



Health and Social Care Act 2012

2012 CHAPTER 7

PART 8

THE NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELLENCE

Functions: advice, guidance etc.

237 Advice, guidance, information and recommendations

- (1) Regulations may confer functions on NICE in relation to the giving of advice or guidance, provision of information or making of recommendations about any matter concerning or connected with the provision of—
 - (a) NHS services,
 - (b) public health services, or
 - (c) social care in England.
- (2) The regulations may provide that a function conferred under subsection (1)(a)—
 - (a) is only exercisable on the direction of the Secretary of State or [^{F1}NHS England];
 - (b) is subject to directions given by the Secretary of State or (as the case may be) [^{F1}NHS England] about NICE's exercise of the function.
- (3) The regulations may provide that a function conferred under subsection (1)(b) or (c)—
 - (a) is only exercisable on the direction of the Secretary of State;
 - (b) is subject to directions given by the Secretary of State about NICE's exercise of the function.
- (4) Provision made under subsection (2)(b) or (3)(b) must not permit a direction to be given about the substance of advice, guidance or recommendations of NICE.
- (5) The regulations may make provision about—
 - (a) the persons who may request or require that advice, guidance, information or recommendations be given, provided or (as the case may be) made by NICE,

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- (b) the publication or other dissemination of the advice, guidance, information or recommendations (whether by NICE, the Secretary of State or [^{F1}NHS England]), and
 - (c) the imposition by NICE of charges for or in connection with the giving of advice or guidance, provision of information or making of recommendations.
- (6) Provision made under subsection (5)(c) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.
- (7) The regulations must make provision about—
- (a) the establishment by NICE of procedures for the giving of advice or guidance, provision of information or making of recommendations under the regulations, and
 - (b) consultation by NICE in establishing the procedures.
- (8) The regulations may make provision requiring specified health or social care bodies, or health or social care bodies of a specified description, to—
- (a) have regard to specified advice or guidance, or advice or guidance of a specified description, given by NICE pursuant to the regulations;
 - (b) comply with specified recommendations, or recommendations of a specified description, made by NICE pursuant to the regulations.
- (9) Provision made under subsection (8) may require a specified body, or bodies of a specified description, to have regard to advice or guidance or to comply with recommendations—
- (a) generally in the exercise of functions, or
 - (b) in the exercise of specified functions or functions of a specified description.
- (10) But provision made under subsection (8) may impose a requirement on a local authority, or a description of local authorities, only if the requirement relates to—
- (a) the exercise by an authority of any of its functions under section 2B or 111 of, or paragraphs 1 to 7B or 13 of Schedule 1 to, the National Health Service Act 2006;
 - [^{F2}(b) the exercise by an authority of the functions of any other person by virtue of any provision of that Act.]
- (11) In this section—
- “health or social care body” means any public body exercising functions in connection with the provision of health services or of social care in England;
- “local authority” means—
- (a) a county council in England;
 - (b) a district council in England, other than a council for a district in a county for which there is a county council;
 - (c) a London borough council;
 - (d) the Council of the Isles of Scilly;
 - (e) the Common Council of the City of London;
- “public body” means a body or other person whose functions—
- (a) are of a public nature, or
 - (b) include functions of that nature,
- but, in the latter case, the body or person is a public body to the extent only of those functions;

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“specified” means specified in the regulations.

Textual Amendments

- F1** Words in s. 237 substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F2** S. 237(10)(b) substituted for s. 237(10)(b)(c) (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 9 para. 21**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I1** S. 237 partly in force; s. 237 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I2** S. 237 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

238 NICE recommendations: appeals

- (1) Regulations under section 237 may make provision about appeals against recommendations made by NICE pursuant to the regulations.
- (2) The regulations may, in particular, include provision about—
- the types of recommendations in relation to which an appeal may be brought,
 - the persons who may bring an appeal,
 - the grounds on which an appeal may be brought, and
 - the persons by whom an appeal is to be heard.

Commencement Information

- I3** S. 238 partly in force; s. 238 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I4** S. 238 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

239 Training

- (1) Regulations may confer functions on NICE in relation to providing, or facilitating the provision of, training in connection with any matter concerning or connected with the provision of—
- NHS services,
 - public health services, or
 - social care in England.
- (2) The regulations may provide that a function conferred under subsection (1)(a)—
- is only exercisable on the direction of [^{F3}NHS England];
 - is subject to directions given by [^{F3}NHS England] about NICE's exercise of the function.
- (3) The regulations may provide that a function conferred under subsection (1)(b) or (c)—
- is only exercisable on the direction of the Secretary of State;
 - is subject to directions given by the Secretary of State about NICE's exercise of the function.
- (4) The regulations may provide for the imposition by NICE of charges for or in connection with the provision, or the facilitation of the provision, of training.

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- (5) Provision made under subsection (4) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.

Textual Amendments

F3 Words in s. 239 substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), Sch. 1 para. 1(1)(2); [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I5 [S. 239](#) partly in force; [s. 239](#) in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)
I6 [S. 239](#) in force at 1.4.2013 in so far as not already in force by [S.I. 2013/160](#), [art. 2\(2\)](#) (with arts. 7-9)

240 Advisory services

- (1) Regulations may confer functions on NICE in relation to the giving of advice to persons (whether or not in the United Kingdom) in relation to any matter concerning or connected with—
- (a) the provision of health care,
 - (b) the protection or improvement of public health, or
 - (c) the provision of social care.
- (2) The regulations may make provision about the imposition of charges by NICE for or in connection with the giving of such advice.
- (3) Provision made under subsection (2) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.
- (4) In this Part “health care” includes all forms of health care provided for individuals whether relating to physical or mental health and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

Commencement Information

I7 [S. 240](#) partly in force; [s. 240](#) in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)
I8 [S. 240](#) in force at 1.4.2013 in so far as not already in force by [S.I. 2013/160](#), [art. 2\(2\)](#) (with arts. 7-9)

241 Commissioning guidance

- (1) [^{F4}NHS England] may direct NICE to exercise any of [^{F4}NHS England’s] functions in relation to the preparation of the guidance required to be published by [^{F4}NHS England] under [^{F5}section 14Z51 of the National Health Service Act 2006 so far as relating to arrangements for the provision of services as part of the health service] (the “commissioning guidance”).
- (2) A direction under subsection (1) may direct NICE to exercise the functions in such manner and within such period as may be specified in the direction.
- (3) If requested to do so, NICE must—

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- (a) provide [^{F4}NHS England] with information or advice on such matters connected to [^{F4}NHS England's] functions in respect of the commissioning guidance as may be specified in the request, and
- (b) disseminate the commissioning guidance to such persons and in such manner as may be specified in the request.

Textual Amendments

- F4** Words in s. 241 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F5** Words in s. 241(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 4 para. 186; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I9** S. 241 partly in force; s. 241 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I10** S. 241 in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, art. 2(2) (with arts. 7-9)

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