



Health Act 2009

2009 CHAPTER 21

PART 1

QUALITY AND DELIVERY OF NHS SERVICES IN ENGLAND

CHAPTER 1

NHS CONSTITUTION

1 NHS Constitution

- (1) In this Chapter the “NHS Constitution” means—
- (a) the document entitled “The NHS Constitution” published by the Secretary of State on 21 January 2009, or
 - (b) any revised version of that document published under section 3 or 4.
- (2) In this Chapter the “Handbook” means—
- (a) the document entitled “The Handbook to the NHS Constitution” published by the Secretary of State on 21 January 2009, or
 - (b) any revised version of that document published under section 5.

2 Duty to have regard to NHS Constitution

- (1) Each of the bodies listed in subsection (2) must, in performing its NHS functions, have regard to the NHS Constitution.
- (2) The bodies are—
- (a) Strategic Health Authorities;
 - (b) Primary Care Trusts;
 - (c) National Health Service trusts;
 - (d) Special Health Authorities;
 - (e) NHS foundation trusts;

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- (f) the Independent Regulator of NHS Foundation Trusts;
 - (g) the Care Quality Commission.
- (3) In subsection (1) an “NHS function” means any function under an enactment which is a function concerned with, or connected to, the provision, commissioning or regulation of NHS services.
- (4) Each person who—
 - (a) provides NHS services under a contract, agreement or arrangements made under or by virtue of an enactment listed in subsection (6), or
 - (b) provides or assists in providing NHS services under arrangements under section 12(1) of the [National Health Service Act 2006 \(c. 41\)](#),
 must, in doing so, have regard to the NHS Constitution.
- (5) Each person who—
 - (a) in pursuance of a contract, agreement or arrangements as mentioned in subsection (4)(a) or (b), makes arrangements (“sub-contracting arrangements”) for another person to provide or assist in providing NHS services, or
 - (b) provides or assists in providing NHS services under sub-contracting arrangements,
 must, in doing so, have regard to the NHS Constitution.
- (6) The enactments referred to in subsection (4)(a) are the following provisions of the [National Health Service Act 2006](#)—
 - (a) section 83(2)(b) (arrangements made by PCTs for provision of primary medical services);
 - (b) section 84(1) (general medical services contracts);
 - (c) section 92 (other arrangements for the provision of primary medical services);
 - (d) section 100(1) (general dental services contracts);
 - (e) section 107(1) (other arrangements for the provision of primary dental services);
 - (f) section 117(1) (general ophthalmic services contracts);
 - (g) section 126(1) (pharmaceutical services);
 - (h) section 127(1) (additional pharmaceutical services);
 - (i) Schedule 12 (local pharmaceutical services schemes).
- (7) In this Chapter “NHS services” means health services provided in England for the purposes of the health service continued under section 1(1) of the [National Health Service Act 2006](#).
- (8) References in this section to the provision of services include references to the provision of services jointly with another person.

3 Availability and review of NHS Constitution

- (1) The Secretary of State must ensure that the NHS Constitution continues to be available to patients, staff and members of the public.
- (2) At least once in any period of 10 years the Secretary of State must carry out a review of the NHS Constitution (referred to in this Chapter as a “10 year review”).

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- (3) The following must be consulted about the NHS Constitution on a 10 year review—
 - (a) patients and bodies or other persons representing patients,
 - (b) staff and bodies or other persons representing staff,
 - (c) carers,
 - (d) local authorities,
 - (e) members of the public,
 - (f) the bodies and persons listed in section 2(2), (4) and (5), and
 - (g) such other persons as the Secretary of State considers appropriate.
- (4) The first 10 year review must be completed not later than 5 July 2018.
- (5) The guiding principles may not be revised as a result of a 10 year review, except in accordance with regulations made by the Secretary of State setting out the revision to be made.
- (6) The Secretary of State must publish the NHS Constitution after any revision made as a result of a 10 year review.
- (7) In this Chapter—
 - “carers” means persons who, as relatives or friends, care for other persons to whom NHS services are being provided;
 - “the guiding principles” means—
 - (a) the 7 principles described in the NHS Constitution published on 21 January 2009 as “the principles that guide the NHS”, or
 - (b) any revised version of those principles set out in the NHS Constitution published under this section or section 4;
 - “patients” means persons to whom NHS services are being provided;
 - “staff” means—
 - (a) persons employed by a body listed in section 2(2) or otherwise working for such a body (whether as or on behalf of a contractor, as a volunteer or otherwise) in, or in connection with, the provision, commissioning or regulation of NHS services;
 - (b) persons employed by a person listed in subsection (4) or (5) of section 2 or otherwise working for such a person (whether as or on behalf of a contractor, as a volunteer or otherwise) in, or in connection with, the provision of NHS services or assistance or the making of arrangements as mentioned in the subsection in question.
- (8) For the purposes of subsection (3), each of the following is a local authority—
 - (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 Common Council of the City of London;
 - (e) the Council of the Isles of Scilly.

