

2022 No. 635

MENTAL HEALTH, ENGLAND

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Integrated Care Boards:
Responsibilities) Regulations 2022**

Made - - - - at 10.50 a.m. on 9th June 2022

Laid before Parliament at 4.15 p.m. on 9th June 2022

Coming into force 1st July 2022

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 3(2)(b), 3A(2)(b) and 272(8) of, and paragraph 9(2)(b) of Schedule 1 to, the National Health Service Act 2006(a) and section 117(2E) of the Mental Health Act 1983(b).

PART 1

General

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022 and come into force on 1st July 2022.

(2) These Regulations extend to England and Wales.

(3) These Regulations apply in relation to England only(c).

Interpretation

2.—(1) In these Regulations—

“after-care services” has the meaning given in section 117(6) of the Mental Health Act 1983;

(a) 2006 c. 41. Sections 3 and 3A were substituted by section 21 of the Health and Care Act 2022 (c. 31). Paragraph 9 of Schedule 1 was substituted by paragraph 135(2) of Schedule 4 to the Health and Care Act 2022. See section 275(1) for the meaning of “prescribed”.

(b) 1983 c. 20. Section 117(2E) was added by section 40(3) of the Health and Social Care Act 2012 (c. 7) and amended by paragraph 16 of Schedule 4 to the Health and Care Act 2022. Other relevant amendments were made by paragraph 15 of Schedule 1 to the Mental Health (Patients in the Community) Act 1995 (c. 52); paragraph 12 of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43); paragraph 47 of Schedule 2 to the National Health Care Reform and Health Care Professions Act 2002 (c. 17) (repealed subject to savings and transitional provisions specified in S.I. 2013/160); sections 4, 9 and 30(2) of, and paragraph 2 of Schedule 1, paragraph 2 of Schedule 2, Part 1 of Schedule 11, and paragraph 24 of Schedule 3 to, the Mental Health Act 2007 (c. 12); section 40(2) and (4) of the Health and Social Care Act 2012, section 75 of the Care Act 2014 (c. 23); S.I. 2007/961 and S.I. 2010/813.

(c) See section 271(1) of the National Health Service Act 2006, by virtue of which the functions of the Secretary of State being exercised in the making of these Regulations are exercisable only in relation to England.

“the CCG Regulations 2012” means the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012(a);

“ICB” means integrated care board(b);

“mental health services” means services provided to patients in relation to a disorder or disability of the mind;

“the NHS Act 2006” means the National Health Service Act 2006;

“patient” means any person who is receiving treatment provided as part of the health service;

“registered establishment” has the meaning given in section 34(1) of the Mental Health Act 1983;

“treatment” means an intervention that is intended to manage a person’s disease, condition or injury and includes prevention, examination and diagnosis;

“urgent treatment centre” means a centre, other than a hospital accident and emergency department, at which urgent medical attention is provided to patients with conditions, other than life threatening conditions, and includes minor injury units and walk-in centres;

“walk-in centre” means a centre at which information and treatment for minor conditions is provided to the public under arrangements made by an ICB or NHS England(c).

(2) For the purposes of these Regulations, a person is discharged from after-care services when, in accordance with section 117(2) of the Mental Health Act 1983 (duty to arrange for the provision of after-care services), the local social services authority and, as the case may be, the ICB or Local Health Board are no longer subject to the duty imposed by that section in respect of the person.

PART 2

Additional persons for whom an integrated care board has responsibility

Additional persons for whom an ICB has responsibility: general

3.—(1) For the purposes of sections 3 and 3A of the NHS Act 2006 (duties and powers of ICBs to commission certain health services), in addition to the group of people for whom it has core responsibility (see section 14Z31 of that Act), an ICB has responsibility for the persons listed in paragraph 2 of the Schedule.

(2) In the case of a person listed in paragraph 2(a), (b), (d), (e), (f), (h) or (j) of the Schedule, an ICB has responsibility only in relation to the provision of accommodation or services specified in the relevant sub-paragraph.

(3) The responsibility for a person listed in paragraph 2(c), (g), (i) or (k) of the Schedule does not apply in relation to the provision of emergency ambulance services or accident and emergency services, whether provided at a hospital accident and emergency department, an urgent treatment centre or elsewhere (but excluding any services provided after the person has been accepted as an in-patient, or at an out-patient appointment).

