



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 1

#### THE HEALTH SERVICE IN ENGLAND

##### *Arrangements for provision of health services*

#### **11 The Secretary of State's duty as to protection of public health**

After section 2 of the National Health Service Act 2006 insert—

##### *“Provision for protection or improvement of public health*

#### **2A Secretary of State's duty as to protection of public health**

- (1) The Secretary of State must take such steps as the Secretary of State considers appropriate for the purpose of protecting the public in England from disease or other dangers to health.
- (2) The steps that may be taken under subsection (1) include—
  - (a) the conduct of research or such other steps as the Secretary of State considers appropriate for advancing knowledge and understanding;
  - (b) providing microbiological or other technical services (whether in laboratories or otherwise);
  - (c) providing vaccination, immunisation or screening services;
  - (d) providing other services or facilities for the prevention, diagnosis or treatment of illness;
  - (e) providing training;
  - (f) providing information and advice;
  - (g) making available the services of any person or any facilities.

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- (3) Subsection (4) applies in relation to any function under this section which relates to—
- (a) the protection of the public from ionising or non-ionising radiation, and
  - (b) a matter in respect of which the Health and Safety Executive has a function.
- (4) In exercising the function, the Secretary of State must—
- (a) consult the Health and Safety Executive, and
  - (b) have regard to its policies.”

## 12 Duties as to improvement of public health

After section 2A of the National Health Service Act 2006 insert—

### “2B Functions of local authorities and Secretary of State as to improvement of public health

- (1) Each local authority must take such steps as it considers appropriate for improving the health of the people in its area.
- (2) The Secretary of State may take such steps as the Secretary of State considers appropriate for improving the health of the people of England.
- (3) The steps that may be taken under subsection (1) or (2) include—
  - (a) providing information and advice;
  - (b) providing services or facilities designed to promote healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way);
  - (c) providing services or facilities for the prevention, diagnosis or treatment of illness;
  - (d) providing financial incentives to encourage individuals to adopt healthier lifestyles;
  - (e) providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment;
  - (f) providing or participating in the provision of training for persons working or seeking to work in the field of health improvement;
  - (g) making available the services of any person or any facilities.
- (4) The steps that may be taken under subsection (1) also include providing grants or loans (on such terms as the local authority considers appropriate).
- (5) In this section, “local authority” means—
  - (a) a county council in England;
  - (b) a district council in England, other than a council for a district in a county for which there is a county council;
  - (c) a London borough council;
  - (d) the Council of the Isles of Scilly;
  - (e) the Common Council of the City of London.”

### **13 Duties of clinical commissioning groups as to commissioning certain health services**

- (1) Section 3 of the National Health Service Act 2006 is amended as follows.
- (2) In subsection (1)—
  - (a) for the words from the beginning to “reasonable requirements” substitute “A clinical commissioning group must arrange for the provision of the following to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility”, and
  - (b) in each of paragraphs (d) and (e) for the words “as he considers” substitute “as the group considers”.
- (3) After that subsection insert—
  - “(1A) For the purposes of this section, a clinical commissioning group has responsibility for—
    - (a) persons who are provided with primary medical services by a member of the group, and
    - (b) persons who usually reside in the group’s area and are not provided with primary medical services by a member of any clinical commissioning group.
  - (1B) Regulations may provide that for the purposes of this section a clinical commissioning group also has responsibility (whether generally or in relation to a prescribed service or facility) for persons who—
    - (a) were provided with primary medical services by a person who is or was a member of the group, or
    - (b) have a prescribed connection with the group’s area.
  - (1C) The power conferred by subsection (1B)(b) must be exercised so as to provide that, in relation to the provision of services or facilities for emergency care, a clinical commissioning group has responsibility for every person present in its area.
  - (1D) Regulations may provide that subsection (1A) does not apply—
    - (a) in relation to persons of a prescribed description (which may include a description framed by reference to the primary medical services with which the persons are provided);
    - (b) in prescribed circumstances.
  - (1E) The duty in subsection (1) does not apply in relation to a service or facility if the Board has a duty to arrange for its provision.”
- (4) After subsection (1E) insert—
  - “(1F) In exercising its functions under this section and section 3A, a clinical commissioning group must act consistently with—
    - (a) the discharge by the Secretary of State and the Board of their duty under section 1(1) (duty to promote a comprehensive health service), and
    - (b) the objectives and requirements for the time being specified in the mandate published under section 13A.”
- (5) Omit subsections (2) and (3).

