



Health and Social Care Act 2012

2012 CHAPTER 7

PART 8

THE NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELLENCE

Establishment and general duties

232 The National Institute for Health and Care Excellence

- (1) There is to be a body corporate known as the National Institute for Health and Care Excellence (referred to in this Part as “NICE”).
- (2) Schedule 16 (which makes further provision about NICE) has effect.

233 General duties

- (1) In exercising its functions NICE must have regard to—
 - (a) the broad balance between the benefits and costs of the provision of health services or of social care in England,
 - (b) the degree of need of persons for health services or social care in England, and
 - (c) the desirability of promoting innovation in the provision of health services or of social care in England.

- (2) NICE must exercise its functions effectively, efficiently and economically.

- (3) In this Part—

“health services” means services which must or may be provided as part of the health service in England;

“social care” includes all forms of personal care and other practical assistance provided for individuals who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.

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Functions: quality standards

234 Quality standards

- (1) The relevant commissioner may direct NICE to prepare statements of standards in relation to the provision of—
 - (a) NHS services,
 - (b) public health services, or
 - (c) social care in England.
- (2) In this Part such a statement is referred to as a “quality standard”.
- (3) In preparing a quality standard NICE must consult the public and, for that purpose, may publish drafts of the standard.
- (4) NICE must keep a quality standard under review and may revise it as it considers appropriate.
- (5) A quality standard (and any revised standard)—
 - (a) has no effect unless it is endorsed by the relevant commissioner, and
 - (b) must not be published by NICE unless the relevant commissioner so requires.
- (6) The relevant commissioner may require NICE—
 - (a) to publish the standard (or revised standard) or to disseminate it to persons specified by the relevant commissioner, and
 - (b) to do so in the manner specified by the relevant commissioner.
- (7) NICE must—
 - (a) establish a procedure for the preparation of quality standards, and
 - (b) consult such persons as it considers appropriate in establishing that procedure.
- (8) Subsection (9) applies in a case where the Secretary of State and the Board each has power under this section to give NICE a direction to prepare a quality standard in relation to the same matter or connected matters.
- (9) In such a case—
 - (a) the Secretary of State and the Board may issue a joint direction under subsection (1), and
 - (b) if they do so, NICE must prepare a joint quality standard in respect of the matter or matters concerned.
- (10) In this section “the relevant commissioner”—
 - (a) in relation to a quality standard in relation to the provision of NHS services, means the Board, and
 - (b) in relation to a quality standard in relation to the provision of public health services or of social care in England, means the Secretary of State,
 and a reference to the relevant commissioner in relation to a joint quality standard is a reference to both the Secretary of State and the Board.
- (11) In this Part—

“NHS services” means services the provision of which is arranged by the Board or a clinical commissioning group under the National Health Service Act 2006 (including pursuant to arrangements made under section 7A of the

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National Health Service Act 2006) or section 117 of the Mental Health Act 1983 (after-care);

“public health services” means services provided pursuant to the functions of—

- (a) the Secretary of State under section 2A or 2B of, or paragraph 7C, 8 or 12 of Schedule 1 to, that Act, or
- (b) a local authority under section 2B or 111 of, or paragraphs 1 to 7B or 13 of Schedule 1 to, that Act.

235 Supply of quality standards to other persons

- (1) Regulations may confer powers on NICE in relation to the supply by NICE of quality standards to—
 - (a) devolved authorities;
 - (b) other persons (whether or not in the United Kingdom).
- (2) The regulations may in particular—
 - (a) confer power on NICE to make such adjustments as NICE considers appropriate to a quality standard for the purposes of supplying it as mentioned in subsection (1), and
 - (b) provide for the imposition by NICE of charges for or in connection with the supply of a quality standard as so mentioned.
- (3) Provision made under subsection (2)(b) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.
- (4) In this section “devolved authority” means—
 - (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and
 - (c) the Department of Health, Social Services and Public Safety in Northern Ireland.

236 Advice or guidance to the Secretary of State or the Board

- (1) NICE must give advice or guidance to the Secretary of State or the Board on any quality matter referred to it by the Secretary of State or (as the case may be) the Board.
- (2) “Quality matter”—
 - (a) in relation to the Secretary of State, means any matter in relation to which the Secretary of State has the power to direct NICE to prepare a quality standard, and
 - (b) in relation to the Board, means any matter in relation to which the Board has the power to direct NICE to prepare a quality standard.

Functions: advice, guidance etc.

