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STATUTORY INSTRUMENTS

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**2022 No. 734**

**The Health and Care Act 2022 (Commencement No. 2  
and Transitional and Saving Provision) Regulations 2022**

**PART 9**

Transitional provision in relation to procurement, patient choice and competition

**Transitional provision: procurement, patient choice and competition**

**21.**—(1) The following modifications apply during the period beginning with 1st July 2022 and ending when section 80(2) to (4) of the 2022 Act comes into force.

(2) Except in the provisions inserted by paragraph (4), in sections 75 to 78 of, and Schedule 9 to, the 2012 Act and in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013—

- (a) any reference to Monitor is to be read as a reference to NHS England;
- (b) any reference to a clinical commissioning group is to be read as a reference to an integrated care board.

(3) The 2012 Act is to be read as if—

- (a) in section 76(1)—
  - (i) in paragraph (c), the words “the Board or” were omitted;
  - (ii) in paragraph (d), the words “the Board or” were omitted;
- (b) in section 76(6), the words “the National Health Service Commissioning Board or” were omitted;
- (c) in section 77(1), the words “the National Health Service Commissioning Board or” were omitted;
- (d) in section 77(3), the words “the Board, or (as the case may be)” were omitted;
- (e) in section 77(4), the words “the Board, or (as the case may be)” were omitted;
- (f) in section 78(2), for “Monitor must consult” to the end, there were substituted “NHS England must consult such persons as it considers appropriate.”.

(4) The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 apply as if—

- (a) in regulation 1, in paragraph (2), at the appropriate place in the alphabetical order, there were inserted—

““integrated care board” means an integrated care board established under Chapter A3 of Part 2 of the National Health Service Act 2006;”;

- (b) in regulation 3, in paragraph (5)(b), for “14Q, 14R and 14Z1”, there were substituted “14Z33, 14Z34 and 14Z42”;
- (c) in regulation 13—

- (i) in paragraph (4), for “A relevant body”, there were substituted “An integrated care board”;
- (ii) in paragraph (5), in paragraph (a), for “relevant body”, there were substituted “integrated care board”;
- (iii) after paragraph (5), there were inserted—
  - “(6) Where an investigation under paragraph (1) or (2) relates to NHS England, NHS England must make arrangements—
    - (a) for any such investigation to be conducted by an employee of NHS England (“the investigating officer”) who has had no prior involvement with the conduct or alleged failure which is the subject of the investigation;
    - (b) for the investigating officer to be supplied with—
      - (i) such information as the investigating officer may specify for the purposes of an investigation carried out by virtue of paragraph (1) or (2), and
      - (ii) where necessary—
        - (aa) an explanation of such information as is provided by virtue of sub-paragraph (b)(i);
        - (bb) in relation to information kept by means of a computer, for that information to be provided in legible form.
  - (7) NHS England must make arrangements to—
    - (a) minimise the risk of conflicts between its investigatory functions under these Regulations and its other functions, and
    - (b) manage any conflicts that arise.
  - (8) Paragraph (9) applies where, before 1st July 2022—
    - (a) a complaint has been received by Monitor for the purposes mentioned in paragraph (1) but has not been determined by that date, or
    - (b) Monitor on its own initiative has commenced an investigation for the purpose mentioned in paragraph (2) but that investigation has not been concluded by that date.
  - (9) A complaint which has not been determined or investigation which has not been concluded—
    - (a) is to be continued by NHS England, and
    - (b) if it is a complaint or investigation into a clinical commissioning group, is to be treated as though it were a complaint or investigation relating to the integrated care board which has taken on the responsibility for exercising in relation to a person the functions of the clinical commissioning group to which the complaint or investigation relates.
  - (10) Paragraph (11) applies where, on or after 1st July 2022—
    - (a) a complaint is received by NHS England for the purposes mentioned in paragraph (1) in relation to conduct before that date, or
    - (b) NHS England on its own initiative proposes to commence an investigation for the purpose mentioned in paragraph (2) in relation to conduct before that date.
  - (11) On or after 1st July 2022—

- (a) the conduct of a clinical commissioning group before that date it is to be treated as the conduct of the integrated care board which has taken on the responsibility for exercising in relation to a person the functions of the clinical commissioning group to which the complaint or investigation relates, and
  - (b) the complaint or investigation is to be pursued against the integrated care board concerned.”;
- (d) in regulation 15—
- (i) in paragraph (1), for “a relevant body”, there were substituted “an integrated care board”;
  - (ii) in paragraph (2), for “a relevant body”, there were substituted “an integrated care board”;
- (e) after regulation 15, there were inserted—

**“Compliance by NHS England**

**15A.**—(1) Where, following an investigation, NHS England finds it has failed to comply with a requirement imposed by regulations 2 to 12, or by regulations 39, 42 or 43 of the 2012 Regulations, it must take such of the following steps as it deems appropriate in the circumstances—

- (a) put in place measures for the purpose of preventing failures by it to comply with a requirement imposed by regulations 2 to 12, or by regulations 39, 42 or 43 of the 2012 Regulations;
  - (b) put in place measures for the purpose of mitigating the effect of such failures;
  - (c) vary or withdraw an invitation to tender for the provision of health care services for the purposes of the NHS to prevent or remedy a failure by it to comply with a requirement imposed by regulations 2 to 8 and 10;
  - (d) vary an arrangement for the provision of health care services for the purposes of the NHS made in consequence of putting the provision of services out to tender to remedy a failure by it to comply with a requirement imposed by regulations 2 to 8;
  - (e) vary an arrangement for the provision of health care services for the purposes of the NHS to remedy a failure by it to comply with regulation 10;
  - (f) otherwise remedy a failure by it to comply with a requirement referred to in subparagraph (a).
- (2) Nothing in paragraph (1) requires NHS England to hold a competitive tender for a contract for the provision of health care services for the purposes of the NHS.”;
- (f) in regulation 16, for “a relevant body”, there were substituted “an integrated care board”.