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- (6) For the heading to section 3 substitute “Duties of clinical commissioning groups as to commissioning certain health services”.
- (7) For the cross-heading preceding section 3 substitute “Arrangements for the provision of certain health services”.
- (8) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) before paragraph (za) insert—
  - “(zza) regulations under section 3(1D),”.

#### **14 Power of clinical commissioning groups as to commissioning certain health services**

After section 3 of the National Health Service Act 2006 insert—

##### **“3A Power of clinical commissioning groups to commission certain health services**

- (1) Each clinical commissioning group may arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement—
  - (a) in the physical and mental health of the persons for whom it has responsibility, or
  - (b) in the prevention, diagnosis and treatment of illness in those persons.
- (2) A clinical commissioning group may not arrange for the provision of a service or facility under subsection (1) if the Board has a duty to arrange for its provision by virtue of section 3B or 4.
- (3) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of this section as they apply for the purposes of that section.”

#### **15 Power to require Board to commission certain health services**

After section 3A of the National Health Service Act 2006 insert—

##### **“3B Secretary of State’s power to require Board to commission services**

- (1) Regulations may require the Board to arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of—
  - (a) dental services of a prescribed description;
  - (b) services or facilities for members of the armed forces or their families;
  - (c) services or facilities for persons who are detained in a prison or in other accommodation of a prescribed description;
  - (d) such other services or facilities as may be prescribed.
- (2) A service or facility may be prescribed under subsection (1)(d) only if the Secretary of State considers that it would be appropriate for the Board (rather than clinical commissioning groups) to arrange for its provision as part of the health service.

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- (3) In deciding whether it would be so appropriate, the Secretary of State must have regard to—
  - (a) the number of individuals who require the provision of the service or facility;
  - (b) the cost of providing the service or facility;
  - (c) the number of persons able to provide the service or facility;
  - (d) the financial implications for clinical commissioning groups if they were required to arrange for the provision of the service or facility.
- (4) Before deciding whether to make regulations under this section, the Secretary of State must—
  - (a) obtain advice appropriate for that purpose, and
  - (b) consult the Board.
- (5) The reference in subsection (1)(b) to members of the armed forces is a reference to persons who are members of—
  - (a) the regular forces within the meaning of the Armed Forces Act 2006, or
  - (b) the reserve forces within the meaning of that Act.”

## **16 Secure psychiatric services**

- (1) Section 4 of the National Health Service Act 2006 (high security psychiatric services) is amended as follows.
- (2) In subsection (1) for the words from the beginning to “duty to provide” substitute “The Board must arrange for the provision of”.
- (3) In subsection (3)—
  - (a) after “may be provided” insert “—  
(a)”,  
and
  - (b) after paragraph (a) insert “, and  
(b) only by a person approved by the Secretary of State for the purposes of this subsection.”
- (4) After subsection (3) insert—

“(3A) The Secretary of State may—

  - (a) give directions to a person who provides high security psychiatric services about the provision by that person of those services;
  - (b) give directions to the Board about the exercise of its functions in relation to high security psychiatric services.”

## **17 Other services etc. provided as part of the health service**

- (1) In section 5 of the National Health Service Act 2006 (other services) for “about the Secretary of State and services under this Act” substitute “about the provision of services for the purposes of the health service in England”.
- (2) Schedule 1 to that Act is amended as follows.
- (3) In paragraph 1 (medical inspection of pupils)—

