



Health and Care Act 2022

2022 CHAPTER 31

PART 1

HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

Secretary of State's functions

40 Duties in respect of research

In section 1E of the National Health Service Act 2006 (duty as to research), after “must” insert “facilitate or otherwise”.

41 Report on assessing and meeting workforce needs

After section 1G of the National Health Service Act 2006 (but before the italic heading after it) insert—

“1GA Secretary of State’s duty to report on workforce systems

- (1) The Secretary of State must, at least once every five years, publish a report describing the system in place for assessing and meeting the workforce needs of the health service in England.
- (2) NHS England and Health Education England must assist in the preparation of a report under this section, if requested to do so by the Secretary of State.”

42 Arrangements for exercise of public health functions

For section 7A of the National Health Service Act 2006 substitute—

“7A Exercise of Secretary of State’s public health functions

- (1) The Secretary of State may arrange for any of the public health functions of the Secretary of State to be exercised by one or more relevant bodies.
- (2) In this section “relevant body” means—
 - (a) NHS England,
 - (b) an integrated care board,
 - (c) a local authority (within the meaning of section 2B),
 - (d) a combined authority, or
 - (e) such other body as may be prescribed.
- (3) Arrangements under this section may be made on such terms as may be agreed between the parties including—
 - (a) terms as to payment;
 - (b) terms prohibiting or restricting a relevant body from making delegation arrangements in relation to a function that is exercisable by it by virtue of arrangements under this section.
- (4) In subsection (3)(b) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a relevant body of any function by virtue of this section are enforceable by or against that body (and no other person).
- (6) The reference in subsection (1) to the public health functions of the Secretary of State includes any functions of the Secretary of State exercisable in connection with those functions (including the powers conferred by section 12).”

43 Power of direction: public health functions

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 7A (inserted by section 42 of this Act) insert—

“7B Directions requiring NHS bodies to exercise public health functions

- (1) The Secretary of State may by direction provide for any of the public health functions of the Secretary of State to be exercised by one or more relevant bodies.
- (2) In this section “relevant body” means—
 - (a) NHS England, or
 - (b) an integrated care board.
- (3) A direction under subsection (1) may include provision prohibiting or restricting the relevant body from making delegation arrangements in relation to a function that is exercisable by it by virtue of the direction.
- (4) In subsection (3) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.

- (5) The Secretary of State may make payments to a relevant body in respect of the exercise by it of a function by virtue of a direction under subsection (1).
 - (6) The Secretary of State may give directions to an integrated care board as to the exercise by it of any functions by virtue of this section.
 - (7) For power to give directions to NHS England as to the exercise of functions, see section 13ZC.
 - (8) As soon as reasonably practicable after giving a direction under subsection (1) or (6), the Secretary of State must publish it.
 - (9) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a relevant body of any function by virtue of this section are enforceable by or against it (and no other person).
 - (10) The reference in subsection (1) to the public health functions of the Secretary of State includes any functions of the Secretary of State exercisable in connection with those functions (including the powers conferred by section 12).”
- (3) In section 73 (directions and regulations under Parts 1 and 2), in subsection (1), after paragraph (a) insert—
- “(aa) section 7B.”

44 Power of direction: investigation functions

- (1) The National Health Service Act 2006 is amended as follows.
- (2) After section 7B (inserted by section 43 of this Act) insert—

“7C Power of direction: investigation functions

- (1) The Secretary of State may direct—
 - (a) NHS England, or
 - (b) any other public body,to exercise any of the investigation functions which are specified in the direction.
- (2) A direction under subsection (1) may include provision prohibiting or restricting the body directed from making delegation arrangements in relation to a function that is exercisable by it by virtue of the direction.
- (3) In subsection (2) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (4) The Secretary of State may make payments to NHS England or any other body in respect of the exercise by it of a function by virtue of a direction under subsection (1).
- (5) The Secretary of State may give directions to any body on whom functions are conferred by virtue of subsection (1)(b) as to the exercise of those functions.
- (6) For power to give directions to NHS England as to the exercise of functions, see section 13ZC.

Status: This is the original version (as it was originally enacted).

- (7) As soon as reasonably practicable after giving a direction under subsection (1) or (5), the Secretary of State must publish it.
- (8) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by NHS England or any other body of any function by virtue of this section are enforceable by or against it (and no other person).
- (9) In this section “the investigation functions” are functions which, immediately before the coming into force of section 36 of the Health and Care Act 2022, were exercised by the Special Health Authority called the National Health Service Trust Development Authority pursuant to—
 - (a) the National Health Service Trust Development Authority (Healthcare Safety Investigation Branch) Directions 2016 made under sections 7 and 8 of the National Health Service Act 2006, or
 - (b) the National Health Service Trust Development Authority (Healthcare Safety Investigation Branch) (Additional Investigatory Functions in respect of Maternity Cases) Directions 2018 made under sections 7 and 8 of the National Health Service Act 2006.

7D Transfer schemes in connection with a direction under section 7C

- (1) The Secretary of State may, in connection with a direction under section 7C, make one or more transfer schemes.
- (2) A “transfer scheme” is a scheme for the transfer to NHS England or any other public body of any property, rights or liabilities relating to the discharge of functions pursuant to any directions made by the Secretary of State under the power conferred by section 7C.
- (3) 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.
- (4) 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, or on behalf of or in relation to 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 for the shared ownership or use of property;
 - (f) make provision which is the same as or similar to the TUPE regulations;
 - (g) make other consequential, supplementary, incidental or transitional provision.

