

1999 No. 2337

NATIONAL HEALTH SERVICE, ENGLAND

**The Primary Care Trusts (Consultation on Establishment,
Dissolution and Transfer of Staff) Regulations 1999**

<i>Made</i> - - - -	<i>18th August 1999</i>
<i>Laid before Parliament</i>	<i>18th August 1999</i>
<i>Coming into force</i>	<i>8th September 1999</i>

The Secretary of State for Health, in exercise of powers conferred on him by sections 16A(5), 17, 18 and 126(4) of, and paragraph 2(d) of Schedule 7 to, the National Health Service Act 1977(a) and section 5(2) of, and paragraphs 29(3) and 30(3) of Schedule 2 to, the National Health Service and Community Care Act 1990(b), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999 and shall come into force on 8th September 1999.

(2) In these Regulations—

“the Act” means the National Health Service Act 1977;

“the 1990 Act” means the National Health Service and Community Care Act 1990;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997(c);

“community health services” means any services which the Secretary of State may provide under section 3(1)(d) or (e) of, or Schedule 1 to, the Act and any service which he has a duty to provide under section 5(1) or (1A) of that Act(d);

“health care professional” means—

(a) 1977 c. 49. Section 16A is inserted by the Health Act 1999 (c. 8) (“the 1999 Act”), section 2(1); section 17 was substituted by the Health Authorities Act 1995 (c. 17) (“the 1995 Act”), Schedule 1, paragraph 8; section 18 was amended by the 1995 Act, Schedule 1, paragraph 9; section 126(4) was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 65(2), and the 1999 Act, Schedule 4, paragraph 37(5); paragraph 2(d) of Schedule 7 was substituted by the Health and Social Security Act 1984 (c. 48), Schedule 3, paragraph 15, and amended by the 1995 Act, Schedule 1, paragraph 62(a). See section 128(1), as amended by the 1990 Act, section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. The functions of the Secretary of State under these provisions of the 1977 and 1990 Acts are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672.

(b) 1990 c. 19. Section 5(2) was substituted by paragraph 69(b) of Schedule 1 to the 1995 Act.

(c) 1997 c. 46.

(d) Section 5(1) was amended by the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”), section 25 and Schedule 3; section 5(1A) and (1B) was inserted by the 1988 Act, section 10(1); Schedule 1 was amended by the 1988 Act, Schedule 2, paragraph 7, and the Education Act 1996 (c. 56), Schedule 37, paragraph 46.

- (a) a medical or dental practitioner;
- (b) a registered nurse, midwife or health visitor;
- (c) a registered pharmacist;
- (d) an ophthalmic optician, other than a body corporate, enrolled in the list kept under section 9 of the Opticians Act 1989(a);
- (e) a person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960(b) extends;
- (f) a registered osteopath as defined by section 41 of the Osteopaths Act 1993(c); or
- (g) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994(d);

“Part II services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services under the Act;

“practice patient” means–

- (a) in relation to a medical practitioner who practises otherwise than in partnership, an individual who is on that practitioner’s list of patients (or, if that practitioner and one or more other medical practitioners together have a single list of patients in connection with a pilot scheme under the 1997 Act(e), an individual who is on that single list);
- (b) in relation to a medical practitioner who is one of two or more practitioners who practise in partnership with each other, an individual who is on the list of patients of any of those practitioners (or, if any of those practitioners together have a single list of patients in connection with a pilot scheme under the 1997 Act, an individual who is on that single list);

“Primary Care Group” means a committee appointed under regulation 14(1) of the Health Authorities (Membership and Procedure) Regulations 1996(f) in accordance with the Secretary of State’s directions of 15th October 1998 and exercising functions in accordance with the Secretary of State’s directions of 25th March 1999(g);

“private carer” means, in relation to the provision of care, a person who is not employed to provide the care in question by any body in the exercise of its functions under any enactment;

“relevant Health Authority” means, in relation to a medical practitioner, a Health Authority which is construed as the relevant Health Authority in accordance with section 15(1B) and (1BA) of the Act(h);