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- (a) for “The Secretary of State” substitute “A local authority”, and
  - (b) for “local authorities” substitute “the local authority”.
- (4) In paragraph 2—
- (a) in sub-paragraph (1)—
    - (i) for “The Secretary of State” substitute “A local authority”, and
    - (ii) omit “, by arrangement with any local authority”,
  - (b) in sub-paragraph (2)—
    - (i) for “The Secretary of State” substitute “A local authority”,
    - (ii) after “educational establishment” insert “in its area”, and
    - (iii) for “a local authority” substitute “the local authority”, and
  - (c) omit sub-paragraph (3).
- (5) In paragraph 4—
- (a) for “A local authority may not make an arrangement” substitute “A local authority may not provide for any medical inspection or treatment”, and
  - (b) for “the arrangement” substitute “the inspection or (as the case may be) treatment”.
- (6) In paragraph 5—
- (a) omit sub-paragraph (1)(a) and the word “and” immediately following it,
  - (b) in sub-paragraph (2)—
    - (i) omit “local authority or”,
    - (ii) for “the Secretary of State” substitute “a local authority”, and
    - (iii) for “him” substitute “it”.
- (7) In paragraph 7A (weighing and measuring of children)—
- (a) for “The Secretary of State” (in each place it occurs) substitute “A local authority”,
  - (b) in sub-paragraph (1) omit “, by arrangement with any local authority”, and
  - (c) in sub-paragraph (2) —
    - (i) after “any school” insert “in its area”, and
    - (ii) for “a local authority” substitute “the local authority”.
- (8) In paragraph 7B (regulations as to weighing and measuring of children)—
- (a) in sub-paragraph (1)(b) for “by the Secretary of State” substitute “by a local authority”, and
  - (b) in sub-paragraph (1)(d)—
    - (i) for “by the Secretary of State” substitute “by a local authority”, and
    - (ii) after “paragraph 7A” insert “and of any other prescribed information relating to the children concerned”, and
  - (c) in sub-paragraph (2) after “such weighing or measuring” insert “or in relation to information prescribed under sub-paragraph (1)”.
- (9) After paragraph 7B insert—

*“Supply of blood and other human tissues*

7C           The Secretary of State must for the purposes of the health service make arrangements for—

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- (a) collecting, screening, analysing, processing and supplying blood or other tissues,
  - (b) preparing blood components and reagents, and
  - (c) facilitating tissue and organ transplantation.”
- (10) In paragraph 9 (provision of vehicles for disabled persons)—
  - (a) the existing text becomes sub-paragraph (1),
  - (b) in that sub-paragraph—
    - (i) for “The Secretary of State may provide” substitute “A clinical commissioning group may make arrangements for the provision of”, and
    - (ii) for “persons appearing to him to be persons who have a physical impairment” substitute “persons for whom the group has responsibility and who appear to it to have a physical impairment”, and
  - (c) after that sub-paragraph insert—
    - “(2) Subsections (1A), (1B) and (1D) of section 3 apply for the purposes of sub-paragraph (1) as they apply for the purposes of that section.”
- (11) In paragraph 10—
  - (a) in sub-paragraph (1)(a) after “provided” insert “in pursuance of arrangements made”,
  - (b) in sub-paragraph (2) —
    - (i) for “The Secretary of State may” substitute “The clinical commissioning group may make arrangements for”,
    - (ii) in paragraph (a) for “adapt” substitute “the adaptation of”,
    - (iii) in paragraph (b) for “maintain and repair” substitute “the maintenance and repair of”,
    - (iv) in paragraph (c) for “take out” substitute “the taking out of”,
    - (v) in that paragraph for “pay” substitute “the payment of”,
    - (vi) in paragraph (d) for “provide” (in each place it occurs) substitute “the provision of”, and
    - (vii) in that paragraph for “execute” substitute “the execution of”,
  - (c) in sub-paragraph (3) for “The Secretary of State” substitute “A clinical commissioning group”, and
  - (d) in sub-paragraph (5) for “the Secretary of State” substitute “the clinical commissioning group”.
- (12) In paragraph 12 (provision of a microbiological service)—
  - (a) in sub-paragraph (1)—
    - (i) omit paragraph (a) and the word “and” immediately following it,
    - (ii) in paragraph (b) omit “other”, and
    - (iii) in that paragraph for “that service” substitute “a microbiological service provided under section 2A”, and
  - (b) omit sub-paragraph (2).
- (13) For paragraph 13 and the cross-heading preceding it substitute—

*“Powers in relation to research etc.*

- 13 (1) The Secretary of State, the Board or a clinical commissioning group may conduct, commission or assist the conduct of research into—
- (a) any matters relating to the causation, prevention, diagnosis or treatment of illness, and
  - (b) any such other matters connected with any service provided under this Act as the Secretary of State, the Board or the clinical commissioning group (as the case may be) considers appropriate.
- (2) A local authority may conduct, commission or assist the conduct of research for any purpose connected with the exercise of its functions in relation to the health service.
- (3) The Secretary of State, the Board, a clinical commissioning group or a local authority may for any purpose connected with the exercise of its functions in relation to the health service—
- (a) obtain and analyse data or other information;
  - (b) obtain advice from persons with appropriate professional expertise.
- (4) The power under sub-paragraph (1) or (2) to assist any person to conduct research includes power to do so by providing financial assistance or making the services of any person or other resources available.
- (5) In this paragraph, “local authority” has the same meaning as in section 2B.”