Additional persons for whom an ICB has responsibility: arrangements for the provision of vehicles

4. For the purposes of paragraph 9 of Schedule 1 to the NHS Act 2006 (arrangements for the provision of vehicles (including wheelchairs) for people for whom an ICB has responsibility), in

(a) S.I. 2012/2996; relevant amending instruments are S.I. 2013/2891, S.I. 2014/2103 and S.I. 2018/48. Part 2 and regulations 14 and 15 of, and Schedule 1 to, those Regulations are revoked by regulation 9 of these Regulations.

(b) An integrated care board is a body established by NHS England under an Order made under section 14Z25 of the National Health Service Act 2006. That section is inserted by section 19 of the Health and Care Act 2022.

(c) Section 1 of the Health and Care Act 2022 renamed the body corporate created under section 1H of the National Health Service Act 2006, formerly known as the National Health Service Commissioning Board, as NHS England.

addition to the group of people for whom it has core responsibility (see section 14Z31 of that Act), an ICB has responsibility for the persons listed in paragraph 2 of the Schedule.

Additional persons for whom an ICB has responsibility: persons detained under the Mental Health Act 1983 pursuant to an application made on or after the coming into force of these Regulations

5.—(1) For the purposes of sections 3 and 3A of the NHS Act 2006 (duties and powers of ICBs to commission certain health services), in addition to the group of people for whom it has core responsibility (see section 14Z31 of that Act), an ICB has responsibility to arrange for the provision of mental health services during the course of the person’s detention under the Mental Health Act 1983 for each person—

- (a) who is detained under the Mental Health Act 1983 in a hospital or registered establishment pursuant to a relevant application made on or after the coming into force of these Regulations;
- (b) who is a qualifying patient within the meaning of section 130C of the Mental Health Act 1983; and
- (c) for whom the ICB had core responsibility when the relevant application resulting in the person’s detention was made.

(2) In this regulation, an application for detention, made in respect of a person, is an application for the person’s admission to a hospital or registered establishment made in accordance with Part 2 of the Mental Health Act 1983.

(3) In this regulation—

“exclusion period”, in relation to a person who is detained under the Mental Health Act 1983, means a period—

- (a) beginning with the person’s detention under the Mental Health Act 1983; and
- (b) ending with the person’s next discharge from after-care services;

“relevant application” means an application for detention made outside of the exclusion period.

Additional persons for whom an ICB has responsibility: other persons detained, or in detention, under the Mental Health Act 1983

6.—(1) For the purposes of sections 3 and 3A of the NHS Act 2006 (duties and powers of ICBs to commission certain health services), in addition to the group of people for whom it has core responsibility (see section 14Z31 of that Act), an ICB has responsibility to arrange for the provision of mental health services during the course of the person’s detention under the Mental Health Act 1983 for each person—

- (a) to whom paragraph (2), (3) or (4) applies;
- (b) who is a qualifying patient within the meaning of section 130C of the Mental Health Act 1983; and
- (c) for whom the ICB has core responsibility on the coming into force of these Regulations.

(2) This paragraph applies to a person who—

- (a) was in detention under the Mental Health Act 1983 on the coming into force of these Regulations; and
- (b) either—
 - (i) has not been discharged from that detention; or
 - (ii) where the person has been discharged from that detention, has not been discharged from after-care services subsequent to that detention prior to being further detained under the Mental Health Act 1983.

(3) This paragraph applies to a person who—

- (a) is detained under the Mental Health Act 1983 on or after the coming into force of these Regulations in pursuance of an application for detention made before these Regulations came into force; and
 - (b) either—
 - (i) has not been discharged from that detention; or
 - (ii) where the person has been discharged from that detention, has not been discharged from after-care services subsequent to that detention prior to being further detained under the Mental Health Act 1983.
- (4) This paragraph applies to a person who—
- (a) was being provided with after-care services on the coming into force of these Regulations in relation to a period of detention under the Mental Health Act 1983 occurring before these Regulations came into force;
 - (b) has not been discharged from those after-care services;
 - (c) is detained under that Act after the coming into force of these Regulations (“detention 2”) (regardless of when the application for detention relating to detention 2 was made); and
 - (d) either—
 - (i) has not been discharged from detention 2; or
 - (ii) where the person has been discharged from detention 2, has not been discharged from after-care services subsequent to detention 2 prior to being further detained under the Mental Health Act 1983.
- (5) In this regulation—
- (a) an application for detention, made in relation to a person, is an application for the person’s admission to a hospital or registered establishment made in accordance with Part 2 of the Mental Health Act 1983;
 - (b) references to a person’s detention are to a person’s detention in a hospital or registered establishment.