“relevant Primary Care Trust” means, in relation to a medical practitioner, the Primary Care Trust–

- (a) which is in the area of the Health Authority which is the practitioner’s relevant Health Authority, and
- (b) in whose area live the largest number of the practice patients who are resident in the area of that authority;

“staff representatives” means–

- (a) in the case of an order under paragraph 20(1) of Schedule 5A of the Act (transfer of property etc. on dissolution of a Primary Care Trust)(i), such persons as the Primary Care Trust which is to be dissolved may recognise as representing persons

(a) 1989 c. 44.

(b) 1960 c. 66.

(c) 1993 c. 21.

(d) 1994 c. 17.

(e) See section 1 of the National Health Service (Primary Care Act) 1997 (c. 46) for the definition of “pilot scheme”.

(f) S.I. 1996/707 as amended by S.I. 1997/2991, 1998/648 and 1998/2621.

(g) A copy of the directions may be obtained by writing to the Department of Health, PC-GMS, Room 7E60, Quarry House, Leeds LS2 7UE.

(h) Section 15(1B) and (1BA) were inserted by the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 4(3).

(i) Schedule 5A is inserted by the 1999 Act, Schedule 1.

who are employed by that Trust and who are, in its opinion, likely to be affected by the order;

- (b) in the case of an order under paragraph 23(1) of Schedule 5A of the Act (transfer of staff to a Primary Care Trust), such persons as the Health Authority, NHS trust, or Primary Care Trust from which employees are to be transferred may recognise as representing those employees who are, in their opinion, likely to be affected by the order.

(3) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations, and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in the regulation.

Consultation requirements for PCT orders

2.—(1) Before the Secretary of State may make a PCT order establishing a Primary Care Trust the Health Authority within whose area the Primary Care Trust is to be established must—

- (a) refer the proposal to establish the Primary Care Trust to any of the authority's Primary Care Groups which exercise functions in relation to persons for whom the Primary Care Trust will be responsible, other than a Primary Care Group which has initiated or formulated the proposal, for them to consider and make recommendations; and
- (b) consult the persons to which paragraph (2) applies.

(2) The persons referred to in paragraph (1)(b) are—

- (a) any Community Health Council within whose area falls, wholly or partly, the area of the Primary Care Trust to be established;
- (b) any local authority whose area falls wholly or partly within the area of the Primary Care Trust to be established;
- (c) any NHS trust which provides community health services to the persons for whom the Primary Care Trust is to be responsible, except where the level of services is, in the opinion of the Health Authority, not significant;
- (d) the Local Medical Committee for the area of the Health Authority, and such other bodies, if any, as appear to the Health Authority to be appropriate to represent those health care professionals—
 - (i) providing, or assisting the provision of, Part II services or community health services; or
 - (ii) performing, or assisting the performance of, services in connection with a pilot scheme under the 1997 Act,

for the benefit of persons for whom the Primary Care Trust is to be responsible;

- (e) such voluntary organisations as appear to the Health Authority to be appropriate to represent—
 - (i) the interests of persons who are provided with services under the 1977 Act and for whom the Primary Care Trust is to be responsible; or
 - (ii) the interests of private carers who provide care to such persons;
- (f) such other persons as the Health Authority consider appropriate.

(3) For the purposes of this regulation, the persons for whom a Primary Care Trust is to be responsible are—

- (a) the practice patients of the medical practitioners providing general medical services under the Act, or performing personal medical services in connection with a pilot scheme under the 1997 Act, in respect of whom the trust will be the relevant Primary Care Trust;
- (b) those usually resident in the area for which the trust is to be established and who are not practice patients of any medical practitioner providing general medical services under the Act or performing personal medical services in connection with a pilot scheme under the 1997 Act.