**18 Regulations as to the exercise by local authorities of certain public health functions**

- (1) After section 6B of the National Health Service Act 2006 insert—

*“Regulations as to the exercise of functions*

**6C Regulations as to the exercise by local authorities of certain public health functions**

- (1) Regulations may require a local authority to exercise any of the public health functions of the Secretary of State (so far as relating to the health of the public in the authority’s area) by taking such steps as may be prescribed.
- (2) Regulations may require a local authority to exercise its public health functions by taking such steps as may be prescribed.
- (3) Where regulations under subsection (1) require a local authority to exercise any of the public health functions of the Secretary of State, the regulations may also authorise or require the local authority to exercise any prescribed functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).



- (4) The making of regulations under subsection (1) does not prevent the Secretary of State from taking any step that a local authority is required to take under the regulations.
  - (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a local authority of any of its functions under regulations under subsection (1) are enforceable by or against the local authority (and no other person).
  - (6) In this section, “local authority” has the same meaning as in section 2B.”
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zza) insert—
- “(zzb) regulations under section 6C(1) or (2).”

## **19 Regulations relating to EU obligations**

After section 6C of the National Health Service Act 2006 insert—

### **“6D Regulations relating to EU obligations**

- (1) Regulations may require the Board or a clinical commissioning group to exercise a specified EU health function.
- (2) In subsection (1)—
  - (a) “EU health function” means any function exercisable by the Secretary of State for the purpose of implementing EU obligations that concern, or are connected to, the health service, other than a function of making subordinate legislation (within the meaning of the Interpretation Act 1978), and
  - (b) “specified” means specified in the regulations.
- (3) The Secretary of State may give directions to the Board or a clinical commissioning group about its exercise of any of its functions under regulations under subsection (1).
- (4) The making of regulations under subsection (1) does not prevent the Secretary of State from exercising the specified EU health function.
- (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the Board or a clinical commissioning group of any of its functions under regulations under subsection (1) are enforceable by or against the Board or (as the case may be) the group (and no other person).
- (6) The Secretary of State may, for the purpose of securing compliance by the United Kingdom with EU obligations, give directions to the Board or a clinical commissioning group about the exercise of any of its functions.”

## **20 Regulations as to the exercise of functions by the Board or clinical commissioning groups**

- (1) After section 6D of the National Health Service Act 2006 insert—

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**“6E Regulations as to the exercise of functions by the Board or clinical commissioning groups**

- (1) Regulations may impose requirements (to be known as “standing rules”) in accordance with this section on the Board or on clinical commissioning groups.
- (2) The regulations may, in relation to the commissioning functions of the Board or clinical commissioning groups, make provision—
  - (a) requiring the Board or clinical commissioning groups to arrange for specified treatments or other specified services to be provided or to be provided in a specified manner or within a specified period;
  - (b) as to the arrangements that the Board or clinical commissioning groups must make for the purpose of making decisions as to—
    - (i) the treatments or other services that are to be provided;
    - (ii) the manner in which or period within which specified treatments or other specified services are to be provided;
    - (iii) the persons to whom specified treatments or other specified services are to be provided;
  - (c) as to the arrangements that the Board or clinical commissioning groups must make for enabling persons to whom specified treatments or other specified services are to be provided to make choices with respect to specified aspects of them.
- (3) Regulations by virtue of paragraph (b) of subsection (2) may, in particular, make provision—
  - (a) requiring the Board or a clinical commissioning group to take specified steps before making decisions as to the matters mentioned in that paragraph;
  - (b) as to reviews of, or appeals from, such decisions.
- (4) The regulations may—
  - (a) specify matters for which provision must be made in commissioning contracts entered into by the Board or clinical commissioning groups;
  - (b) require the Board to draft terms and conditions making provision for those matters;
  - (c) require the Board or clinical commissioning groups to incorporate the terms and conditions drafted by virtue of paragraph (b) in commissioning contracts entered into by the Board or (as the case may be) clinical commissioning groups.
- (5) The regulations must—
  - (a) require the Board to draft such terms and conditions as the Board considers are, or might be, appropriate for inclusion in commissioning contracts entered into by the Board or clinical commissioning groups (other than terms and conditions that the Board is required to draft by virtue of subsection (4)(a));
  - (b) authorise the Board to require clinical commissioning groups to incorporate terms and conditions prepared by virtue of paragraph (a) in their commissioning contracts;
  - (c) authorise the Board to draft model commissioning contracts.

