
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force provisions of the Health and Social Care Act 2012 (c. 7) (“the Act”). It is the second Commencement Order to be made under the Act. This Order also contains transitional, savings and transitory provisions in relation to the provisions of the Act being brought into force by this Order.

Article 2(2) brings into force the following provisions of the Act on 1st October 2012—

- (a) section 1 (in part) which, insofar as is relevant to this Order, amends section 1 of the National Health Service Act 2006 (“the 2006 Act”) in relation to the duty of the National Health Service Commissioning Board (“the Board”) as regards the comprehensive health service;
- (b) section 9 (in part) and Schedule 1 (in part) which amend the 2006 Act to provide for the establishment of the Board and as to its functions;
- (c) section 10 (in part) which amends the 2006 Act to provide for clinical commissioning groups to be established as bodies corporate and as to their general functions;
- (d) section 23 (in part) which amends the 2006 Act to make further provision in relation to the Board, including as to the Secretary of State’s mandate to the Board and duties of the Board in exercising its functions;
- (e) section 24 (in part) which, insofar as is relevant to this Order, amends the 2006 Act to make provision as to the Secretary of State’s power to allot an amount of money to the Board in respect of a financial year by giving notice to the Board in writing;
- (f) section 25 (in part) and Schedule 2 (in part), which amend the 2006 Act to provide for the process of establishing clinical commissioning groups by the Board, and for the functions of clinical commissioning groups;
- (g) section 26 (in part) which amends the 2006 Act to make further provision in relation to clinical commissioning groups, including as to the duties of a clinical commissioning group in exercising its functions;
- (h) section 27 (in part) which, insofar as is relevant to this Order, amends the 2006 Act to make provision as to the Board’s power to allot an amount of money to a clinical commissioning group in respect of a financial year by giving notice to a clinical commissioning group in writing.

These provisions are commenced on 1st October 2012 in order to establish the Board and to confer on it the necessary powers and duties to enable the Board to prepare itself for exercising its full functions in relation to the health service when the provisions of the Act relating to it come fully into force. In particular the commencement of these provisions will enable the Board to determine applications for the establishment of clinical commissioning groups from 1st October 2012. The commencement of these provisions will also confer on a clinical commissioning group the powers and duties necessary to enable it to prepare for exercising its full functions in relation to the health service when the provisions of the Act relating to clinical commissioning groups come fully into force. In relation to both the Board and clinical commissioning groups, it is envisaged that the provisions of the Act relating to them will come fully into force on 1st April 2013.

Article 2(2) also commences the following provisions of the Act on 1st October 2012—

