the abolition of clinical commissioning groups and the creation of integrated care boards

Transitional and saving provision: annual reports of clinical commissioning groups

23.—(1) This regulation applies where, prior to its abolition, a clinical commissioning group has not fully discharged its obligations under section 14Z15(31) of the 2006 Act in relation to—

- (a) the financial year ending with 31st March 2022, or
- (b) the financial year beginning with 1st April 2022.

(2) Section 14Z15 of the 2006 Act is saved in relation to the relevant period and is to be read as if—

(a) in subsection (1), the obligation imposed on the clinical commissioning group to prepare a report were imposed on the successor integrated care board in relation to that clinical commissioning group;

(b) in subsection (3), the obligation imposed on the clinical commissioning group to consult each relevant Health and Wellbeing Board were imposed on the successor integrated care board in relation to that clinical commissioning group;

(c) in subsection (4)—

- (i) directions applicable to the clinical commissioning group were applicable to the successor integrated care board in relation to that clinical commissioning group, and
- (ii) NHS England may give directions to an integrated care board as to the form and content of an annual report in relation to a clinical commissioning group's relevant period;

(d) in subsection (5)—

- (i) the obligation imposed on the clinical commissioning group to provide a copy of its annual report before a specified date were imposed on the successor integrated care board in relation to that clinical commissioning group,
- (ii) that obligation required the report to be provided by the successor integrated care board to NHS England, and
- (iii) NHS England may give directions to an integrated care board specifying a date before which the annual report must be delivered to it;

(e) in subsection (6)—

- (i) the obligation imposed on the clinical commissioning group to publish its annual report were imposed on the successor integrated care board in relation to that clinical commissioning group, and
- (ii) subsection (6)(b) were omitted.

(3) In paragraph (2), “relevant period” means—

- (a) the financial year ending with 31st March 2022, or
- (b) the financial year beginning with 1st April 2022 and ending with 30th June 2022.

Transitional and saving provision: performance assessment of clinical commissioning groups

24.—(1) This regulation applies where a performance assessment of a clinical commissioning group required under section 14Z16 of the 2006 Act(32) has not been completed in relation to the financial year ending with 31st March 2022.

(2) Section 14Z16 of the 2006 Act is saved in relation to the financial year ending with 31st March 2022 and is to be read as if references to the Board were references to NHS England.

Transitional provision: means of meeting expenditure of integrated care boards out of public funds

25.—(1) In respect of the first financial year of an integrated care board, section 223G of the 2006 Act is to be read as if subsection (2)(a) were a reference to the expenditure during the relevant period of any predecessor clinical commissioning group of the integrated care board(33).

(2) In paragraph (1), “relevant period” means the financial year ending with 31st March 2022 together with the period beginning with 1st April 2022 and ending with 30th June 2022.

Transitional provision: NHS England consolidated annual accounts

26. Paragraph 16 of Schedule A1 to the 2006 Act is to be read as if—

- (a) in respect of the financial year ending with 31st March 2022, the reference in sub-paragraph (2)(b) to an integrated care board(34) were to a clinical commissioning group, and
- (b) in respect of the financial year beginning with 1st April 2022, the reference in sub-paragraph (2)(b) to an integrated care board were also to include a clinical commissioning group in relation to the period ending with 30th June 2022.

Transitional provision: NHS England consolidated interim accounts

27. Paragraph 17 of Schedule A1 to the 2006 Act is to be read as if, in respect of any period before 1st July 2022, the reference in sub-paragraph (2)(b)—

- (a) to an integrated care board(35) were to a clinical commissioning group, and
- (b) to paragraph 22(3) of Schedule 1B(36) were to paragraph 17(3) of Schedule 1A as it applied at the date concerned.

Transitional and saving provision: clinical commissioning group accounts

28.—(1) This regulation applies where, prior to its abolition, a clinical commissioning group has not fully discharged its obligations under paragraph 17 of Schedule 1A to the 2006 Act in relation to—

- (a) the financial year ending with 31st March 2022, or
- (b) the financial year beginning with 1st April 2022.

(2) Paragraph 17 of Schedule 1A to the 2006 Act(37) is saved in relation to the relevant period and is to be read as if—

(32) Section 14Z16 is revoked by paragraph 100 of Schedule 4 to the 2022 Act.

(33) For the first financial year of an integrated care board, the finance given to a clinical commissioning group in its final year before abolition may be taken into account.

(34) Reference to an integrated care board was substituted by paragraph 134(2) of Schedule 4 to the 2022 Act.

