

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Health

Chapter 1 - Health Education England

Establishment

Schedule 5 – Health Education England

Part 1 – Constitution

Membership

539. *Paragraph 1* set outs the requirements for the membership of the Board of HEE. It provides that the Board must consist of a chair and six other non-executive members appointed by the Secretary of State, and a chief executive and no more than four executive members appointed by the chair and other non-executive members. Non-executive members are not employees of HEE. The chief executive and executive appointments will be employees of HEE.
540. *Paragraph 2* specifies that the Board of HEE must include persons with clinical expertise of a type set out in regulations. Regulations may specify the number of executive and non-executive members which must have that clinical expertise. The regulations will set out the types of expertise that must be represented, for example a doctor, a nurse or a member of one of the other healthcare professions.
541. *Paragraph 2* also makes provision that the non-executive members of HEE must include a person who will represent the interests of patients.

Non-executive members: terms of office

542. *Paragraph 3* makes provision about the terms of appointment and tenure of office of non-executive members of the Board of HEE. Sub-paragraph (2) provides that non-executive appointments will be for a maximum period of four years. Sub-paragraph (3) confirms that non-executive members can be reappointed after they have ceased to be a member or at the end of the four year term of office. Sub-paragraph (4) provides that persons appointed to non-executive roles may resign from office by giving notice to the Secretary of State. Sub-paragraph (5) gives the Secretary of State a power to remove any person from a non-executive appointment on the grounds of incapacity, misbehaviour, or failure to carry out their duties properly. Sub-paragraph (6) permits the Secretary of State to suspend a person from a non-executive role for any of the reasons set out in sub-paragraph (5).

Non-executive members: suspension from office

543. *Paragraphs 4 and 5* set out the procedural requirements to be complied with when the Secretary of State suspends a non-executive member of the Board of HEE, make

provision for the Secretary of State to review the suspension and gives the Secretary of State power to appoint an interim chair. HEE will have no power to appoint an interim chair, but could choose to appoint a deputy chair (regardless of any suspension of the chair).

Non-executive members: pay

544. *Paragraph 6* requires HEE to pay to the non-executive members such remuneration as the Secretary of State may decide. Sub-paragraph (2) provides that the Secretary of State may also determine the allowances and gratuities that HEE must pay a person who is or has been a non-executive member.

Employees: terms of office

545. *Paragraph 7* gives HEE the power to appoint the chief executive, executive members and other employees on such terms as it decides. The appointment of the chief executive requires the consent of the Secretary of State.

Employees: pay

546. *Paragraph 8* provides that HEE must pay its employees such remuneration as it decides. HEE must also pay such pensions, allowances or gratuities as it may determine. In common with other arms-length bodies, HEE is required to obtain the approval of the Secretary of State to its policy on pay before making a decision on these matters.

Committees and sub-committees

547. *Paragraph 9* provides that HEE may appoint committees and sub-committees and pay remuneration and allowances to those members of a committee or sub-committee who are not employees of HEE. Any committees or sub-committees of the Special Health Authority called HEE will become part of HEE when it is established as a non-departmental public body and will be treated as appointed for the purposes of this paragraph.

Procedure

548. *Paragraph 10(1)* provides that HEE regulates its own procedure. *Paragraph 10(2)* confirms that the validity of any act of HEE, will not be affected by vacancies or any defects in appointments.

Seal and evidence

549. *Paragraph 11* makes provision in relation to HEE's seal.

Status of HEE

550. *Paragraph 12* states that HEE is not to be regarded as a servant or agent of the Crown and will not enjoy any status, privilege or immunity of the Crown. HEE's property will not be regarded as property of, or property held on behalf of, the Crown.

Part 2 – Functions

Exercise of functions

551. Sub-paragraph (1) of *paragraph 13* imposes a duty on HEE to exercise its functions effectively, efficiently and economically. Under sub-paragraph (2) HEE may arrange for any of its committees, sub-committees, or members or any other person to exercise any of its functions on its behalf, subject to sub-paragraph (5).
552. Under sub-paragraph (3) HEE may arrange for any person to assist it in the exercise of its functions.