PART 3

Mental health after-care services

After-care services: imposition of ICB responsibility

7.—(1) The duty imposed by section 117(2) of the Mental Health Act 1983 on an ICB to arrange for the provision of after-care services for a person to whom that section applies is to be imposed instead on another ICB (“ICB A”) in the circumstances described in paragraph (2), (3), (4) or (5).

- (2) The circumstances described in this paragraph are—
- (a) ICB A had responsibility to arrange for the provision of mental health services to the person during the detention to which the after-care services relate; and
 - (b) the person is usually resident in England.
- (3) The circumstances described in this paragraph are—
- (a) the after-care services relate to a period of detention from which the person was discharged before these Regulations came into force;
 - (b) ICB A has core responsibility for the person on the coming into force of these Regulations; and
 - (c) the person is usually resident in England.
- (4) The circumstances described in this paragraph are—
- (a) the after-care services relate to a period of detention the provision of which was arranged by NHS England;

- (b) the period of detention began before these Regulations came into force;
 - (c) the person is discharged from that period of detention on, or after, the coming into force of these Regulations;
 - (d) ICB A had core responsibility for the person on the date of their discharge from that period of detention;
 - (e) regulation 8 does not apply to the after-care services; and
 - (f) the person is usually resident in England.
- (5) The circumstances described in this paragraph are—
- (a) the after-care services relate to a period of detention the provision of which was arranged by NHS England;
 - (b) the period of detention began on, or after, the coming into force of these Regulations;
 - (c) ICB A had core responsibility for the person on the first day of the person’s detention;
 - (d) regulation 8 does not apply to the after-care services; and
 - (e) the person is usually resident in England.

After-care services: imposition of NHS England responsibility

8.—(1) The duty imposed by section 117(2) of the Mental Health Act 1983 on an ICB to arrange for the provision of after-care services for a person to whom that section applies is to be imposed instead on NHS England in the circumstances described in paragraph (2).

(2) The circumstances described in this paragraph are that the person is receiving after-care services under section 117 of the Mental Health Act 1983 which, if it were being provided under the NHS Act 2006, would be a service the provision of which NHS England had a duty to arrange (see sections 3B and 4 of the NHS Act 2006).

PART 4

Consequential amendments

Consequential amendments of the CCG Regulations 2012

- 9.**—(1) The CCG Regulations 2012 are amended as follows.
- (2) In regulation 1 (citation and commencement), in paragraph (2)—
- (a) omit sub-paragraph (b);
 - (b) omit sub-paragraph (d)(ii).
- (3) In regulation 2 (interpretation), in paragraph (2), for the words “Parts 2, 4 and”, substitute “Part”.
- (4) Omit—
- (a) Part 2 (additional persons for whom a CCG has responsibility);
 - (b) Part 4 (mental health after-care services); and
 - (c) Schedule 1 (additional persons for whom a CCG has responsibility).

Edward Argar
Minister of State,

Department of Health and Social Care

At 10.50 a.m. on 9th June 2022

SCHEDULE

Regulations 3 and 4

Additional persons for whom an ICB has responsibility for the purposes of sections 3 and 3A of the NHS Act 2006

1. In this Schedule—

“adult” means a person aged 18 or older;

“care home”—

(a) in England, has the same meaning as in the Care Standards Act 2000^(a) (see section 3 of that Act); and

(b) in Wales, means a place at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016^(b), is provided wholly or mainly to adults;

“CCG” means Clinical Commissioning Group^(c);

“child” means a person under the age of 18;

“children’s home”—

(a) in England, has the same meaning as in the Care Standards Act 2000; and

(b) in Wales, means a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, which is provided wholly or mainly to children;

