

2023 No. 223

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Joint Working and Delegation Arrangements) (England) (Amendment) Regulations 2023

<i>Made</i>	- - - -	<i>27th February 2023</i>
<i>Laid before Parliament</i>		<i>28th February 2023</i>
<i>Coming into force</i>		<i>10th April 2023</i>

The Secretary of State makes these Regulations in exercise of the power conferred by sections 65Z5(3)(a) and 272(8) of the National Health Service Act 2006(a).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service (Joint Working and Delegation Arrangements) (England) (Amendment) Regulations 2023.

(2) These Regulations come into force on 10th April 2023.

(3) These Regulations extend to England and Wales.

Amendment of the National Health Service (Joint Working and Delegation Arrangements) (England) Regulations 2022

2.—(1) The National Health Service (Joint Working and Delegation Arrangements) (England) Regulations 2022(b) are amended as follows.

(2) After regulation 1 insert—

“Interpretation

1A. In these Regulations—

“the 2006 Act” means the National Health Service Act 2006;

“relevant body” has the meaning given in regulation 2(1) of the Standing Rules;

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

(a) 2006 c. 41. Section 65Z5 was inserted by section 71 of the Health and Care Act 2022 (c. 31). Section 275(1) of the 2006 Act provides that “regulations” means regulations made by the Secretary of State.

(b) S.I. 2022/642.

(c) S.I. 2012/2996. Under the Health and Care Act 2022, the NHS Commissioning Board was renamed NHS England (section 1) and NHS England was required to establish integrated care boards to take on the commissioning functions of clinical commissioning groups (section 19, which inserts new Chapter A3 into Part 2 of the 2006 Act), which it did on 1st July 2022 in accordance with S.I. 2022/632. As a consequence of those changes, paragraph 1(1) of the Schedule to S.I. 2022/634 substitutes “CCG” with “integrated care board” in regulation 23 and in the definition of “relevant body” in regulation 2(1) of S.I. 2012/2996. In addition, under paragraph 1(3) of Schedule 1 to the Health and Care Act 2022, the references to the

- (3) In regulation 2 (joint working and delegation arrangements)—
- (a) for “the National Health Service Act 2006” substitute “the 2006 Act”;
 - (b) in paragraph (a), for “the National Health Service Act 2006” substitute “the 2006 Act”;
 - (c) at the end of sub-paragraph (a)(xiv), omit “and”;
 - (d) at the end of sub-paragraph (b)(iii), for “.” substitute “; and”; and
 - (e) after paragraph (b) insert—
“(c) regulation 23 of the Standing Rules (the Board’s duty: reviewing decisions).”.
- (4) After regulation 2 insert—

“Functions relating to NHS Continuing Healthcare and NHS funded nursing care

3. The power in section 65Z5(1) of the 2006 Act does not apply in relation to the functions of NHS England and integrated care boards arising under or by virtue of sections 3, 3A or 3B of the 2006 Act insofar as they relate to—

- (a) deciding whether a person has a primary health need in accordance with paragraph (5)(b) of regulation 21(a) of the Standing Rules (duty of relevant bodies: assessment and provision of NHS Continuing Healthcare); and
- (b) determining whether a person has a need for nursing care in accordance with regulation 28(b) of the Standing Rules (persons who enter relevant premises or who develop a need for nursing care) but the power continues to apply in relation to an assessment of the need for nursing care under paragraph (1) of that regulation.”.

Saving provision: decisions and determinations relating to NHS Continuing Healthcare and NHS funded nursing care

3.—(1) This regulation applies where NHS England or an integrated care board has entered into a relevant delegation or joint working arrangement in the period beginning with 1st July 2022 and ending when this instrument comes into force.

(2) Any determination or decision made on behalf of, or jointly with, NHS England or an integrated care board (“the delegating authorities”) pursuant to a relevant delegation or joint working arrangement continues to be effective as if the decision or determination was a decision or determination of the relevant delegating authority alone.

(3) For the purposes of this regulation, a “relevant delegation or joint working arrangement” is an arrangement entered into by NHS England or an integrated care board with a relevant body pursuant to section 65Z5(1) of the 2006 Act for the exercise of their respective functions under or by virtue of sections 3, 3A or 3B of the 2006 Act insofar as they relate to—

- (a) deciding whether a person has a primary health need in accordance with paragraph (5)(b) of regulation 21 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (“the Standing Rules”); or
- (b) determining whether a person has a need for nursing care as prescribed by regulation 28 of the Standing Rules.

National Health Service Commissioning Board (defined as “the Board” in regulation 2(1)) in regulation 23 and in the definition of “relevant body” in regulation 2(1) of S.I. 2012/2996 are to be read, in relation to any time on or after 1st July 2022, as a reference to NHS England.

- (a) Paragraph (5)(a)(ii) of regulation 21, which contains information about the Decisions Support Tool, was amended by regulation 2(3)(b) of S.I. 2018/283.
- (b) Regulation 28 was amended by S.I. 2014/1611 and 2015/415.

Signed by authority of the Secretary of State for Health and Social Care

27th February 2023

Helen Whately
Minister of State,
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 65Z5(1) of the National Health Service Act 2006 (c. 41) gives certain bodies, including NHS England and integrated care boards, the power to arrange for their functions to be exercised by, or jointly with, one or more specified bodies (“the joint working and delegation power”). The National Health Service (Joint Working and Delegation Arrangements) (England) Regulations 2022 (“the Joint Working Regulations”) disapply the joint working and delegation power in respect of specified functions of NHS England. These Regulations amend the Joint Working Regulations to prescribe additional functions to which the joint working and delegation power does not apply.

Regulation 2 of these Regulations inserts new provisions into the Joint Working Regulations disapplying the joint working and delegation power in respect of functions of NHS England and integrated care boards relating to eligibility for NHS Continuing Healthcare and NHS funded nursing care. It also precludes NHS England from delegating the function of arranging for the review of eligibility decisions for CHC to any other body. The legislative framework relating to NHS Continuing Healthcare and NHS funded nursing care is contained in Part 6 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (“the Standing Rules”). Regulation 20 of Standing Rules defines NHS Continuing Healthcare as a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness. NHS funded nursing care is funding provided by the health service in England to care home providers for the provision of nursing care by a registered nurse.

Regulation 3 is a saving provision in relation to eligibility decisions for NHS Continuing Healthcare and NHS funded nursing care made on behalf of, or jointly with, NHS England or integrated care boards pursuant to a delegation or joint working arrangement under the joint working and delegation power, prior to the coming into force of this instrument.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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