237 Advice, guidance, information and recommendations

- (1) Regulations may confer functions on NICE in relation to the giving of advice or guidance, provision of information or making of recommendations about any matter concerning or connected with the provision of—

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- (a) NHS services,
 - (b) public health services, or
 - (c) social care in England.
- (2) The regulations may provide that a function conferred under subsection (1)(a)—
- (a) is only exercisable on the direction of the Secretary of State or the Board;
 - (b) is subject to directions given by the Secretary of State or (as the case may be) the Board about NICE’s exercise of the function.
- (3) The regulations may provide that a function conferred under subsection (1)(b) or (c)—
- (a) is only exercisable on the direction of the Secretary of State;
 - (b) is subject to directions given by the Secretary of State about NICE’s exercise of the function.
- (4) Provision made under subsection (2)(b) or (3)(b) must not permit a direction to be given about the substance of advice, guidance or recommendations of NICE.
- (5) The regulations may make provision about—
- (a) the persons who may request or require that advice, guidance, information or recommendations be given, provided or (as the case may be) made by NICE,
 - (b) the publication or other dissemination of the advice, guidance, information or recommendations (whether by NICE, the Secretary of State or the Board), and
 - (c) the imposition by NICE of charges for or in connection with the giving of advice or guidance, provision of information or making of recommendations.
- (6) Provision made under subsection (5)(c) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.
- (7) The regulations must make provision about—
- (a) the establishment by NICE of procedures for the giving of advice or guidance, provision of information or making of recommendations under the regulations, and
 - (b) consultation by NICE in establishing the procedures.
- (8) The regulations may make provision requiring specified health or social care bodies, or health or social care bodies of a specified description, to—
- (a) have regard to specified advice or guidance, or advice or guidance of a specified description, given by NICE pursuant to the regulations;
 - (b) comply with specified recommendations, or recommendations of a specified description, made by NICE pursuant to the regulations.
- (9) Provision made under subsection (8) may require a specified body, or bodies of a specified description, to have regard to advice or guidance or to comply with recommendations—
- (a) generally in the exercise of functions, or
 - (b) in the exercise of specified functions or functions of a specified description.
- (10) But provision made under subsection (8) may impose a requirement on a local authority, or a description of local authorities, only if the requirement relates to—
- (a) the exercise by an authority of any of its functions under section 2B or 111 of, or paragraphs 1 to 7B or 13 of Schedule 1 to, the National Health Service Act 2006;

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- (b) the exercise by an authority of any of its functions by virtue of section 6C(1) or (3) of that Act;
- (c) anything done by an authority in pursuance of arrangements under section 7A of that Act.

(11) In this section—

“health or social care body” means any public body exercising functions in connection with the provision of health services or of social care in England;

“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;

“public body” means a body or other person whose functions—

- (a) are of a public nature, or
- (b) include functions of that nature,

but, in the latter case, the body or person is a public body to the extent only of those functions;

“specified” means specified in the regulations.

238 NICE recommendations: appeals

- (1) Regulations under section 237 may make provision about appeals against recommendations made by NICE pursuant to the regulations.
- (2) The regulations may, in particular, include provision about—
 - (a) the types of recommendations in relation to which an appeal may be brought,
 - (b) the persons who may bring an appeal,
 - (c) the grounds on which an appeal may be brought, and
 - (d) the persons by whom an appeal is to be heard.

239 Training

- (1) Regulations may confer functions on NICE in relation to providing, or facilitating the provision of, training in connection with any matter concerning or connected with the provision of—
 - (a) NHS services,
 - (b) public health services, or
 - (c) social care in England.
- (2) The regulations may provide that a function conferred under subsection (1)(a)—
 - (a) is only exercisable on the direction of the Board;
 - (b) is subject to directions given by the Board about NICE’s exercise of the function.
- (3) The regulations may provide that a function conferred under subsection (1)(b) or (c)—
 - (a) is only exercisable on the direction of the Secretary of State;

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- (b) is subject to directions given by the Secretary of State about NICE’s exercise of the function.
- (4) The regulations may provide for the imposition by NICE of charges for or in connection with the provision, or the facilitation of the provision, of training.
- (5) Provision made under subsection (4) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.

240 Advisory services

- (1) Regulations may confer functions on NICE in relation to the giving of advice to persons (whether or not in the United Kingdom) in relation to any matter concerning or connected with—
 - (a) the provision of health care,
 - (b) the protection or improvement of public health, or
 - (c) the provision of social care.
- (2) The regulations may make provision about the imposition of charges by NICE for or in connection with the giving of such advice.
- (3) Provision made under subsection (2) may include provision for charges to be calculated on the basis NICE considers to be the appropriate commercial basis.
- (4) In this Part “health care” includes all forms of health care provided for individuals whether relating to physical or mental health and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

241 Commissioning guidance

- (1) The Board may direct NICE to exercise any of the Board’s functions in relation to the preparation of the guidance required to be published by the Board under section 14Z8 of the National Health Service Act 2006 (the “commissioning guidance”).
- (2) A direction under subsection (1) may direct NICE to exercise the functions in such manner and within such period as may be specified in the direction.
- (3) If requested to do so, NICE must—
 - (a) provide the Board with information or advice on such matters connected to the Board’s functions in respect of the commissioning guidance as may be specified in the request, and
 - (b) disseminate the commissioning guidance to such persons and in such manner as may be specified in the request.

Functions: other

242 NICE’s charter

- (1) Regulations may make provision requiring NICE to publish a document explaining the functions of NICE and how NICE intends to exercise them (referred to in this section as “the charter”).

