
STATUTORY INSTRUMENTS

2022 No. 734

**The Health and Care Act 2022 (Commencement No. 2
and Transitional and Saving Provision) Regulations 2022**

PART 6

**Transitional and saving provision in relation
to the abolition of Monitor and the Authority**

Transitional and saving provision: licensing criteria set by Monitor

6. Any criteria which—

- (a) have been set under section 86(1) (licensing criteria) of the 2012 Act; and
- (b) are in force immediately before 1st July 2022,

are to be treated on and after that date as if they were set by NHS England.

**Transitional provision: investigations of Monitor by the Parliamentary Commissioner of
Administration**

7.—(1) The amendment made by paragraph 3 of Schedule 5 (abolition of Monitor and transfer of its functions) to the 2022 Act does not prevent the Parliamentary Commissioner Act 1967⁽¹⁾ (the “1967 Act”) from applying to an action taken by or on behalf of Monitor before 1st July 2022 (a “relevant action”).

(2) For the purposes of an investigation—

- (a) in respect of a relevant action; and
- (b) which is commenced on or after 1st July 2022,

Schedule 2 to the Parliamentary Commissioner Act 1967 applies as if it includes an entry for NHS England.

(3) Where—

- (a) an investigation in respect of a relevant action is concluded on or after 1st July 2022, and
- (b) section 10(2) of the 1967 Act⁽²⁾ would, had the investigation concluded before 1st July 2022, have required the Commissioner to send a report of the results of the investigation to the principal officer of Monitor,

the Commissioner must instead send such a report to the principal officer of NHS England.

- (4) In this regulation, “Commissioner” has the meaning given by section 12(1) of the 1967 Act⁽³⁾.

⁽¹⁾ 1967 c. 13.

⁽²⁾ Section 10 was amended by paragraph 5(2) to (6) of the Domestic Violence, Crime and Victims Act 2004 (c. 28).

⁽³⁾ There are amendments to section 12(1), but none is relevant.

Transitional provision: investigations of the Authority by the Health Service Commissioner

8.—(1) Where—

- (a) an investigation in respect of an action taken by or on behalf of the Authority before 1st July 2022 is concluded on or after 1st July 2022, and
- (b) section 14 of the Health Service Commissioners Act 1993(4) (“the 1993 Act”) would, had the investigation concluded before 1st July 2022, have required the Commissioner to send a report of the results of the investigation to the Authority,

the Commissioner must instead send such a report to NHS England.

(2) In this regulation, “Commissioner” has the meaning given by section 1(2) of the 1993 Act(5).

Transitional provision in relation to requests from Monitor to the Health and Social Care Information Centre to establish information systems

9.—(1) Paragraph (2) applies where, before 1st July 2022, Monitor has requested the Health and Social Care Information Centre(6) (“the Information Centre”) to establish and operate a system for the collection or analysis of information under section 255 of the 2012 Act (powers to request Information Centre to establish information systems) and the request—

- (a) has not been complied with;
- (b) has been partially complied with; or
- (c) continues to be complied with.

(2) In the circumstances described in paragraph (1), the request is to be treated as a direction by NHS England to the Information Centre under section 254 of the 2012 Act (powers to direct Information Centre to establish information systems) to establish and operate a system for the collection or, as the case may be, analysis of the information.

(3) For the purposes of paragraph (2)—

- (a) section 254 of the 2012 Act is to be read as if subsection (3) and, insofar as it refers to NHS England(7), subsection (5), were omitted;
- (b) section 258 of the 2012 Act (information systems: supplementary) is to be read as if subsection (1) were omitted.

Transitional and saving provision: Monitor’s annual accounts and annual report

10.—(1) This regulation applies where, immediately before 1st July 2022, a duty (the “undischarged duty”) imposed under the following provisions of Schedule 8 to the 2012 Act had not been discharged in respect of any period before 1st July 2022—

- (a) paragraph 19 (Monitor annual accounts);
- (b) paragraph 21(1) to (3) (Monitor annual report).