“commissioning functions” means the functions of the ICB or NHS England in arranging for the provision of services as part of the health service but it does not include, in relation to NHS England, its functions in relation to services provided under a primary care contract;

“continuing care” means care provided over an extended period of time to a person to meet physical or mental health needs which have arisen as the result of illness;

“EHC plan” has the same meaning as in the Children and Families Act 2014^(d) (see section 37 of that Act);

“independent hospital” means a hospital, as defined in section 275(1) of the NHS Act 2006, that is not a health service hospital, as defined there;

“planned service” means any service whose provision is planned and arranged by an ICB as part of the health service in response to the results of an assessment of a person’s physical or mental health needs and which is intended to bring about or promote a specific outcome in relation to those needs;

“predecessor CCG”, in relation to an ICB, means—

(a) a CCG whose area, as it was immediately before the commencement of paragraph 100 of Schedule 4 to the Health and Care Act 2022, is wholly contained within the area of the ICB; or

(b) in any other case, a CCG from which rights and liabilities relating to arrangements for the provision of accommodation or services under relevant legislation are transferred to the ICB under section 14Z28(1) of the NHS Act 2006^(e);

“relevant legislation” means the following provisions of the CCG Regulations 2012—

(a) in relation to paragraph 8 of this Schedule, regulation 4 and paragraph 8 of Schedule 1;

(b) in relation to paragraph 9 of this Schedule, regulation 4 and paragraph 3 of Schedule 1;

(a) 2000 c. 14.

(b) 2016 anaw 2.

(c) Clinical commissioning groups were established under section 14D of the National Health Service Act 2006. Section 14D was repealed by paragraph 100 of Schedule 4 to the Health and Care Act 2022.

(d) 2014 c. 6; section 37 was amended by paragraph 97 of Schedule 1 to the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914).

(e) Section 14Z28 was added by section 19(2) of the Health and Care Act 2022.

- (c) in relation to paragraph 10 of this Schedule, regulation 4 and paragraph 4 of Schedule 1;
 - (d) in relation to paragraph 11 of this Schedule, regulation 4 and paragraph 5 of Schedule 1;
- “secure children’s home” means a children’s home used for the purpose of restricting liberty and approved for that purpose in respect of which a person is registered under Part 2 of the Care Standards Act 2000, or premises in respect of which a person is registered under Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 to provide a secure accommodation service within the meaning of Part 1 of, and Schedule 1 to, that Act.

2. The list of persons referred to in regulation 3(1) is as follows—

- (a) every person present in the ICB’s area who is not a person for whom the ICB has core responsibility, in relation to the provision of emergency ambulance services or accident and emergency services, whether provided at a hospital accident and emergency department, an urgent treatment centre or elsewhere (but excluding any services provided after the person has been accepted as an in-patient, or at an out-patient appointment);
- (b) every person aged 18 or over who falls within paragraph 3, in relation to the provision of the accommodation and services referred to in paragraph 3(b);
- (c) every child who falls within paragraph 4;
- (d) every person who falls within paragraph 5, in relation to the provision of the accommodation and services referred to in paragraph 5(b);
- (e) every person who falls within paragraph 6, in relation to the provision of the accommodation and services referred to in paragraph 6(c);
- (f) every child who falls within paragraph 7, in relation to the provision of the accommodation and services referred to in paragraph 7(c);
- (g) every child who falls within paragraph 8;
- (h) every person who falls within paragraph 9, in relation to the provision of accommodation and services referred to in paragraph 9(c);
- (i) every child who falls within paragraph 10;
- (j) every person who falls within paragraph 11, in relation to the provision of accommodation and services referred to in paragraph 11(c);
- (k) every person resident in Northern Ireland, Scotland or Wales and present in the ICB’s area who is a qualifying patient within the meaning of section 130C of the Mental Health Act 1983, and not being provided with NHS primary medical services.

3. A person falls within this paragraph if—

- (a) the ICB has made an arrangement in the exercise of its commissioning functions (by itself or jointly with a local authority) by virtue of which the person is to be provided with services to meet the person’s continuing care needs;
- (b) those services consist of or include the provision of the following accommodation and services to meet the person’s continuing care needs—
 - (i) accommodation in a care home or independent hospital situated in the area of another ICB or of a Local Health Board; and
 - (ii) at least one planned service (other than a service consisting only of NHS-funded nursing care) which is connected to the provision of such accommodation (whether or not the accommodation is arranged by the ICB referred to in sub-paragraph (a));
- (c) the person is resident in that accommodation and continues to need that planned service (or those planned services); and
- (d) the person would not be a person for whom the ICB has core responsibility.

