



# Health and Care Act 2022

## 2022 CHAPTER 31

### PART 1

#### HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

##### *Merger of NHS bodies etc*

#### **33 Abolition of Monitor and transfer of functions to NHS England**

- (1) Monitor is abolished.
- (2) Schedule 5 contains amendments to transfer Monitor’s functions to NHS England and related amendments.

#### **34 Exercise by NHS England of new regulatory functions**

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 13SA (inserted by section 11 of this Act) insert—

##### *“Regulatory functions*

#### **13SB Minimising conflicts between regulatory and other functions**

- (1) NHS England must make arrangements for—
  - (a) minimising the risk of conflicts between the exercise of its regulatory functions and its other functions;
  - (b) managing any conflicts that arise.
- (2) In this Act “regulatory functions”, in relation to NHS England, means—
  - (a) its functions under the provisions listed in subsection (3),
  - (b) its functions under Chapter 5A of Part 2 (trust special administrators) in relation to NHS foundation trusts, except for any functions that are

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conferred on it under section 65DA, 65F or 65G as a commissioner, and

- (c) any other functions of NHS England so far as exercisable in connection with functions within paragraph (a) or (b).

(3) Those provisions are—

- (a) in Part 2 of this Act, Chapter 5 (NHS foundation trusts);
- (b) in Part 3 of the Health and Social Care Act 2012—
- (i) Chapter 3 (licensing);
  - (ii) Chapter 4 (NHS payment scheme);
  - (iii) Chapter 5 (health special administration);
  - (iv) Chapter 6 (financial assistance in special administration cases)."

(3) In section 13U (annual report), after subsection (2) insert—

“(2A) The annual report must include a statement explaining what NHS England has done, during the financial year, to comply with its duties under section 13SB.”

(4) In section 275 (interpretation), in subsection (1), at the appropriate place insert—

““regulatory functions”, in relation to NHS England, has the meaning given by section 13SB.”.

### **35 Modification of standard licence conditions**

(1) Section 100 of the Health and Social Care Act 2012 (modification of standard conditions) is amended as follows.

(2) After subsection (1) insert—

“(1A) Before making modifications under subsection (1) that NHS England consider to be a major change, NHS England must—

- (a) carry out an assessment of the likely impact of the modifications, or
- (b) publish a statement setting out its reasons for concluding that such assessment is not needed.”

(3) In subsection (2), for “such modifications” substitute “modifications under subsection (1)”.

(4) In subsection (4), after paragraph (b) insert—

“(ba) set out any impact assessment carried out by NHS England under subsection (1A)(a).”.

### **36 Abolition of NHS Trust Development Authority**

(1) The Special Health Authority called the National Health Service Trust Development Authority is abolished.

(2) The following are revoked—

- (a) the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012 (S.I. 2012/901);
- (b) the National Health Service Trust Development Authority Regulations 2012 (S.I. 2012/922);

- (c) the National Health Service Trust Development Authority (Directions and Miscellaneous Amendments etc.) Regulations 2016 (S.I. 2016/214).
- (3) In section 9 of the Mental Health Units (Use of Force) Act 2018 (investigation of deaths or serious injuries), omit paragraph (d).
- (4) In section 15 of the Domestic Abuse Act 2021 (duty to co-operate with the Domestic Abuse Commissioner), in subsection (7), omit paragraph (e) of the definition of “NHS body in England”.

### **37 Merger of bodies: consequential amendment**

In section 1H of the National Health Service Act 2006 (NHS England and its general functions), in subsection (3)(b), before “so as to secure” insert “, NHS trusts established under section 25 and NHS foundation trusts”.

### **38 Transfer schemes in connection with abolished bodies**

- (1) The Secretary of State may make one or more schemes for the transfer of property, rights and liabilities from Monitor or the National Health Service Trust Development Authority to NHS England.
- (2) The things that may be transferred under a transfer scheme include—
  - (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (c) criminal liabilities.
- (3) A transfer scheme may—
  - (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision which is the same as or similar to the TUPE regulations;
  - (f) make other consequential, supplementary, incidental or transitional provision.
- (4) In subsection (3)(e), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (5) In this section references to rights and liabilities include rights and liabilities relating to a contract of employment.

### **39 Transfer schemes under section 38: taxation**

- (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—
  - (a) anything transferred under a scheme under section 38, or

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- (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.
- (2) The provision which may be made under subsection (1)(a) includes in particular provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision which may be made under subsection (1)(b) includes in particular provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) Regulations under this section are subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this section—
- “relevant tax” means income tax, corporation tax, capital gains tax, value added tax, stamp duty or stamp duty reserve tax;
  - “tax provision” means a provision of an enactment about a relevant tax.