- (2) The regulations may, in particular, make provision about—
- (a) the information to be provided in the charter,
 - (b) the timing of preparation of the charter,
 - (c) review and revision by NICE of the charter, and
 - (d) the manner in which the charter must or may be published.

243 Additional functions

- (1) NICE may do any of the following—
- (a) acquire, produce, manufacture and supply goods,
 - (b) acquire land by agreement and manage and deal with land,
 - (c) supply accommodation to any person,
 - (d) supply services to any person and provide new services,
 - (e) provide instruction for any person, and
 - (f) develop and exploit ideas and exploit intellectual property.
- (2) But NICE may exercise a power under subsection (1) only—
- (a) if doing so is connected with the provision of health care or social care, and
 - (b) to the extent that its exercise does not to any significant extent interfere with the performance by NICE of any function it has under or by virtue of any other provision of this Part.
- (3) NICE may—
- (a) charge for anything it does in the exercise of a power under subsection (1), and
 - (b) calculate any such charge on the basis that it considers to be the appropriate commercial basis.

244 Arrangements with other bodies

- (1) NICE may arrange with any person or body to provide, or assist in providing, any service which NICE is required or authorised to provide by virtue of this Part.
- (2) The power under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by or to NICE.

245 Failure by NICE to discharge any of its functions

- (1) The Secretary of State may give a direction to NICE if the Secretary of State considers that—
- (a) NICE—
 - (i) is failing or has failed to discharge any of its functions, or
 - (ii) is failing or has failed properly to discharge any of its functions, and
 - (b) the failure is significant.
- (2) A direction under subsection (1) may direct NICE to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
- (3) If NICE fails to comply with a direction under subsection (1), the Secretary of State may—

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- (a) discharge the functions to which it relates, or
 - (b) make arrangements for any other person to discharge them on the Secretary of State's behalf.
- (4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish reasons for doing so.
- (5) For the purposes of this section, a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service in England or (as the case may be) with what otherwise appears to the Secretary of State to be the purpose for which it is conferred.

246 Protection from personal liability

- (1) Section 265 of the Public Health Act 1875 (which relates to the protection of members and officers of certain authorities from personal liability) has effect as if there were included in the authorities referred to in that section a reference to NICE.
- (2) In its application to NICE as provided for by subsection (1), section 265 of that Act has effect as if any reference in that section to the Public Health Act 1875 were a reference to this Act.

Supplementary

247 Interpretation of this Part

In this Part—

- “the Board” means the National Health Service Commissioning Board;
- “health care” has the meaning given by section 240(4);
- “the health service” has the same meaning as in the National Health Service Act 2006 (see section 275(1) of that Act);
- “health services” has the meaning given by section 233(3);
- “NHS services” has the meaning given by section 234(11);
- “public health services” has the meaning given by section 234(11);
- “quality standard” has the meaning given by section 234(2);
- “social care” has the meaning given by section 233(3).

248 Dissolution of predecessor body

The Special Health Authority known as the National Institute for Health and Clinical Excellence is abolished.

249 Consequential and transitional provision

- (1) Schedule 17 (which contains consequential provision) has effect.
- (2) A statement of standards prepared and published by the Institute before commencement is to be treated on and after commencement as if it were a quality standard—
- (a) prepared and published by NICE in accordance with section 234,
 - (b) endorsed under subsection (5) of that section, and

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- (c) in respect of which the transitional commissioner is the relevant commissioner for the purposes of that section.
- (3) Subsections (4) to (6) apply to a case where before commencement—
- (a) the Secretary of State has referred a matter to the Institute for the purpose of preparing and publishing a statement of standards, but
 - (b) the Institute has not published the statement.
- (4) The referral by the Secretary of State to the Institute of the matter is to be treated on and after commencement as if it were a direction given to NICE by the transitional commissioner for the preparation of a quality standard in relation to that matter under section 234(1); and the transitional commissioner is to be treated as the relevant commissioner for the purposes of that section.
- (5) Anything done by the Institute before commencement in relation to the matter is to be treated on and after commencement as having been done by NICE in pursuance of the direction.
- (6) Consultation with any person undertaken by the Institute before commencement in relation to the matter is to be treated on and after commencement as if it were consultation by NICE under section 234(3) in relation to the preparation of the quality standard.
- (7) A procedure established by the Institute before commencement for the preparation of statements of standards is to be treated on and after commencement as if it were a procedure established by NICE in accordance with section 234(7) for the preparation of quality standards.
- (8) For the purposes of this section “the transitional commissioner” is the Secretary of State; but the Secretary of State, after consulting the Board, may direct that in relation to a particular statement of standards or matter the transitional commissioner is—
- (a) the Board, or
 - (b) both the Secretary of State and the Board.
- (9) In this section—
- “commencement” means the commencement of section 234;
 - “the Institute” means the Special Health Authority known as the National Institute for Health and Clinical Excellence;
 - “statement of standards” means a document containing advice to the Secretary of State in relation to the quality of the provision of health care prepared and published by the Institute pursuant to the directions given to the Institute by the Secretary of State on 27 July 2009.