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- (a) section 17(13) which amends the 2006 Act to confer powers on the Board in relation to research, the obtaining and analysis of data and the obtaining of advice from persons with appropriate professional expertise;
- (b) section 21 which amends the Secretary of State's powers of direction in relation to Special Health Authorities in section 7 of the 2006 Act;
- (c) section 22 (in part) which, insofar as it is commenced by this Order, amends the 2006 Act to give the Secretary of State the power to make arrangements with the Board or a clinical commissioning group as to the exercise of the Secretary of State's public health functions;
- (d) section 147 (in part) which amends the 2006 Act to impose a duty on the Secretary of State as respects variation in provision of health services;
- (e) section 151(1) and (9) which makes consequential amendments to the 2006 Act to rename the board of governors of NHS foundation trusts as the "council of governors";
- (f) section 154 which amends provisions in Schedule 7 to the 2006 Act to make changes to the accounting requirements of NHS foundation trusts;
- (g) section 158 which amends Schedule 7 to the 2006 Act to provide for a new regulation-making power to alter the voting arrangements for directors, governors and members of NHS foundation trusts;
- (h) section 164(1) to (3) and (6) which amends section 43 of the 2006 Act on authorised services of NHS foundation trusts to remove references to ongoing terms of authorisation and makes provision for safeguards as a result of the amendments made by section 165 of the Act;
- (i) section 165 which amends the 2006 Act to remove the restriction on the amount of income an NHS foundation trust can derive from private charges;
- (j) section 181 (in part) which amends the Health and Social Care Act 2008 (c. 14) in relation to the establishment of Healthwatch England as a statutory committee of the Care Quality Commission;
- (k) section 212(1) which provides for the abolition of the General Social Care Council;
- (l) section 223(3) and (6) which amends the National Health Service Reform and Health Care Professions Act 2002 (c. 17) as regards the functions of the Professional Standards Authority;
- (m) section 281 which provides for the abolition of the National Patient Safety Agency;
- (n) section 290 (in part) and section 291 which provide for a duty to co-operate between Monitor, the Care Quality Commission and other bodies in the exercise of their respective functions, and makes provision for where there is a breach of such a duty;
- (o) section 294 which amends the power the Secretary of State has under section 82 of the Health and Social Care Act 2008 to direct the Care Quality Commission when he considers that it is failing, or has failed, to perform its functions;
- (p) sections 295 and 296 (in part) which make provision for arrangements between the Board and Northern Ireland Ministers and Scottish Ministers;
- (q) section 298 which concerns the provision by the Board or a clinical commissioning group of advice or assistance to any public authority in the Isle of Man or Channel Islands;
- (r) sections 300 to 302 and Schedules 22 and 23 (in part) which together make provision in relation to the making of transfer schemes by the Secretary of State to transfer property, rights and liabilities from one body to another, in connection with the establishment, modification or abolition of a body by the Act;

- (s) Schedule 4 and section 55(1) (in part) which together make consequential amendments to the 2006 Act in relation to the establishment of the Board and clinical commissioning groups;
- (t) Schedule 5 and section 55(2) (in part) which together make consequential amendments to other enactments in relation to the establishment of the Board and clinical commissioning groups;
- (u) Schedule 6 and section 55(3) (in part) which together make transitional provision, primarily in respect of the establishment of clinical commissioning groups and the exercise of functions by them and in relation to them during an initial period following their establishment.

Article 2(3) commences on 31st October 2012 section 279 of, and Part 2 of Schedule 20 to, the Act which together provide for the abolition of the Appointments Commission and for consequential amendments and savings as a result of that abolition.

Article 3(1) and (3) makes transitory modifications in relation to the commencement of section 9 of the Act to modify references to provisions in the 2006 Act which have not yet been brought into force until such time as they are brought into force. Article 3(2) makes a transitory modification in relation to paragraph 16(2)(b) of Schedule A1 to the 2006 Act, which is inserted by section 9 of the Act, to ensure that where the Board has to produce consolidated annual accounts, it will not need to include the accounts of a clinical commissioning groups until the end of the initial period during which clinical commissioning groups will not be required to produce accounts by virtue of article 9.

Article 4(1) makes a transitory modification in respect of section 23 of the Act. Section 13A(8) of the 2006 Act, which is inserted by section 23 of the Act, is modified to ensure that the Secretary of State's duty to consult Healthwatch England before specifying any objectives or requirements in the mandate to the Board does not apply in relation to the first mandate: this is because Healthwatch England will not be established until 1st October 2012 by which time the first mandate to the Board will need to have been finalised (as the Board is also established on that date). Article 4(2) makes a transitory modification in respect of section 13U of the 2006 Act, which is inserted by section 23 of the Act, to modify requirements as to the content of the first annual report the Board will produce to reflect the fact that it will not be undertaking its full functions during the first financial year in which it is established.

Article 5 makes transitional provision in respect of the commencement of section 25 of the Act. The modification ensures that any applications for establishment as a clinical commissioning group that have been made before 1st October 2012 to the NHS Commissioning Board Authority, a Special Health Authority established under the NHS Commissioning Board Authority (Establishment and Constitution) Order 2011 (S.I. 2011/2237), are treated as applications to the Board. The modification only applies if the application meets the requirements in section 14B of the 2006 Act (which is inserted by section 25 of the Act). The NHS Commissioning Board Authority will be abolished on 1st October 2012 under article 3 of the NHS Commissioning Board Authority (Abolition and Transfer of Staff, Property and Liabilities) and the Health and Social Care Act 2012 (Consequential Amendments) Order 2012 (S.I. 2012/1641).