4 Other revisions of NHS Constitution

- (1) This section applies to any revision of the NHS Constitution made other than as a result of a 10 year review (including any such revision which revises the guiding principles).

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- (2) Before any revision the Secretary of State must undertake appropriate consultation about the proposed revision.
- (3) The persons consulted must include such patients, staff, members of the public and other persons as appear to the Secretary of State to be affected by the proposed revision.
- (4) The guiding principles may not be revised, except in accordance with regulations made by the Secretary of State setting out the revision to be made.
- (5) The Secretary of State must publish the NHS Constitution after any revision.

5 Availability, review and revision of Handbook

- (1) The Secretary of State must ensure that the Handbook continues to be available to patients, staff and members of the public.
- (2) At least once in any period of 3 years the Secretary of State must carry out a review of the Handbook.
- (3) The first review must be completed not later than 5 July 2012.
- (4) The Secretary of State must publish the Handbook after any revision (whether made as a result of a review under this section or otherwise).

6 Report on effect of NHS Constitution

- (1) The Secretary of State must publish a report every 3 years on how the NHS Constitution has affected patients, staff, carers and members of the public, since the last report was produced under this subsection.
- (2) The first report must be published not later than 5 July 2012.
- (3) The Secretary of State must lay before Parliament a copy of each report under subsection (1).

7 Regulations under section 3 or 4

- (1) The power to make regulations under section 3 or 4 is exercisable by statutory instrument.
- (2) A statutory instrument containing regulations under either of those sections is subject to annulment in pursuance of a resolution of either House of Parliament.

CHAPTER 2

QUALITY ACCOUNTS

8 Duty of providers to publish information

- (1) Each of the bodies listed in subsection (2) must, in accordance with regulations made by the Secretary of State, publish in respect of each reporting period a document containing prescribed information relevant to the quality of—

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- (a) any NHS services that the body provides;
 - (b) any NHS services that, under arrangements made by the body, are provided by a person not listed in subsection (2) or (3);
 - (c) any services that are provided in England and for the provision of which the body provides assistance or support under section 124(1) of the [National Health Service Act 2006 \(c. 41\)](#) (primary ophthalmic services).
- (2) The bodies are—
 - (a) Primary Care Trusts;
 - (b) National Health Service trusts all or most of whose hospitals, establishments and facilities are in England;
 - (c) Special Health Authorities;
 - (d) NHS foundation trusts.
- (3) Each person who—
 - (a) provides NHS services as mentioned in section 2(4)(a),
 - (b) provides or assists in providing NHS services as mentioned in section 2(4)(b), or
 - (c) makes arrangements as mentioned in section 2(5)(a) for another person to provide NHS services,must, in accordance with regulations made by the Secretary of State, publish in respect of each reporting period a document containing prescribed information relevant to the quality of those services.
- (4) References in this section to the provision of services include references to the provision of services jointly with another person.
- (5) The Secretary of State may by regulations provide that subsection (1) or (3) does not apply to prescribed bodies, persons or services, or to bodies, persons or services of a prescribed description.
- (6) In this section “NHS services” has the same meaning as in Chapter 1.

9 Supplementary provision about the duty

- (1) In this section “the provider” means the body or person required to publish a document under section 8.
- (2) For the purposes of that section a reporting period is—
 - (a) the period of 12 months beginning with 1 April 2009, and
 - (b) each subsequent period of 12 months.
- (3) If the Care Quality Commission or a Strategic Health Authority notifies the provider of an error or omission in a document published under that section, the provider must within 21 days of the notification republish the document correcting the error or omission and including a statement explaining the correction.
- (4) A copy of any document published under that section must be sent by the provider to the Secretary of State in any form specified by the Secretary of State for the purpose of enabling the Secretary of State to make the document available to the public.
- (5) Regulations under subsection (1) or (3) of section 8 may in particular make provision—