(2) The provision which imposes the undischarged duty continues to apply—

(4) 1993 c. 46. Section 14 was amended by S.I. 1996/970; paragraph 11(5) of Schedule 9 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43); S.I. 2004/1823; paragraphs 44 and 45(2) and (3) of Schedule 6 to the Public Services Ombudsman (Wales) Act 2005 (c. 10); section 12(6) of the Health Act 2009 (c. 21); section 201 of, and paragraph 70(2), (3), (4) and (5) of Schedule 5 to, the 2012 Act; and section 1(2) and (3) of the Health Service Commissioner for England (Complaint Handling) Act 2015 (c. 29).

(5) Section 1 was amended by S.I. 2004/1823 and paragraphs 29 and 30(2) to (4) of Schedule 6 to the Public Services Ombudsman (Wales) Act 2005.

(6) The Health and Social Care Information Centre (known as NHS Digital) is a body corporate established under section 252(1) of the 2012 Act.

(7) Paragraph 1 of Schedule 1 to the 2022 Act substitutes “NHS England” for references to “the Board” in section 254 of the 2012 Act.

- (a) so far as it relates to the undischarged duty; and
- (b) where the duty is imposed on Monitor, as if the undischarged duty were imposed on NHS England.

Transitional and saving provision: the Authority’s annual accounts

11.—(1) This regulation applies where, immediately before 1st July 2022, a duty (the “undischarged duty”) imposed under the following provisions of Schedule 15 (accounts and audit) to the 2006 Act had not been discharged in relation to the Authority in respect of any period before 1st July 2022—

- (a) paragraph 3 (NHS bodies annual accounts);
 - (b) paragraph 5(3)(**8**) (transmission of annual accounts);
 - (c) paragraph 6(**9**) (auditing of certain Special Health Authority accounts).
- (2) The provision which imposes the undischarged duty continues to apply—
- (a) so far as it relates to the undischarged duty; and
 - (b) where the duty is imposed on the Authority, as if the undischarged duty were imposed on NHS England.

Transitional and saving provision: the Authority’s reports

12.—(1) This regulation applies where, immediately before 1st July 2022, the Authority had not complied with the duty to prepare an annual report in respect of any period before 1st July 2022 imposed under—

- (a) direction 8(b) (the “direction”) of the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016(**10**), together with
 - (b) regulation 14 of the National Health Service Trust Development Authority Regulations 2012(**11**) (the “2012 Regulations”).
- (2) Regulation 14 of the 2012 Regulations continues to apply—
- (a) so far as it relates to the requirement to comply with the direction; and
 - (b) as if the requirement to comply with the direction (and, accordingly, to make the report) were imposed on NHS England.

Supplementary provision: general continuity

13.—(1) NHS England may do anything which appears necessary or appropriate for the winding up of the affairs of Monitor and the Authority.

- (2) Any—
- (a) act or omission; or
 - (b) other thing (including legal proceedings)—
 - (i) done; or
 - (ii) which, immediately before this provision comes into force, is in the process of being done,

(8) Paragraph 5(3) was amended by [S.I. 2008/817](#).

(9) Paragraph 6 was amended by [S.I. 2008/817](#).

(10) An electronic copy of these Directions is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/511610/Directions_2016.pdf.

(11) [S.I. 2012/922](#). These Regulations are revoked by section 36 of the 2022 Act.

by or in relation to Monitor or the Authority is to be treated as an act, omission or thing done or in the process of being done, and capable of being continued, by or in relation to NHS England.

(3) Paragraph (2) does not apply in relation to a complaint or an investigation described in regulation 13(8) of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013⁽¹²⁾.

(4) Any reference to—

- (a) Monitor or the Authority in an agreement (whether written or otherwise); or
- (b) the Authority in an instrument or other document,

made before this provision comes into force is to be read, in relation to any time after this provision comes into force, as a reference to NHS England.

⁽¹²⁾ S.I. 2013/500. Regulation 13(8) is inserted by regulation 21(4)(c)(iii) of these Regulations.