
STATUTORY INSTRUMENTS

2023 No. 1431

**The Health and Care Act 2022 (Commencement No. 8
and Transitional and Saving Provision) Regulations 2023**

Transitional and saving provision: procurement, patient choice and competition

5.—(1) Notwithstanding the repeal of section 6E(2)(c) of the 2006 Act (regulations as to the exercise of functions by NHS England or integrated care boards)(1) and section 75 of the 2012 Act (requirements as to procurement, patient choice and competition), any provision of the 2012 Regulations made under either of those provisions, and in force immediately before 1st January 2024—

- (a) continues in force and has effect as if made under section 6E(1A) or (1B) of the 2006 Act(2), and
- (b) may be varied or revoked accordingly.

(2) Subject to paragraphs (3) to (5), the following continue to have effect as they had effect immediately before 1st January 2024 (including as modified by regulation 21 of the 2022 Regulations) for the purposes of any contract award procedure or process for the procurement of a framework agreement which was commenced but had not ended before 1st January 2024—

- (a) sections 75, 76 and 77 of, and Schedule 9 to, the 2012 Act (requirements as to procurement, patient choice and competition), so far as they apply in relation to the 2013 Regulations;
- (b) the 2013 Regulations.

(3) For the purposes of paragraph (2), the 2013 Regulations have effect as if—

- (a) regulations 11 and 12 were omitted;
- (b) in regulation 13(1), for “12, or by regulations 39, 42 or 43 of the 2012 Regulations (choice of health service provider)”, there were substituted “10”;
- (c) in regulation 15(1)(a), for “12, or by regulations 39, 42 or 43 of the 2012 Regulations”, there were substituted “10”;
- (d) in regulation 15A(1)(3), in both places it occurs, for “12, or by regulations 39, 42 or 43 of the 2012 Regulations”, there were substituted “10”.

(4) For the purposes of paragraph (2), where, on or after 1st January 2024, NHS England commences or continues an investigation of an integrated care board under regulation 13(1) of the 2013 Regulations which—

- (a) relates to a determination of a kind referred to in regulation 7(2)(a) or (b) of the 2013 Regulations, and
- (b) does not fall within regulation 43B of the 2012 Regulations(4),

(1) Section 6E was inserted by section 20(1) of the Health and Social Care Act 2012 (c. 7). Section 6E(2)(c) was amended by paragraph 1(1) of Schedule 1 and paragraph 89(3) of Schedule 4 to the Health and Care Act 2022 (“the 2022 Act”), and is repealed by section 78(2)(c) of the 2022 Act, as commenced by these Regulations.

(2) Subsections (1A) and (1B) of section 6E are inserted by section 78(2)(b) of the Health and Care Act 2022, as commenced by these Regulations.

(3) Regulation 15A is treated as inserted after regulation 15 by regulation 21(4)(e) of S.I. 2022/734.

(4) Regulation 43B is inserted by regulation 2(6) of S.I. 2023/1105.

that investigation may be commenced or continued as though it were an investigation under section 6F(1) of the 2006 Act (enforcement of section 6E regulations relating to patient choice)⁽⁵⁾ (and accordingly section 6F of, and Schedule 1ZA to, the 2006 Act apply to that investigation as appropriate).

- (5) For the purposes of paragraph (2)—
- (a) a contract award procedure has been commenced before 1st January 2024 if, before that date—
 - (i) a relevant body has published a contract notice in accordance with regulation 4(2) of the 2013 Regulations;
 - (ii) a relevant body has contacted a provider in order to—
 - (aa) seek an expression of interest or offer in respect of a proposed contract; or
 - (bb) respond to an unsolicited expression of interest or offer received from that provider in respect of a proposed contract; or
 - (iii) in the case of a contract to be based on a framework agreement or other technique or instrument for electronic or aggregated procurement concluded before 1st January 2024, a relevant body has taken any step with a view to making an award of such a contract;
 - (b) a process for the procurement of a framework agreement has been commenced before 1st January 2024 if, before that date—
 - (i) a relevant body has published any form of advertisement seeking offers or expressions of interest in a proposed framework agreement; or
 - (ii) a relevant body has contacted a provider in order to—
 - (aa) seek an expression of interest or offer in respect of a proposed framework agreement; or
 - (bb) respond to an unsolicited expression of interest or offer received from that provider in respect of a proposed framework agreement;
 - (c) a contract award procedure has ended before 1st January 2024 if, before that date—
 - (i) the contract has been awarded; or
 - (ii) the relevant body has taken a decision not to award the contract to any provider;
 - (d) a process for the procurement of a framework agreement has ended before 1st January 2024 if, before that date—
 - (i) the framework agreement has been concluded; or
 - (ii) the relevant body has taken a decision not to conclude the framework agreement with any provider.

(6) For the purposes of section 13SC of the 2006 Act (provision of regulatory information or assistance to the CMA)⁽⁶⁾, any information held by NHS England in connection with its functions under—

- (a) sections 76 and 77 of, and Schedule 9 to, the 2012 Act; or
- (b) measures made under those provisions in the 2013 Regulations,

in so far as those provisions are saved by paragraph (2), continues to be treated as “regulatory information”.

- (7) In this regulation—

⁽⁵⁾ Section 6F is inserted by section 78(3) of the Health and Care Act 2022, as commenced by these Regulations.

⁽⁶⁾ Section 13SC was inserted by section 82(1) of the Health and Care Act 2022. It was modified by regulation 20 of [S.I. 2022/734](#) for the period beginning with 1st July 2022 and ending when section 78 of the Health and Care Act 2022 came into force.

“the 2012 Act” means the Health and Social Care Act 2012⁽⁷⁾;

“the 2012 Regulations” means the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012⁽⁸⁾;

“the 2022 Regulations” means the Health and Care Act 2022 (Commencement No. 2 and Transitional and Saving Provision) Regulations 2022⁽⁹⁾;

“framework agreement” has the meaning given in regulation 7(7) of the 2013 Regulations as they had effect immediately before 1st January 2024;

“integrated care board” means an integrated care board established under Chapter A3 of Part 2 of the 2006 Act;

“NHS England” means the body corporate established under section 1H of the 2006 Act;

“provider” has the meaning given in regulation 1(2) of the 2013 Regulations as they had effect immediately before 1st January 2024;

“relevant body” means an integrated care board or NHS England.

(7) 2012 c. 7.

(8) S.I. 2012/2996, amended by S.I. 2013/2891, 2014/1611, 2019/248, 2022/634 and 635, 2023/1071 and 1105. There are other amending instruments but none is relevant.

(9) S.I. 2022/734.