- (5) A transfer scheme may provide—
 - (a) for modifications by agreement;
 - (b) for modifications to have effect from the date when the original scheme came into effect.
- (6) In subsection (4)(f), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (7) For the purposes of this section—
 - (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
 - (b) references to the transfer of property include the grant of a lease.
- (8) For the purposes of subsection (7)(a)—
 - (a) an individual who holds employment in the civil service of the State is to be treated as employed by virtue of a contract of employment, and
 - (b) the terms of the individual’s employment in the civil service are to be regarded as constituting the terms of the contract of employment.

7E Transfer schemes under section 7D: 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 7D, or
 - (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) In this section references to the transfer of property include the grant of a lease.
- (5) In this section—

Status: This is the original version (as it was originally enacted).

“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.”

(3) In section 73 (directions and regulations under Parts 1 and 2), in subsection (1), after paragraph (aa) (inserted by section 43 of this Act) insert—

“(ab) section 7C,”.

(4) In section 272 (orders, regulations, rules and directions)—

(a) in subsection (4), after “subsections” insert “(4A),”, and

(b) after that subsection insert—

“(4A) A statutory instrument containing regulations under section 7E(1) is subject to annulment in pursuance of a resolution of the House of Commons.”

45 General power to direct NHS England

(1) The National Health Service Act 2006 is amended as follows.

(2) Before section 13Z1 (and the italic heading before it) insert—

“Powers of direction

13ZC Secretary of State directions as to exercise of NHS England functions

(1) The Secretary of State may give NHS England directions as to the exercise of any of its functions.

(2) The directions that may be given include a direction as to whether a power is to be exercised or not.

(3) The directions that may be given include a direction as to—

(a) when or how a function is, or is not, to be exercised;

(b) conditions that must be met before a function is exercised (for example, conditions relating to the provision of information, consultation or approval);

(c) matters to be taken into account in exercising a function.

(4) For exceptions to the power to give directions under subsection (1), see section 13ZD.

(5) A direction under subsection (1) must include a statement that the Secretary of State considers the direction to be in the public interest.

(6) As soon as reasonably practicable after giving a direction under subsection (1), the Secretary of State must publish it.

(7) The fact that the Secretary of State has a function under any other enactment in relation to NHS England’s exercise of functions is not to be read as limiting the power conferred by subsection (1).

- (8) The reference in subsection (7) to a function of the Secretary of State does not include a function of making subordinate legislation.

13ZD Power to give directions: exceptions

- (1) A direction under section 13ZC may not be given in relation to a function relating to the appointment or employment of a person.
- (2) A direction under section 13ZC may not be given in relation to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.
- (3) A direction under section 13ZC may not be given in relation to the provision of any drug, medicine or other treatment, or the use of any diagnostic technique, unless NICE has made a recommendation or issued guidance as to its clinical and cost effectiveness and the direction is not inconsistent with that recommendation or guidance.

13ZE Compliance with directions: significant failure

- (1) This section applies where—
- (a) NHS England is given a direction under section 13ZC,
 - (b) the direction —
 - (i) states that the Secretary of State considers that NHS England is failing or has failed to discharge any of its functions, and
 - (ii) states that the Secretary of State considers that the failure is significant and explains why,
 - (c) the direction states that it is given for the purposes of addressing that failure, and
 - (d) NHS England fails to comply with the direction.
- (2) The Secretary of State may—
- (a) discharge the functions to which the direction relates, or
 - (b) make arrangements for any other person to discharge them on the Secretary of State's behalf.
- (3) Where the Secretary of State exercises the power under subsection (2), the Secretary of State must publish the reasons for doing so.
- (4) For the purpose of this section—
- (a) a failure to discharge a function includes a failure to discharge it properly, and
 - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

13ZF Secretary of State directions to provide information

- (1) The Secretary of State may direct NHS England to provide the Secretary of State with any documents or other information that may be specified in the direction.

- (2) The directions that may be given include a direction to provide documents or other information that NHS England would need to obtain from others in the exercise of some other power.
- (3) The directions may include provision as to—
 - (a) the form or manner in which the documents or information must be provided;
 - (b) the time at which or period within which the documents or information must be provided.”
- (3) Omit section 13Z2 (failure to discharge functions) and the italic heading before it.
- (4) In Schedule A1 (constitution of NHS England), omit paragraph 14 and the italic heading before it.

46 Reconfiguration of services: intervention powers

- (1) After section 68 of the National Health Service Act 2006 insert—

“Reconfiguration of NHS services

68A Reconfiguration of NHS services

Schedule 10A confers intervention powers on the Secretary of State in relation to the reconfiguration of NHS services.”

- (2) Schedule 6 inserts into the National Health Service Act 2006 a new Schedule 10A to that Act (intervention powers in relation to the reconfiguration of NHS services).

47 Review into NHS supply chains

- (1) The Secretary of State must carry out a review into the risk of slavery and human trafficking taking place in relation to people involved in NHS supply chains.
- (2) The Secretary of State may determine which NHS supply chains to consider as part of the review or otherwise limit the scope of the review.
- (3) But the review must at least consider a significant proportion of NHS supply chains for cotton-based products in relation to which companies formed under section 223 of the National Health Service Act 2006 (taken as a whole) exercise functions.
- (4) The Secretary of State must publish and lay before Parliament a report on the outcome of the review before the end of the period of 18 months beginning with the day on which this section comes into force.
- (5) The report must describe—
 - (a) the scope of the review, and
 - (b) the methodology used in carrying out the review.
- (6) The report must include any views of the Secretary of State as to steps that should be taken to mitigate the risk mentioned in subsection (1).
- (7) NHS England must assist in the carrying out of the review or the preparation of the report under this section, if requested to do so by the Secretary of State.

(8) In this section—

“health service in England” means the health service continued under section 1(1) of the National Health Service Act 2006;

“NHS supply chain” means the supply chain for providing goods or services for the purposes of the health service in England;

“slavery and human trafficking” has the meaning given by section 54(12) of the Modern Slavery Act 2015.