

SCHEDULES

SCHEDULE 6

Section 55(3)

PART 1: TRANSITIONAL PROVISION

Interpretation

- 1 (1) This paragraph applies for the purposes of this Schedule.
- (2) “The initial period” means the period that—
 - (a) begins with the commencement of section 25, and
 - (b) ends with the day specified by the Secretary of State for the purposes of section 14A of the 2006 Act (as inserted by section 25).
- (3) “An initial application” means an application under section 14B of that Act which is made during the initial period.
- (4) “The Board” means the National Health Service Commissioning Board.
- (5) “The 2006 Act” means the National Health Service Act 2006.

Modification of requirements as to consultation

- 2 (1) If, at any time before the commencement of section 9, the Secretary of State consults a Special Health Authority as to the making of regulations under section 3B of the 2006 Act (as inserted by section 15), the consultation is to be treated for the purposes of subsection (4)(b) of section 3B as consultation with the Board.
- (2) If, at any time before the commencement of section 9, the Secretary of State consults a Special Health Authority about the objectives or requirements to be included in the first mandate published under section 13A of the 2006 Act (as inserted by section 23), the consultation is to be treated for the purposes of subsection (8)(a) of section 13A as consultation with the Board.

Directions under section 7 of the 2006 Act

- 3 (1) This paragraph applies if section 21 is commenced before section 33(1).
- (2) Until section 33(1) is commenced, section 7(1) of the 2006 Act has effect as if after “Special Health Authority” there were inserted “or Strategic Health Authority”.
- (3) Sub-paragraph (4) applies in relation to any direction given under section 7(1) of the 2006 Act to a Strategic Health Authority which has effect immediately before section 21 is commenced.
- (4) Until section 33(1) is commenced, the direction continues to have effect as if given to the Strategic Health Authority under section 7(1) of the 2006 Act (as it has effect by virtue of sub-paragraph (2)).

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- (5) Sub-paragraph (6) applies in relation to any direction given under section 7(2) of the 2006 Act to a Special Health Authority in respect of the functions of a Strategic Health Authority which has effect immediately before section 21 is commenced.
- (6) Until section 33(1) is commenced, the direction continues to have effect as if given to the Special Health Authority in respect of the functions of the Strategic Health Authority under section 7(1) of the 2006 Act.
- (7) Any reference in this paragraph to section 7(1) of the 2006 Act is a reference to that provision as amended by section 21.
- 4 (1) This paragraph applies if section 21 is commenced before section 34(1).
- (2) Until section 34(1) is commenced, section 7(1) of the 2006 Act has effect as if after “Special Health Authority” there were inserted “or Primary Care Trust”.
- (3) Sub-paragraph (4) applies in relation to any direction given under section 7(1) of the 2006 Act to a Primary Care Trust which has effect immediately before section 21 is commenced.
- (4) Until section 34(1) is commenced, the direction continues to have effect as if given to the Primary Care Trust under section 7(1) of the 2006 Act (as it has effect by virtue of sub-paragraph (2)).
- (5) Sub-paragraph (6) applies in relation to any direction given under section 7(2) of the 2006 Act to a Special Health Authority in respect of the functions of a Primary Care Trust which has effect immediately before section 21 is commenced.
- (6) Until section 34(1) is commenced, the direction continues to have effect as if given to the Special Health Authority in respect of the functions of the Primary Care Trust under section 7(1) of the 2006 Act.
- (7) Any reference in this paragraph to section 7(1) of the 2006 Act is a reference to that provision as amended by section 21.
- 5 (1) Sub-paragraph (2) applies in relation to any direction given under section 7(1) of the 2006 Act to a Special Health Authority which has effect immediately before section 21 is commenced.
- (2) The direction continues to have effect on and after the commencement of that section as if given under section 7(1) of the 2006 Act (as amended by section 21).
- (3) The amendment made by section 21(6) does not affect—
- (a) the validity of any direction made by an instrument in writing which continues to have effect by virtue of sub-paragraph (2),
 - (b) any power to vary such a direction otherwise than for the purpose of directing the Special Health Authority concerned to exercise an additional function, or
 - (c) any power to revoke such a direction.
- 6 Any reference in paragraphs 3 to 5 to the commencement of section 21 is to its commencement by virtue of an order under section 306(4) (and not to its commencement for limited purposes by virtue of section 306(1)(d)).

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Exercise of Secretary of State's functions in relation to Primary Care Trusts

- 7 (1) The Secretary of State may, at any time during the initial period, direct the Board to exercise any functions of the Secretary of State that—
- (a) relate to Primary Care Trusts or Strategic Health Authorities, and
 - (b) are specified in the direction.
- (2) Sub-paragraph (1) does not apply to any power or duty of the Secretary of State to make an order or regulations.
- (3) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by the Board of any function exercisable by it by virtue of sub-paragraph (1) are enforceable by or against the Board (and no other person).