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- (a) as to the form of a document published under that section and its contents in addition to the prescribed information;
 - (b) imposing duties on the provider for the purpose of ensuring the accuracy of information;
 - (c) as to how and when a document must be published and when a copy must be sent under subsection (4);
 - (d) requiring the provider to have regard to guidance issued by the Secretary of State.
- (6) The provider must at the request of any person provide to that person a copy of any document published by the provider under section 8 relating to a reporting period ending not more than 2 years before the request.
- (7) While subsection (1) or (3) of section 8 applies to the provider, the provider must keep affixed, in a conspicuous place at each of the premises at which the provider provides services to which that subsection applies, a notice stating how the most recent document published by the provider under that section may be obtained.
- (8) Subsection (7) does not apply if—
- (a) the provider does not have control of the premises, or
 - (b) the services are provided by means such that the persons receiving them do not do so at the premises.
- (9) In subsection (7) “premises” includes a vehicle or moveable structure.

10 Regulations under section 8

- (1) The power to make regulations under section 8 is exercisable by statutory instrument.
- (2) A statutory instrument containing regulations under section 8 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The power to make regulations under section 8—
 - (a) may be exercised so as to make the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
 - (b) may be exercised so as to make the same provision for all cases in relation to which the power is exercised, or different provision for different cases;
 - (c) may be exercised so as to make any such provision unconditionally or subject to any specified condition.

CHAPTER 3

DIRECT PAYMENTS

11 Direct payments for health care

In Part 1 of the [National Health Service Act 2006 \(c. 41\)](#), after section 12 insert—

“Direct payments for health care

12A Direct payments for health care

- (1) The Secretary of State may, for the purpose of securing the provision to a patient of anything to which this subsection applies, make payments, with the patient’s consent, to the patient or to a person nominated by the patient.
- (2) Subsection (1) applies to—
 - (a) anything that the Secretary of State may or must provide under section 2(1) or 3(1);
 - (b) anything for which the Secretary of State must arrange under paragraph 8 of Schedule 1;
 - (c) vehicles that the Secretary of State may provide under paragraph 9 of that Schedule.
- (3) Subsection (1) is subject to any provision made by regulations under section 12B.
- (4) If regulations so provide, a Primary Care Trust may, for the purpose of securing the provision for a patient of services that the trust must provide under section 117 of the Mental Health Act 1983 (after-care), make payments, with the patient’s consent, to the patient or to a person nominated by the patient.
- (5) A payment under subsection (1) or under regulations under subsection (4) is referred to in this Part as a “direct payment”.
- (6) A direct payment may be made only in accordance with a pilot scheme under regulations made by virtue of section 12C.

12B Regulations about direct payments

- (1) The Secretary of State may make regulations about direct payments.
- (2) The regulations may in particular make provision—
 - (a) as to circumstances in which, and descriptions of persons and services in respect of which, direct payments may or must be made;
 - (b) as to circumstances in which direct payments may or must be made to a person nominated by the patient;
 - (c) as to the making of direct payments (and, in particular, as to persons to whom payments may or must be made) where the patient lacks capacity to consent to the making of the payments;
 - (d) as to conditions that the Secretary of State or the Primary Care Trust must comply with before, after or at the time of making a direct payment;
 - (e) as to conditions that the patient or (if different) the payee may or must be required to comply with before, after, or at the time when a direct payment is made;
 - (f) as to the amount of any direct payment or how it is to be calculated;
 - (g) as to circumstances in which the Secretary of State or the Primary Care Trust may or must stop making direct payments;

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- (h) as to circumstances in which the Secretary of State or the Primary Care Trust may or must require all or part of a direct payment to be repaid, by the payee or otherwise;
 - (i) as to monitoring of the making of direct payments, of their use by the payee, or of services which they are used to secure;
 - (j) as to arrangements to be made by the Secretary of State or the Primary Care Trust for providing patients, payees or their representatives with information, advice or other support in connection with direct payments;
 - (k) for such support to be treated to any prescribed extent as a service in respect of which direct payments may be made.
- (3) If the regulations make provision in the case of a person who lacks capacity to consent to direct payments being made, they may apply that provision, or make corresponding provision, with or without modifications, in the case of a person who has lacked that capacity but no longer does so (whether because of fluctuating capacity, or regaining or gaining capacity).
- (4) The regulations may provide for a sum which must be repaid to the Secretary of State or the Primary Care Trust by virtue of a condition or other requirement imposed by or under the regulations to be recoverable as a debt due to the Secretary of State or the Primary Care Trust.
- (5) The regulations may make provision—
- (a) for a service in respect of which a direct payment has been made under section 12A(1) to be regarded, only to such extent and subject to such conditions as may be prescribed, as provided or arranged for by the Secretary of State under an enactment mentioned in section 12A(2);
 - (b) displacing functions or obligations of a Primary Care Trust with respect to the provision of after-care services under section 117 of the Mental Health Act 1983, only to such extent and subject to such conditions as may be prescribed.
- (6) In this section—
- (a) “service” includes anything in respect of which direct payments may be made;
 - (b) references to a person lacking capacity are references to a person lacking capacity within the meaning of the Mental Capacity Act 2005.