Consultation on amendment of a PCT order or dissolution

3.—(1) Subject to paragraph (3), before the Secretary of State may make an order under section 16A(2) (PCT orders), which has the effect of—

- (a) removing, wholly or partly, any restriction or prohibition in a PCT order which prevents a Primary Care Trust from providing services directly to patients in the exercise of functions conferred on it under section 17A(1) of the Act (Health Authorities' directions: distribution of functions)(a);
- (b) changing the area of a Primary Care Trust, unless it appears to the Secretary of State that the change is not sufficiently significant to require consultation; or
- (c) dissolving a Primary Care Trust,

the Health Authority in whose area the trust is established must consult the persons to which paragraph (4) applies.

(2) Before the Secretary of State may make an order under section 16A(2), other than an order establishing a Primary Care Trust or an order in the circumstances to which paragraph (1) applies, the Health Authority must consult the Primary Care Trust in respect of which the order is to be made.

(3) If it appears to the Secretary of State necessary to dissolve a Primary Care Trust as a matter of urgency, the consultation requirements imposed by paragraph (1) shall not apply.

(4) The persons referred to in paragraph (1) are—

- (a) the Community Health Council within whose area falls, wholly or partly, the area of the Primary Care Trust;
- (b) any local authority whose area falls wholly or partly within the area of the Primary Care Trust;
- (c) any NHS trust which provides community health services to the persons for whom the Primary Care Trust is responsible, except where the level of services is, in the opinion of the Health Authority, not significant;
- (d) the Local Medical Committee for the area of the Health Authority, and such other bodies, if any, as appear to the Health Authority to be appropriate to represent those health care professionals—
 - (i) providing, or assisting the provision of, Part II services or community health services; or
 - (ii) performing, or assisting the performance of, services in connection with a pilot scheme under the 1997 Act, for the benefit of persons for whom the Primary Care Trust is responsible;
- (e) such voluntary organisations as appear to the Health Authority to be appropriate to represent—
 - (i) the interests of persons who are provided with services under the 1977 Act and for whom the Primary Care Trust is responsible; or
 - (ii) the interests of private carers who provide care to such persons;
- (f) such other persons as the Health Authority consider appropriate.

(5) For the purposes of this regulation, the persons for whom a Primary Care Trust is responsible are—

- (a) the practice patients of the medical practitioners providing general medical services under the Act, or performing personal medical services in connection with a pilot scheme under the 1997 Act, in respect of whom the trust is the relevant Primary Care Trust;
- (b) those usually resident in the area for which the trust is established and who are not practice patients of any medical practitioner providing general medical services under the Act or performing personal medical services in connection with a pilot scheme under the 1997 Act.

(a) Section 17A is inserted by the 1999 Act, section 12.

Consultation on staff transfers

4.—(1) Before the Secretary of State may make an order under paragraph 20(1) of Schedule 5A to the Act (transfer of property etc. on dissolution of a Primary Care Trust)(a) the Health Authority in whose area the Primary Care Trust to be dissolved is established must consult staff representatives.

(2) Before the Secretary of State may make an order under paragraph 23(1) of Schedule 5A to the Act (transfer of staff to a Primary Care Trust) the Health Authority in whose area the Primary Care Trust to which employees are to be transferred is established must consult staff representatives.

Reporting the results of consultation

5. Within the period of 14 days beginning on the date on which a consultation required by these Regulations ends, or such longer period as the Secretary of State may determine, the Health Authority must—

- (a) send to the Secretary of State any written documentation published by the Authority for the purposes of the consultation, and such other documents or information as the Secretary of State may require;
- (b) report the results of the consultation to the Secretary of State and provide copies of any written responses to the consultation; and
- (c) advise the Secretary of State on whether he should make the order.

Combination of consultations

6.—(1) Where the Secretary of State proposes to make—

- (a) an order establishing a Primary Care Trust or an order which has the effect set out in regulation 3(1)(a) above; and
- (b) an order under paragraph 23(1) of Schedule 5A to the Act transferring employees of a Health Authority, NHS trust or other Primary Care Trust to that Trust,

the consultation required by regulation 4(2) may be combined with the consultation required by regulation 2 or, as the case may be, regulation 3.