Conditional establishment of clinical commissioning groups

- 8 (1) Regulations may make provision authorising the Board to grant an initial application where the Board is not satisfied as to the matters mentioned in section 14C(2) of the 2006 Act.
- (2) In the following provisions of this paragraph, any reference to the grant of an initial application is a reference to the grant of such an application by virtue of the regulations.
- (3) The regulations may authorise the Board to impose conditions on the grant of an initial application.
- (4) The regulations may, in relation to a clinical commissioning group established under section 14D of the 2006 Act on the grant of an initial application, authorise the Board—
- (a) to direct the group not to exercise any functions specified in the direction;
 - (b) to give directions to the group about the exercise of any of its functions.
- (5) If the regulations authorise the Board to give a direction mentioned in sub-paragraph (4)(a), they may also authorise or require the Board to—
- (a) exercise any functions specified in such a direction on behalf of the clinical commissioning group;
 - (b) arrange for another clinical commissioning group to exercise those functions on behalf of the group.
- (6) The 2006 Act applies in relation to a clinical commissioning group established on the grant of an initial application with such modifications as may be specified in the regulations.
- (7) The regulations may, in particular, provide for the power in section 14Z21(7) of the 2006 Act to be exercisable by the Board where a clinical commissioning group is failing or has failed to comply with any conditions imposed by virtue of the regulations.
- (8) The regulations may make provision requiring the Board to keep under review any conditions imposed or directions given by virtue of the regulations.
- (9) The regulations must make provision authorising the Board to vary or remove any conditions imposed, or to vary or revoke any directions given, by virtue of the regulations.

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- (10) The regulations may make provision—
- (a) as to factors which the Board must or may take into account in deciding how to exercise any power conferred on the Board by the regulations;
 - (b) as to the procedure to be followed by the Board before exercising any such power.
- (11) Sub-paragraph (12) applies if all the conditions imposed and directions given in relation to a clinical commissioning group are removed or (as the case may be) revoked.
- (12) In relation to any time after the day on which the clinical commissioning group ceases to be subject to any conditions or directions, the group is to be deemed to have been established by virtue of an application granted under section 14C of the 2006 Act.

Exercise of functions of clinical commissioning groups during initial period

- 9 (1) This paragraph applies to a clinical commissioning group if the application for its establishment is granted under section 14C of the 2006 Act during the initial period.
- (2) The Board may direct that, during that period, the clinical commissioning group may only exercise such of its functions as are specified in the direction.

Preparatory work by clinical commissioning groups

- 10 (1) This paragraph applies to a clinical commissioning group which is prevented by a direction given by virtue of paragraph 8 or 9 of this Schedule from exercising a function.
- (2) The giving of the direction does not prevent the group from doing anything that appears to it to be necessary or expedient for the purpose of preparing it to exercise that function.

Arrangements between PCTs and clinical commissioning groups during initial period

- 11 (1) A Primary Care Trust may at any time during the initial period make arrangements with a clinical commissioning group under which the group exercises any functions of the Primary Care Trust on its behalf.
- (2) Any reference (however expressed) in the following provisions of Chapter A2 of Part 2 of the National Health Service Act 2006 to the functions of a clinical commissioning group includes a reference to the functions of a Primary Care Trust that are exercisable by the group by virtue of sub-paragraph (1)—
- (a) section 14P(1),
 - (b) section 14Q,
 - (c) section 14R(1),
 - (d) section 14T,
 - (e) section 14U(1),
 - (f) section 14V,
 - (g) section 14W(1),
 - (h) section 14X,
 - (i) section 14Y,
 - (j) section 14Z1(1) and (2),

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- (k) section 14Z3(7),
 - (l) section 14Z4(1),
 - (m) section 14Z5(2),
 - (n) section 14Z7(7) insofar as it defines “commissioning functions” in section 14Z8,
 - (o) sections 14Z17(1), 14Z19(1) and 14Z21(1) and (3),
 - (p) in Schedule 1A, paragraphs 3(1) and (3), 6 and 12(9)(b).
- (3) Arrangements made under sub-paragraph (1) do not affect the liability of the Primary Care Trust for the exercise of any of its functions.

Power to make payments to the Board during initial period

- 12 (1) The Secretary of State may make payments to the Board of such amounts as the Secretary of State considers appropriate towards meeting the expenditure of the Board which is attributable to the performance by it of its functions during the initial period.
- (2) Payments under sub-paragraph (1) may be made at such times and on such terms and conditions as the Secretary of State considers appropriate.

Support for clinical commissioning groups during initial period

- 13 (1) A Primary Care Trust may provide assistance or support to a clinical commissioning group during the initial period.
- (2) The assistance that may be provided includes—
- (a) financial assistance, and
 - (b) making the services of the Trust’s employees or any other resources of the Trust available to the group.
- (3) Assistance or support provided under this paragraph may be provided on such terms and conditions, including terms as to payment, as the Trust considers appropriate.
- (4) The Primary Care Trust may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this paragraph.
- (5) A clinical commissioning group must comply with any restrictions imposed under sub-paragraph (4).