12C Direct payments pilot schemes

- (1) Regulations under section 12B may provide for the Secretary of State to have power—
- (a) to make pilot schemes in accordance with which direct payments may be made;
 - (b) to include in a pilot scheme, as respects payments to which the scheme applies, any provision within section 12B(2), subject to any provision made by the regulations.
- (2) The regulations may in particular make provision, or provide for the pilot scheme to make provision, as to—
- (a) the geographical area in which a pilot scheme operates;

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- (b) the revocation or amendment of a pilot scheme.
- (3) A pilot scheme must, in accordance with the regulations, specify the period for which it has effect, subject to the extension of that period by the Secretary of State in accordance with the regulations.
- (4) The regulations must make provision as to the review of a pilot scheme, or require the pilot scheme to include such provision.
- (5) Provision as to the review of a pilot scheme may in particular include provision—
 - (a) for a review to be carried out by an independent person;
 - (b) for publication of the findings of a review;
 - (c) as to matters to be considered on a review.
- (6) Those matters may in particular include any of the following—
 - (a) the administration of the scheme;
 - (b) the effect of direct payments on the cost or quality of care received by patients;
 - (c) the effect of direct payments on the behaviour of patients, carers or persons providing services in respect of which direct payments are made.
- (7) After any review of one or more pilot schemes, the Secretary of State may make an order under subsection (8) or (10).
- (8) An order under this subsection is an order making provision for either or both of the following—
 - (a) repealing section 12A(6) and subsections (1) to (4) of this section;
 - (b) amending, repealing, or otherwise modifying any other provision of this Act.
- (9) An order may make provision within subsection (8)(b) only if it appears to the Secretary of State to be necessary or expedient for the purpose of facilitating the exercise of the powers conferred by section 12A(1) or by regulations under section 12A(4).
- (10) An order under this subsection is an order repealing sections 12A, 12B, 12D and this section.

12D Arrangements with other bodies relating to direct payments

- (1) The Secretary of State may arrange with any person or body to give assistance in connection with direct payments.
- (2) Arrangements may be made under subsection (1) with voluntary organisations.
- (3) Powers under this section may be exercised on such terms as may be agreed, including terms as to the making of payments by the Secretary of State.”

12 Jurisdiction of Health Service Commissioner

- (1) The [Health Service Commissioners Act 1993 \(c. 46\)](#) is amended as follows.

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- (2) In section 2B (independent providers subject to investigation) after subsection (1) insert—
 - “(1A) Persons are subject to investigation by the Commissioner if—
 - (a) they are, or were at the time of the action complained of, providing direct payment services, and
 - (b) they are not, or were not at the time of the action complained of, health service bodies.”
- (3) In subsection (5) of that section after “subsection (1)” insert “or (1A)”.
- (4) In section 3(1C) (complaints against independent providers) after “(of whatever kind)” insert “, or has undertaken to provide direct payment services,”.
- (5) In section 7(2) (contractual or commercial transactions) after paragraph (a) insert—
 - “(aa) matters arising from arrangements for the provision of direct payment services,”.
- (6) In section 14 (reports by the Commissioner), in subsection (2C)(e) after “independent provider” insert “(in a case within section 2B(1))”.
- (7) In section 19 (interpretation) after the definition of “the Court” insert—
 - ““direct payment services” means services in respect of which direct payments have been made under section 12A(1), or under regulations under section 12A(4), of the National Health Service Act 2006;”.

13 Direct payments: minor and consequential amendments

Schedule 1 (which makes minor and consequential amendments relating to direct payments, including in the case of section 117 of the [Mental Health Act 1983 \(c. 20\)](#), social care direct payments) has effect.

CHAPTER 4

INNOVATION

14 Innovation prizes

- (1) The Secretary of State may make payments as prizes to promote innovation in the provision of health services in England.
- (2) A prize may relate to—
 - (a) work at any stage of innovation (including research);
 - (b) work done at any time (including work before the commencement of this section).
- (3) The Secretary of State may establish a committee to give advice about the exercise of the power conferred by subsection (1), and may pay remuneration, allowances and expenses to members.