(2) Where the Secretary of State proposes to make—

- (a) an order dissolving a Primary Care Trust; and
- (b) an order under paragraph 20(1) of Schedule 5A to the Act transferring the property, rights and liabilities of the Trust to be dissolved,

the consultation required by regulation 4(1) may be combined with the consultation required by regulation 3.

(3) Where the Secretary of State proposes to make—

- (a) a PCT order establishing a Primary Care Trust;
- (b) an order dissolving a Primary Care Trust; and
- (c) an order under paragraph 20(1) of Schedule 5A to the Act transferring the property, rights and liabilities of the Trust to be dissolved to the Trust to be established by the order referred to in paragraph (a),

the consultations required by regulations 2, 3 and 4(1) may be combined.

(4) Subject to paragraph (6), where the Secretary of State proposes to make—

- (a) a PCT order establishing a Primary Care Trust;
- (b) an order under paragraph 29 of Schedule 2 to the 1990 Act dissolving an NHS trust; and
- (c) an order under paragraph 30 of Schedule 2 to the 1990 Act transferring the property, rights and liabilities of the NHS trust to be dissolved to the Primary Care Trust to be established,

(a) An order under paragraph 20(1) may provide for the transfer of staff; *see* paragraph 26 of Schedule 5A to the 1977 Act.

the consultation required by regulation 2 may be combined with the consultations required by regulation 2(4) and (6) of the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996(a).

- (5) Subject to paragraph (6), where the Secretary of State proposes to make—
- (a) an order under section 5(1) of the 1990 Act establishing an NHS trust;
 - (b) an order dissolving a Primary Care Trust; and
 - (c) an order under paragraph 20(1) of Schedule 5A to the Act transferring the property, rights and liabilities of the Primary Care Trust to be dissolved to the NHS trust to be established,

the consultations required by regulations 3 and 4(1) may be combined with the consultation required by regulation 2(1) of the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996.

(6) Paragraphs (4) and (5) apply only if the Secretary of State has directed the Health Authority in whose area the Primary Care Trust is to be established to conduct the consultation required by the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996.

- (7) If—
- (a) a Health Authority is required to consult by regulation 3(1), otherwise than in respect of an order dissolving a Primary Care Trust; and
 - (b) the proposal which is to form the subject matter of that consultation constitutes, or forms part of, a proposal for a substantial development or variation in the health service in respect of which the Authority is required to consult under regulation 18(1) of the Community Health Council Regulations 1996(b),

the Authority may combine the consultation required by regulation 3(1) of these Regulations with the consultation required by regulation 18(1) of those Regulations.

Signed by authority of the Secretary of State for Health

John Hutton
Parliamentary Under Secretary of State,
Department of Health

18th August 1999

(a) S.I. 1996/653.
(b) S.I. 1996/640.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the consultation requirements which must be complied with before the Secretary of State may make or amend an order establishing a Primary Care Trust (regulations 2 and 3). They also set out the consultation requirements which must be complied with before the Secretary of State may make an order dissolving a Primary Care Trust or an order transferring the property, rights, liabilities and staff of a dissolving Trust (regulations 3 and 4(1)).

In addition, these Regulations prescribe the consultation requirements which must be complied with before the Secretary of State may make an order transferring to a Primary Care Trust the staff of a Health Authority, an NHS trust or another Primary Care Trust (regulation 4(2)).

Regulation 5 requires the Health Authority conducting the consultation to report the results to the Secretary of State and provide him with advice on whether to make the relevant order.

Regulation 6 provides that certain consultations required by these Regulations may be combined with certain other consultations under these Regulations, the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996 (“the NHS Trusts Regulations”) or the Community Health Councils Regulations 1996. In particular, the effect of this regulation and regulation 2(8) of the NHS Trusts Regulations is that where the dissolution of a Primary Care Trust or an NHS trust is to be associated with the establishment of a new Trust, the consultation required in connection with the dissolution may be combined with the consultation required in relation to the establishment of the new Trust.

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