- (6) The regulations may require the Board to consult prescribed persons before exercising any of its functions by virtue of subsection (4)(b) or (5).
- (7) The regulations may require the Board or clinical commissioning groups in the exercise of any of its or their functions—
  - (a) to provide information of a specified description to specified persons in a specified manner;
  - (b) to act in a specified manner for the purpose of securing compliance with EU obligations;
  - (c) to do such other things as the Secretary of State considers necessary for the purposes of the health service.
- (8) The regulations may not impose a requirement on only one clinical commissioning group.
- (9) If regulations under this section are made so as to come into force on a day other than 1 April, the Secretary of State must—
  - (a) publish a statement explaining the reasons for making the regulations so as to come into force on such a day, and
  - (b) lay the statement before Parliament.
- (10) In this section—
  - (a) “commissioning contracts”, in relation to the Board or clinical commissioning groups, means contracts entered into by the Board or (as the case may be) clinical commissioning groups in the exercise of its or their commissioning functions;
  - (b) “commissioning functions”, in relation to the Board or clinical commissioning groups, means the functions of the Board or (as the case may be) clinical commissioning groups in arranging for the provision of services as part of the health service;
  - (c) “specified” means specified in the regulations.”
- (2) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zzb) insert—
  - “(zzc) regulations under section 6E, except where they do not include provision by virtue of subsection (7)(c) of that section,”.

## **21 Functions of Special Health Authorities**

- (1) Section 7 of the National Health Service Act 2006 (distribution of health service functions) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) The Secretary of State may direct a Special Health Authority to exercise any functions of the Secretary of State or any other person which relate to the health service in England and are specified in the direction.
- (1A) Subsection (1) does not apply to any function of the Secretary of State of making an order or regulations.

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- (1B) Before exercising the power in subsection (1) in relation to a function of a person other than the Secretary of State, the Secretary of State must consult that person.
- (1C) Regulations may provide that a Special Health Authority specified in the regulations is to have such additional functions in relation to the health service in England as may be so specified.”
- (3) Omit subsections (2) and (3).
- (4) For the heading to that section, and for the cross-heading preceding it, substitute “Functions of Special Health Authorities”.
- (5) In section 272 of that Act (orders, regulations, rules and directions), in subsection (6) after paragraph (zzc) insert—
  - “(zzd) regulations under section 7(1C).”.
- (6) In section 273 of that Act (further provision about orders and directions), in subsection (4)(b)—
  - (a) before paragraph (i) insert—
    - “(zi) section 7 about a function of a person other than the Secretary of State,” and
  - (b) in paragraph (i) after “a function” insert “of the Secretary of State”.

## **22 Exercise of public health functions of the Secretary of State**

After section 7 of the National Health Service Act 2006 insert—

### *“Exercise of Secretary of State’s public health functions*

#### **7A Exercise of Secretary of State’s public health functions**

- (1) The Secretary of State may arrange for a body mentioned in subsection (2) to exercise any of the public health functions of the Secretary of State.
- (2) Those bodies are—
  - (a) the Board;
  - (b) a clinical commissioning group;
  - (c) a local authority (within the meaning of section 2B).
- (3) The power conferred by subsection (1) includes power to arrange for such a body to exercise any functions of the Secretary of State that are exercisable in connection with those functions (including the powers conferred by section 12).
- (4) Where the Secretary of State arranges (under subsection (1)) for the Board to exercise a function, the Board may arrange for a clinical commissioning group to exercise that function.
- (5) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a body mentioned in subsection (2) of any function exercisable by it by virtue of this section are enforceable by or against that body (and no other person).

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- (6) Powers under this section may be exercised on such terms as may be agreed, including terms as to payment.”