4.—(1) A child falls within this paragraph if both of sub-paragraphs (2) and (3) apply to the child.

(2) This sub-paragraph applies to a child if any of the following is the case—

- (a) the child is looked after by a local authority, within the meaning of section 22 of the Children Act 1989^(a) (general duty of local authority in relation to children looked after by them), other than by way of being accommodated in a secure children's home in respect of which NHS England must arrange for the provision of services to children accommodated there;
 - (b) the child is a relevant child within the meaning of section 23A of that Act^(b) (the responsible authority and relevant children);
 - (c) the child is a person to whom section 24(1A) or (1B) of that Act^(c) (persons qualifying for advice and assistance) applies;
 - (d) the child is provided with accommodation at a school, institution within the further education sector or 16 to 19 Academy (within the meaning of section 1B of the Academies Act 2010^(d)) to which the person is admitted in accordance with an EHC plan; or
 - (e) the child requires accommodation in a care home, a children's home or an independent hospital to meet the child's continuing care needs.
- (3) This sub-paragraph applies to a child if—
- (a) the child is provided with—
 - (i) services which consist of or include the provision of accommodation situated in the area of another ICB or of a Local Health Board, under arrangements made by the ICB in the exercise of its commissioning functions (by itself or jointly with a local authority); or
 - (ii) such services under arrangements made by the local authority and immediately before those arrangements were made the child was a person for whom the ICB had core responsibility; and
 - (b) the child—
 - (i) is resident in that accommodation; and
 - (ii) would not be a person for whom the ICB has core responsibility.

5. A person falls within this paragraph if—

- (a) the ICB has made an arrangement in the exercise of its commissioning functions (by itself or jointly with a local authority) by virtue of which immediately before attaining the age of 18 the person was provided with services to meet the person's continuing care needs;
- (b) those services consist of or include the provision of the following accommodation and services to meet the person's continuing care needs—
 - (i) accommodation in a care home, a children's home or an independent hospital situated in the area of another ICB or Local Health Board, or a school, institution within the further education sector or 16 to 19 Academy (within the meaning of section 1B of the Academies Act 2010) to which the person is admitted in accordance with an EHC plan; and
 - (ii) nursing and another service which is a planned service, as part of the health service to meet the person's continuing care needs;
- (c) the person is resident in that accommodation and continues to need that planned service (or those planned services); and
- (d) the person would not be a person for whom the ICB has core responsibility.

6. A person falls within this paragraph if—

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- (a) 1989 c. 41.
 - (b) Section 23A was inserted into the Children Act 1989 by section 2(1) and (4) of the Children (Leaving Care) Act 2000 (c. 35) and amended by paragraph 8 of Schedule 3 to the Children and Young Persons Act 2008 (c. 23) and S.I. 2016/413.
 - (c) Section 24(1A) and (1B) were inserted into the Children Act 1989 paragraph 60(a) and 60(b) of Schedule 3 to the Adoption and Children Act 2002 (c. 38).
 - (d) 2010 c. 32; section 1B was inserted by section 53 of the Education Act 2011 (c. 21).

- (a) immediately before the coming into force of these Regulations, a CCG was responsible for providing services to the person by virtue of regulation 4 of, and paragraph 6 of Schedule 1 to, the CCG Regulations 2012;
- (b) the rights and liabilities relating to arrangements for the provision of those services are transferred to the ICB by virtue of a scheme made under section 14Z28(1) of the NHS Act 2006;
- (c) the person continues to need services consisting of or including the provision of the following accommodation and services to meet their continuing care needs—
 - (i) accommodation in a care home or independent hospital situated in the area of another ICB; and
 - (ii) at least one planned service (other than a service consisting only of NHS-funded nursing care) which is connected to the provision of such accommodation (whether or not the accommodation is arranged by the ICB); and
- (d) the person would not be a person for whom the ICB has core responsibility.