(35) Reference to an integrated care board was substituted by paragraph 134(3)(a) of Schedule 4 to the 2022 Act.

(36) Reference to paragraph 22(3) of Schedule 1B was substituted by paragraph 134(3)(a) of Schedule 4 to the 2022 Act.

(37) Chapter A2 of the 2006 Act, and consequently Schedule 1A introduced by that Chapter, is revoked by paragraph 100 of Schedule 4 to the 2022 Act.

- (a) references to the Board were references to NHS England;
 - (b) in respect of the financial year beginning with 1st April 2022, that year ended with 30th June 2022;
 - (c) the obligation in sub-paragraph (1) imposed on the clinical commissioning group to keep proper accounts and proper records in relation to the accounts were imposed on the successor integrated care board in relation to that clinical commissioning group;
 - (d) the obligation in sub-paragraph (2) imposed on the clinical commissioning group to prepare annual accounts in respect of that financial year were imposed on the successor integrated care board in relation to that clinical commissioning group;
 - (e) directions given under sub-paragraph (3) to the clinical commissioning group were given to the successor integrated care board in relation to that clinical commissioning group;
 - (f) NHS England may give directions under sub-paragraph (4) to an integrated care board as to the methods and principles according to which the annual or other accounts must be prepared, and the form and content of such accounts, in relation to a clinical commissioning group's financial year;
 - (g) the obligation imposed on the clinical commissioning group in sub-paragraphs (7) and (8) to send accounts before a specified date were imposed on the successor integrated care board in relation to that clinical commissioning group.
- (3) In paragraph (2), "relevant period" means—
- (a) the financial year ending with 31st March 2022, or
 - (b) the financial year beginning with 1st April 2022 and ending with 30th June 2022.

Transitional and saving provision: continuity in relation to the affairs of clinical commissioning groups

29.—(1) Anything done before 1st July 2022 by or in relation to a clinical commissioning group in connection with the exercise of a function which from 1st July 2022 falls to be performed by an integrated care board, is to be treated on and after that date as if done by or in relation to the integrated care board.

(2) Any instrument made by or in relation to a clinical commissioning group which relates to a function which from 1st July 2022 falls to be performed by an integrated care board continues in force in relation to the integrated care board until it is varied or revoked by the integrated care board.

(3) Any form supplied by a clinical commissioning group which relates to a function which from 1st July 2022 falls to be performed by an integrated care board, continues to be a valid form until it is cancelled or varied by the integrated care board, as if any reference in that form to the clinical commissioning group in question were a reference to the integrated care board.

(4) So far as is necessary or appropriate, a reference in an agreement or other instrument to a clinical commissioning group which relates to a function which from 1st July 2022 falls to be performed by an integrated care board, is to be treated on or after that date as a reference to the integrated care board.

(5) In this regulation, a reference to a function of a clinical commissioning group which from 1st July 2022 falls to be performed by an integrated care board includes a reference to the provision of, or the arrangement of the provision of, a service by a clinical commissioning group which from 1st July 2022 is provided, or its provision arranged, by an integrated care board.

- (6) Paragraphs (1) to (4) apply subject to any provision for continuity in—
- (a) a transfer scheme under section 14Z28 of the 2006 Act;
 - (b) a transfer scheme under section 38 of the 2022 Act;

- (c) regulations made under section 182 of the 2022 Act (power to make consequential provision); or
- (d) any other enactment.

Transitional provision: winding up of the affairs of clinical commissioning groups

30. An integrated care board may do anything which appears necessary or appropriate for the winding up of the affairs of any clinical commissioning group for which it is the successor integrated care board.

Transitional and saving provision: complaints about clinical commissioning groups

31.—(1) A complaint made under the Health Service Commissioners Act 1993⁽³⁸⁾ to the Health Service Commissioner for England in relation to a clinical commissioning group, whether made before, on or after 1st July 2022, may be investigated by the Commissioner notwithstanding the abolition of the clinical commissioning group, and the Commissioner must send a copy of the report of the result of the complaint to the successor integrated care board in relation to that clinical commissioning group.

(2) A review or investigation in relation to a clinical commissioning group, whether begun before, on or after 1st July 2022, may be conducted by the Care Quality Commission, notwithstanding the abolition of the clinical commissioning group, and the Commission must send a copy of the report of the result of the investigation to the successor integrated care board in relation to that clinical commissioning group.

(3) A complaint made under the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009⁽³⁹⁾ in relation to a clinical commissioning group, whether made before, on or after 1st July 2022, is to be dealt with by the successor integrated care board in relation to that clinical commissioning group notwithstanding the abolition of the clinical commissioning group, and treated as if it were a complaint against that successor integrated care board.

