

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (MANDATE REQUIREMENTS)
REGULATIONS 2017

2017 No. 445

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Secretary of State for Health publishes an annual mandate for the National Health Service Commissioning Board (subsequently referred to in this document by its operational name, NHS England). Through the mandate, the Secretary of State sets the objectives to be achieved and any requirements necessary with which NHS England must comply in meeting those objectives for the year ahead. These Regulations give effect to requirements in the mandate for the 2017-18 financial year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 13A of the National Health Service Act 2006 (the “NHS Act 2006”) requires the Secretary of State to publish and lay before Parliament a mandate to NHS England before the start of each financial year (1 April to the following 31 March).
- 4.2 The mandate sets out objectives that NHS England must seek to achieve, and any requirements with which it must comply. Under section 13A(9) of the NHS Act 2006, requirements in the mandate must be underpinned by regulations.
- 4.3 Amendments to the NHS Act 2006, made by section 121 of the Care Act 2014, make provision at section 223B(6) to (8) and section 223GA for a fund for the integration of health and social care services, and for particular requirements relating to expenditure on integration to be included in the mandate.
- 4.4 The mandate for 2017-18, published and laid before Parliament on 20 March 2017, includes objectives and requirements relating to: NHS England complying with its responsibilities and delegated authorities as set out in the *Framework Agreement between the Department of Health and NHS England*¹ and *Managing Public Money*²; and the integration of health and social care.

¹ <https://www.gov.uk/government/publications/framework-agreement-between-dh-and-nhs-england>

5. Extent and Territorial Application

5.1 This instrument extends to England.

5.2 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

Framework Agreement between the Department of Health and NHS England, and Managing Public Money

7.1 The *Framework Agreement between the Department of Health and NHS England* defines the critical elements of the relationship between the Department of Health and NHS England. As with all Framework Agreements, it sets out how both NHS England and the Department of Health must discharge their accountability responsibilities effectively.

7.2 The *Framework Agreement between the Department of Health and NHS England* outlines that NHS England will adhere to the delegated authorities issued to it by the Department of Health, including those areas where NHS England must obtain the Department of Health's written approval before proceeding.

7.3 This is underpinned by *Managing Public Money* which states that Accounting Officers are responsible for ensuring that prior HM Treasury approval is obtained in all cases where it is needed, including securing HM Treasury approval for any expenditure outside the normal delegations or outside the subheads of Estimates.

7.4 The mandate requires NHS England to:

- comply with its responsibilities and delegated authorities as set out in the *Framework Agreement between the Department of Health and NHS England and Managing Public Money*.

Better Care Fund

7.5 With an ageing population, and higher prevalence of people living with one or more long term conditions, there is a greater need for integrated services across health and social care settings.

7.6 In the last Parliament, in order to encourage more integrated commissioning the Government established the Better Care Fund ("BCF"). The BCF requires every clinical commissioning group ("CCG") to hold a pooled budget with a local authority, and agree a joint plan to commission services which are more joined up and person centred. This was underpinned by the mandate to NHS England for 2015-16 and the mandate to NHS England for 2016-17.

7.7 The mandate to NHS England for 2017-18 builds on the key requirements in relation to the creation and management of the BCF. As with previous years, further detail about the funding, planning and assurance, national conditions and metrics for the

² <https://www.gov.uk/government/publications/managing-public-money>

BCF are contained in the Integration and Better Care Fund Policy Framework for 2017-19, which will be published in March 2017.

- 7.8 In relation to the BCF, the mandate requires NHS England to:
- ring-fence £3.582bn within its allocation to CCGs to establish the Better Care Fund in 2017-18, and ensure the amount spent from within this on schemes identified in Better Care Fund plans as ‘social care’ in 2016-17 is maintained in line with inflation in every area (Better Care Fund national condition 2);
 - consult the Department of Health and the Department for Communities and Local Government before approving BCF plans drawn up by each local area; and
 - consult the Department of Health and the Department for Communities and Local Government before exercising its powers in relation to failure to meet specified conditions attached to the Better Care Fund as set out in the Integration and Better Care Fund Policy Framework.

Consolidation

- 7.9 None.

8. Consultation outcome

- 8.1 There was no consultation on the regulations themselves. The Secretary of State must consult NHS England, Healthwatch England and any other persons he considers appropriate before specifying objectives or requirements in the mandate. NHS England and Healthwatch England were consulted on the mandate and its objectives and requirements.

9. Guidance

- 9.1 There is no guidance on the regulations. The mandate is published on the Department of Health section of the Government website:
<https://www.gov.uk/government/publications/nhs-mandate-2017-to-2018>.
- 9.2 The Integration and Better Care Fund Policy Framework for 2017-19 sets out the approach agreed across Government departments and national partners for the implementation of the BCF. The framework will be published in March 2017.
- 9.3 Hard copies of the mandate can be obtained by writing to: Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector relates to the requirements imposed on NHS England specifically to ring-fence the funding allocated to CCGs for the BCF, and consult with ministers or departments in certain situations. Beyond this, the impact will vary as the plans are locally defined, however the purpose of pooled budgets is to provide greater efficiency in the services provided and encourage conversations between different services in order to integrate care. An impact assessment for the BCF was prepared when the policy was designed and a link is provided below. Hard copies can be obtained by writing to the address at paragraph 9.3 above. However, it should be noted that the policy and the approach to delivery has evolved considerably since this was written at the outset of the passage of the Care Act 2014 through Parliament.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275531/Better_Care_Fund.pdf

10.3 As NHS England already complies with its responsibilities and delegated authorities as set out in the *Framework Agreement between the Department of Health and NHS England and Managing Public Money*, there is no impact on the public sector.

10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 NHS England's progress against the mandate's objectives, and its compliance with the requirements, is monitored throughout the financial year. The mandate to NHS England is renewed on an annual basis and a new mandate must be laid and published before the next financial year. These Regulations will therefore expire on 31 March 2018, when the mandate to which they apply expires.

13. Contact

13.1 Graham Sale at the Department of Health (telephone: 020 7210 5872 or email: Graham.Sale@dh.gsi.gov.uk) can answer any queries regarding the instrument.