7. A child falls within this paragraph if—

- (a) immediately before the coming into force of these Regulations, a CCG was responsible for providing services to the child by virtue of regulation 4 of, and paragraph 7 of Schedule 1 to, the CCG Regulations 2012;
- (b) the rights and liabilities relating to arrangements for the provision of those services are transferred to the ICB by virtue of a scheme made under section 14Z28(1) of the NHS Act 2006;
- (c) the child continues to need services consisting of or including the provision of the following accommodation and services to meet their continuing care needs—
 - (i) accommodation in a care home, a children’s home or an independent hospital situated in the area of another ICB; and
 - (ii) nursing and another service which is a planned service as part of the health service; and
- (d) the child would not be a person for whom the ICB has core responsibility.

8. A child falls within this paragraph if—

- (a) immediately before the coming into force of these Regulations, the child fell within paragraph 8 of Schedule 1 to the CCG Regulations 2012;
- (b) the CCG who, immediately before the coming into force of these Regulations, had responsibility for the child is a predecessor CCG in relation to the ICB;
- (c) the child continues to need accommodation at a school in the area of another ICB or Local Health Board, to which the child is admitted in accordance with an EHC plan; and
- (d) the child would not be a person for whom the ICB has core responsibility.

9. A person falls within this paragraph if—

- (a) immediately before the coming into force of these Regulations the person fell within paragraph 3 of Schedule 1 to the CCG Regulations 2012;
- (b) the CCG who, immediately before the coming into force of these Regulations, had responsibility for the person is a predecessor CCG in relation to the ICB;
- (c) the person continues to need services which consist of or include the provision of the following accommodation and services to meet their continuing care needs—
 - (i) accommodation in a care home or independent hospital situated in the area of another ICB or of a Local Health Board; and
 - (ii) at least one planned service (other than a service consisting only of NHS-funded nursing care) which is connected to the provision of such accommodation;
- (d) the person is resident in the accommodation referred to in sub-paragraph (c)(i); and

(e) the person would not be a person for whom the ICB has core responsibility.

10. A child falls within this paragraph if—

- (a) immediately before the coming into force of these Regulations, the child fell within paragraph 4 of Schedule 1 to the CCG Regulations 2012;
- (b) the CCG who, immediately before the coming into force of these Regulations, had responsibility for the child is a predecessor CCG in relation to the ICB;
- (c) the child—
 - (i) continues to need services which consist of or include the provision of accommodation situated in the area of another ICB or of a Local Health Board; and
 - (ii) is resident in that accommodation; and
- (d) the child would not be a person for whom the ICB has core responsibility.

11. A person falls within this paragraph if—

- (a) immediately before the coming into force of these Regulations the person fell within paragraph 5 of Schedule 1 to the CCG Regulations 2012;
- (b) the CCG who immediately before the coming into force of these Regulations had responsibility for the child is a predecessor CCG in relation to the ICB;
- (c) the person continues to need the following accommodation and services to meet their continuing care needs—
 - (i) accommodation in a care home, a children’s home or independent hospital situated in the area of another ICB or of a Local Health Board; and
 - (ii) nursing and another service which is a planned service, as part of the health service to meet the person’s continuing care needs;
- (d) the person is resident in the accommodation referred to in sub-paragraph (c)(i); and
- (e) the person would not be a person for whom the ICB has core responsibility.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe additional persons for whom an Integrated Care Board (“ICB”) has responsibility to arrange for the provision of certain services under the National Health Service Act 2006 (c. 41) (“the NHS Act 2006”). These Regulations also impose the duty to provide mental health after-care services on an ICB other than the ICB subject to the duty imposed by section 117(2) of the Mental Health Act 1983 (c. 20) and also set out the circumstances in which that duty is imposed on NHS England.

Under section 3 of the NHS Act 2006, an ICB has a duty to arrange the provision of certain services and, under 3A of that Act, a power to arrange the provision of other services, for people for whom it has responsibility. An ICB has responsibility for persons for whom it has core responsibility (as to which, see section 14Z31 of the NHS Act 2006) and for such other persons as may be prescribed.

