



Health and Care Act 2022

2022 CHAPTER 31

PART 1

HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

Secretary of State's functions

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.

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- (6) For power to give directions to NHS England as to the exercise of functions, see section 13ZC.
- (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;

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- (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

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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—

“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.”

Commencement Information

I1 S. 44 not in force at Royal Assent, see [s. 186\(6\)](#)

I2 [S. 44](#) in force at 1.7.2022 by [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with [regs. 13, 29, 30](#))

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