Transitional provision: applications to court in respect of children in secure accommodation

32. Where before 1st July 2022 a clinical commissioning group has made arrangements for the provision of accommodation for a child under the 2006 Act, regulation 2 of the Children (Secure Accommodation) (No. 2) Regulations 1991⁽⁴⁰⁾ is to be read as if those arrangements had been made by the successor integrated care board in relation to that clinical commissioning group.

Transitional provision: joint forward plans and joint capital resource use plans

33.—(1) This regulation applies in respect of the financial year ending with 31st March 2023.

(2) Sections 14Z52(1) to (6) and 14Z53 to 14Z55 of the 2006 Act⁽⁴¹⁾ do not apply.

(3) Insofar as it remains relevant, an integrated care board and its partner NHS trusts and NHS foundation trusts must have regard to any existing forward plan of a clinical commissioning group for which that board is the successor integrated care board.

(4) In paragraph (3), “existing forward plan” means a commissioning plan prepared or revised by a clinical commissioning group before 1st July 2022 pursuant to sections 14Z11 and 14Z12 of the 2006 Act in respect of the financial year ending with 31st March 2023.

⁽³⁸⁾ 1993 c. 46.

⁽³⁹⁾ S.I. 2009/309.

⁽⁴⁰⁾ S.I. 1991/2034.

⁽⁴¹⁾ Sections 14Z52 to 14Z55 are inserted by section 25 of the 2022 Act.

(5) Section 14Z56(1) of the 2006 Act(42) is to be read as if, for the words “Before the start of each financial year”, there were substituted “As soon as reasonably practicable after the giving of any direction pursuant to subsection (2) relating to any part of the financial year ending with 31st March 2023”.

(6) The following provisions of the 2006 Act is to be read as if the reference to a forward plan published under section 14Z52 were a reference to the existing forward plan of a clinical commissioning group referred to in paragraph (3)—

- (a) section 14Z58(2)(b)(43);
- (b) paragraph 12(1A) of Schedule 4(44);
- (c) paragraph 26(1A) of Schedule 7(45).

Transitional provision: NHS England’s financial responsibilities

34. In respect of the financial year ending with 31st March 2023—

- (a) section 223C of the 2006 Act(46) is to be read as if—
 - (i) the list of bodies in subsection (1) included a reference to clinical commissioning groups in respect of their expenditure incurred and sums received in the period beginning with the 1st April 2022 and ending with the 30th June 2022;
 - (ii) subsection (2)(d) included a reference to sums received but not spent by a predecessor clinical commissioning group in the period beginning with 1st April 2022 and ending with 30th June 2022 to be aggregated with any sums received but not spent by the integrated care board;
- (b) section 223D of the 2006 Act(47) is to be read as if the list of bodies in subsection (3) included a reference to clinical commissioning groups in respect of their use of capital resources or (as the case may be) revenue resources in the period beginning with 1st April 2022 and ending with 30th June 2022;
- (c) section 223E of the 2006 Act(48) is to be read as if—
 - (i) subsection (2) included a reference to clinical commissioning groups in respect of their use of capital resources or (as the case may be) revenue resources in the period beginning with 1st April 2022 and ending with 30th June 2022;
 - (ii) subsection (3) included a reference to NHS England’s use of revenue resources which is attributable to such matters relating to administration as are specified in the direction in connection with clinical commissioning groups in the period beginning with 1st April 2022 and ending with 30th June 2022.

Transitional provision: appointment of local auditor

35. In respect of the financial year ending with 31st March 2023 and in relation to an integrated care board only, section 7(1) of the Local Audit and Accountability Act 2014(49) is to be read as if, for the words “not later than 31 December in the preceding financial year”, there were substituted “as soon as reasonably practicable after 1st July 2022 and in any event before 1st October 2022”.

(42) Section 14Z56 is inserted by section 25 of the 2022 Act.

(43) Section 14Z58 is inserted by section 25 of the 2022 Act.

(44) Paragraph 12(1A) is inserted by paragraph 136 of Schedule 4 to the 2022 Act.

(45) Paragraph 26(1A) is inserted by paragraph 137 of Schedule 4 to the 2022 Act.

(46) Section 223C is substituted by sections 27 and 28 of the 2022 Act.

(47) Section 223D is substituted by section 27 of the 2022 Act.

(48) Section 223E is substituted by section 27 of the 2022 Act.

(49) 2014 c. 2.

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

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

30th June 2022

Edward Argar
Minister of State,
Department of Health and Social Care