Part 2 of this instrument prescribes those other persons for whom an ICB has responsibility. Regulation 3 and the Schedule provide that an ICB has responsibility for—

- every person present in the ICB’s area who is not a person for whom the ICB has core responsibility, in relation to the provision of emergency ambulance services or accident and emergency services, whether provided at a hospital accident and emergency department, an urgent treatment centre or elsewhere (but excluding any services provided after the person has been accepted as an in-patient, or at an out-patient appointment) (paragraph 2(a) of the Schedule);

- certain persons aged 18 or over under arrangements made by the ICB (or the ICB acting jointly with a local authority) being provided with accommodation in a care home or independent hospital in the area of another ICB or Local Health Board and at least one other planned service, and who would not be a person for whom the ICB has core responsibility (paragraphs 2(b) and 3 of the Schedule);
- certain looked-after children or children placed, under arrangements made by the ICB (or the ICB acting jointly with a local authority), in accommodation (in specified settings) in the area of another ICB or Local Health Board and who would not be children for whom the ICB has core responsibility (or children receiving such services under arrangements made by a local authority, who immediately before which were children for whom the ICB had core responsibility) (paragraphs 2(c) and 4 of the Schedule);
- certain persons aged 18 or over who, under arrangements made by the ICB (or the ICB acting jointly with a local authority), were provided with accommodation (in specified settings) in the area of another ICB or Local Health Board, and nursing and a planned service, immediately before they turned 18, who continue to need those accommodation and services after turning 18 and who would not be a person for whom the ICB has core responsibility (paragraphs 2(d) and 5 of the Schedule);
- certain persons for whom a Clinical Commissioning Group (“CCG”) was responsible immediately before the coming into force of these Regulations for providing accommodation and services by virtue of regulation 4 of, and paragraph 6 of Schedule 1 to, the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) (“the CCG Regulations 2012”), who continue to need that accommodation and those services and in respect of whom the ICB, to which the rights and liabilities relating to those services have been transferred under the NHS Act 2006, would not have core responsibility (paragraphs 2(e) and 6 of the Schedule);
- certain children for whom a CCG was responsible immediately before the coming into force of these Regulations for providing services by virtue of regulation 4 of, and paragraph 7 of Schedule 1 to, the CCG Regulations 2012, who continue to need that accommodation and those services and in respect of whom the ICB, to which the rights and liabilities relating to those services have been transferred under the NHS Act 2006, would not have core responsibility (paragraphs 2(f) and 7 of the Schedule);
- a child who immediately before the coming into force of these Regulations fell within paragraph 8 of Schedule 1 to the CCG Regulations 2012, in relation to whom the CCG with responsibility under those Regulations is the predecessor CCG (as defined) in relation to the ICB, who continues to need accommodation at a school in the area of another ICB or Local Health Board and for whom the ICB would not have core responsibility (paragraphs 2(g) and 8 of the Schedule);
- a person who immediately before the coming into force of these Regulations fell within paragraph 3 of Schedule 1 to the CCG Regulations 2012, in relation to whom the CCG with responsibility under those Regulations is a predecessor CCG (as defined) in relation to the ICB, who is resident in and continues to need accommodation in a care home or independent hospital in the area of another ICB or Local Health Board (and needs at least one other planned service), and for whom the ICB would not have core responsibility (paragraphs 2(h) and 9 of the Schedule);
- a child who immediately before the coming into force of these Regulations fell within paragraph 4 of Schedule 1 to the CCG Regulations 2012, in relation to whom the CCG with responsibility under those Regulations is a predecessor CCG (as defined) in relation to the ICB, who is resident in and continues to need accommodation in a care home or independent hospital in the area of another ICB or Local Health Board, and for whom the ICB would not have core responsibility (paragraphs 2(i) and 10 of the Schedule);
- a person who immediately before the coming into force of these Regulations fell within paragraph 5 of Schedule 1 to the CCG Regulations 2012, in relation to whom the CCG with responsibility under those Regulations is a predecessor CCG (as defined) in relation

to the ICB, who is resident in and continues to need accommodation in a care home, a children's home or independent hospital in the area of another ICB or Local Health Board (and needs nursing and a planned service), and for whom the ICB would not have core responsibility (paragraphs 2(j) and 11 of the Schedule);

- every person resident in Northern Ireland, Scotland or Wales and present in the ICB's area who is a qualifying patient within the meaning of section 130C of the Mental Health Act 1983, and not being provided with NHS primary medical services (paragraph 2(k) of the Schedule).