Article 6(1) makes transitory modification in respect of the commencement of section 26 of the Act. It modifies the duty of clinical commissioning groups in relation to their commissioning plans to ensure that obligations relating to Health and Wellbeing Boards do not apply until such time as the provisions in the Act that establish Health and Wellbeing Boards are commenced. Article 6(2) modifies the duty of a clinical commissioning group to consult persons for whom it has responsibility under section 3 of the 2006 Act as regards its commissioning plan until section 13 of the Act, which makes the relevant changes to section 3 of the 2006 Act, is in force.

Article 7 makes transitory modification in respect of the commencement of section 181 of the Act (which relates to the establishment of Healthwatch England) to modify references in the Health and Social Care Act 2008 (which is amended by section 181 of the Act) to Local Healthwatch

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organisations pending the coming into force of section 183 of the Act which makes provision for such organisations.

Article 8 makes a transitory modification of section 26A(1A) of the National Health Service Reform and Health Care Professions Act 2002 (which is inserted by the commencement of section 223 of the Act) to provide that until section 222 of the Act comes into force any reference to the Professional Standards Authority for Health and Social Care is to be read as a reference to that body by its existing name (the Council for Health Care Regulatory Excellence). Section 222(1)(b) changes the body's name.

Article 9 makes transitory provision in relation to the commencement of Schedule 2 to the Act: the transitory provision relates to paragraph 17(1) and (2) of Schedule 1A to the 2006 Act which is inserted by Schedule 2 to the Act. The provision ensures that a clinical commissioning group will not be subject to the requirement in paragraph 17(1) and (2) to keep proper accounts and prepare annual accounts in the financial year ending 31st March 2013.

Article 10(1) makes a saving provision in respect of the commencement in part of paragraph 1 of Schedule 4 to the Act to preserve the Secretary of State's general powers in relation to the health service under section 2 of the 2006 Act pending that paragraph coming fully into force. Article 10(2) makes a transitory modification to limit the powers of the Board and clinical commissioning groups under section 2 of the 2006 Act, as amended by paragraph 1 of Schedule 4 to the Act.

Article 11 makes saving provisions in respect of the commencement of paragraph 125 of Schedule 4 to the Act (which amends Schedule 15 to the 2006 Act relating to accounts and audits) and paragraph 96 of Schedule 5 to the Act (which amends the Government Resources and Accounts Act 2000 (c. 20)) to ensure the continued application of provisions prior to the amendments made by the Act as regards the accounts of NHS bodies in relation to the financial years up to and including the one ending 31st March 2012.

Article 12 makes a transitory modification in respect of the commencement of paragraph 137 of Schedule 4 to the Act to preserve powers of direction in section 273 of the 2006 Act in relation to Strategic Health Authorities pending the commencement of section 33 of the Act (abolition of Strategic Health Authorities).

Article 13 makes transitory modification in respect of the commencement of paragraph 138(2)(c) of Schedule 4 to the Act. Paragraph 138(2)(c) amends section 275(1) of the 2006 Act to insert a new definition of "NHS body". Until the abolition of Primary Care Trusts and Strategic Health Authorities, the definition of "NHS body" needs to include reference to those bodies: furthermore some of the references to "NHS body" in the 2006 Act do not need to include a reference to the Board or a clinical commissioning group until that abolition, so article 13 makes provision for both of these matters.

Article 14 makes transitory modifications to amendments made to the Public Records Act 1958 (c. 51) to omit references to section 13X of the 2006 Act and paragraph 20 of Schedule 1A to the 2006 Act pending the coming into force of the provisions of the Act that insert them into the 2006 Act.