Regulation 4 provides that, in addition to the persons for whom it has core responsibility (see section 14Z31 of the NHS Act 2006), an ICB has responsibility for the persons listed in the Schedule for the purpose of the power to make arrangements for the provision of vehicles (including wheelchairs) in paragraph 9 of Schedule 1 to the NHS Act 2006.

Regulations 5 and 6 prescribe additional persons for whom an ICB has responsibility to arrange the provision of mental health services during the course of the person's detention under the Mental Health Act 1983.

Regulation 5 prescribes that an ICB is responsible for a person who is detained under the Mental Health Act 1983 in a hospital or registered establishment, is a qualifying patient within the meaning of section 130C of the Mental Health Act 1983, and for whom the ICB had core responsibility when the relevant application resulting in the person's detention was made. A relevant application is an application made after a person is discharged from a previous period of after-care services relating to detention under the Mental Health Act 1983 or, where there is no previous detention, the first application for detention made in relation to the person. Any application for detention made while the person is in detention or has been discharged into after-care services but not discharged from those services, is not relevant for the purposes of determining responsibility under this provision.

Regulation 6 prescribes that an ICB is responsible for a person who is a qualifying patient within the meaning of section 130C of the Mental Health Act 1983, for whom the ICB has responsibility on the coming into force of these Regulations and in relation to whom paragraph (2), (3) or (4) of that regulation applies. Paragraph (2) applies to a person who was in detention under the Mental Health Act 1983 when these Regulations came into force and who either has not been discharged from that detention or has not been discharged from after-care services subsequent to that detention. Paragraph (3) applies to a person who is detained on or after the coming into force of these Regulations pursuant to an application made before these Regulations came into force and who either has not been discharged from that detention or has not been discharged from after-care services subsequent to that detention. Paragraph (4) applies to a person who was being provided with mental health after-care services on the coming into force of these Regulations in relation to a period of detention occurring before the coming into force of these Regulations, is not discharged from those after-care services, is subsequently re-detained after the coming into force of these Regulations and who either has not been discharged from that period of detention or has not been discharged from after-care services subsequent to that detention.

Part 3 provides for the circumstances in which the duty imposed on an ICB under section 117 of the Mental Health Act 1983 to arrange for the provision of mental health after-care services is instead to be imposed on another ICB or NHS England.

Regulation 7 imposes the duty to provide mental health after-care services on another ICB in one of four specified circumstances, as follows—

- the ICB has responsibility to arrange for the provision of mental health services to the person during the detention to which the after-care services relate and the person is usually resident in England (paragraph (2));
- the after-care services relate to a period of detention from which the person was discharged before these Regulations came into force, the ICB has core responsibility for the person when these Regulations came into force and the person is usually resident in England (paragraph (3));

- the after-care services relate to a period of detention the provision of which was arranged by NHS England, the period of detention began before these Regulations came into force, the person is discharged from that period of detention on, or after, the coming into force of these Regulations, the ICB had core responsibility for the person on the date of their discharge from detention, regulation 8 does not apply to the after-care services and the person is usually resident in England (paragraph (4)); or
- the after-care services relate to a period of detention the provision of which was arranged by NHS England, the period of detention began on, or after, the coming into force of these Regulations, the ICB had core responsibility for the person on the first day of the person's detention, regulation 8 does not apply to the after-care services and the person is usually resident in England (paragraph (5)).

Regulation 8 imposes the duty to arrange the provision of mental health after-care services for a person on NHS England where the person is receiving after-care services under section 117 of the Mental Health Act 1983 which, if it were being provided under the NHS Act 2006, would be a service the provision of which NHS England had a duty to arrange.

Part 4, comprising only regulation 9, makes consequential amendments to the CCG Regulations 2012.

An impact assessment has been prepared in relation to the Health and Care Act 2022. A copy is available at www.gov.uk/government/publications/health-and-care-bill-combined-impact-assessments. A hard copy can be obtained by writing to the Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU.

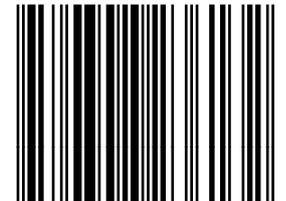
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