553. Under sub-paragraph (4) HEE may provide payment for remuneration and allowances when it arranges for any other person to exercise or assist in the exercise of its functions.
554. Sub-paragraph (5) provides that HEE is not permitted to arrange for a committee which is not an LETB, sub-committee, members or any other person to exercise the functions which are exercisable by a LETB.
555. Under sub-paragraph (6) HEE has a power to involve health care workers, patients and their carers in decisions about the exercise of its functions. In this context, “carer” means an adult who provides or intends to provide care for another person.
556. Under sub-paragraph (7) HEE has a general power to do anything necessary or desirable for the purposes of or in connection with the exercise of its functions.
557. Sub-paragraph (8) amends section 247C of the National Health Service Act 2006 (the 2006 Act) to include HEE in the list of bodies that the Secretary of State has a duty to keep under review in the exercise of their health service functions. In line with other arms-length bodies, the purpose of this is to ensure that the Secretary of State is ultimately accountable for ensuring that HEE performs its health care functions effectively.

Help or advice for public authorities

558. *Paragraph 14* states that HEE may provide help or advice to another public authority on such terms as it decides. Public authority is defined in sub-paragraphs (3) and (4) as any person whose functions are functions of a public nature and excludes the Houses of Parliament or a person exercising functions in connection with proceedings in Parliament. Public authorities in the Channel Islands or the Isle of Man are included within this definition, but others outside the UK are not.

Co-operation

559. *Paragraph 15* requires HEE to co-operate with the Secretary of State in the exercise of his public health functions. Public health functions are defined in section 1H of the 2006 Act.
560. Sub-paragraph (2) amends section 72 of the 2006 Act so that HEE is treated as a NHS body for the purposes of that section. Section 72 requires NHS bodies to co-operate with each other in the exercise of their functions. This means that all NHS bodies, along with those bodies included within the definition of NHS bodies for the purpose of this section such as the National Institute for Health and Care Excellence and the Health and Social Care Information Centre, will be required to co-operate with HEE in the exercise of their functions, and in turn HEE will be required to co-operate with them.
561. Sub-paragraph (3) requires HEE and the Care Quality Commission to co-operate with each other, and HEE and Monitor to co-operate with each other.
562. Sub-paragraph (4) gives the Secretary of State a power to specify in regulations other bodies with which HEE must co-operate, and bodies which must co-operate with HEE.

NHS contracts

563. *Paragraph 16* adds HEE to the list of bodies eligible to enter into NHS contracts under the 2006 Act.

Arrangements with devolved authorities

564. *Paragraph 17* gives HEE a power to exercise on behalf of a devolved authority any functions which are similar to HEE’s functions. There are occasions where UK wide co-operation and activity is required to support education and training, for example in planning for the medical workforce. This will allow HEE to lead work of this nature

on behalf of the devolved authorities in circumstances where all parties have agreed to this. Sub-paragraph (2) makes provision for HEE to receive payment from the devolved authorities for any costs incurred under such arrangements.

Failure to exercise functions

565. *Paragraph 18* empowers the Secretary of State to intervene to direct HEE in the delivery of its functions, where he considers HEE is failing, or has failed to exercise any of its functions properly, and that the failure is significant. A significant failure could include circumstances where there is evidence that public money is not being used effectively; there are concerns about the quality of education and training and these are not being adequately addressed; plans look likely to lead to a shortfall in an important part of the professional workforce; or there are concerns that education and training is impacting on patient safety.
566. Sub-paragraph (2) states that if HEE fails to act as directed by the Secretary of State, the Secretary of State, or another person on his behalf, may carry out HEE's functions.
567. Sub-paragraph (3) requires the Secretary of State to publish reasons for intervention where HEE is failing, or where HEE has failed to take the remedial action stipulated by Secretary of State.

Part 3 – Finance and Reports

568. *Paragraphs 19 to 23* set out how the Secretary of State will fund HEE. It also sets out the general financial duties of HEE, including restrictions on the use of resources.

Funding

569. *Paragraph 19* provides that the Secretary of State must pay HEE the amount allotted for meeting HEE's expenditure. Sub-paragraph (2) provides that an amount will be regarded as allotted once HEE is notified of the amount. The payment is subject to such conditions relating to records, certificates or otherwise as the Secretary of State requires.
570. Sub-paragraph (3) states that the Secretary of State is able to increase or decrease the allotted amount if HEE agrees to the change, there is a parliamentary general election, or the Secretary of State considers that there are exceptional circumstances which make an increase or a decrease necessary. Such exceptional circumstances might include a severe disease outbreak or unpredictable and substantial damage to infrastructure.
571. Sub-paragraph (4) provides that the Secretary of State may direct HEE in respect of HEE's payments to it in respect of charges or other amounts relating to the valuation and disposal of assets.

Financial duties: expenditure

572. Under *paragraph 20*, HEE will have an obligation to ensure that its total expenditure does not exceed the aggregate of the amount allotted to HEE by the Secretary of State for that year and any income derived from other sources. This is in effect an annual "cash limit" on the total amount of cash expenditure which may be incurred.
573. The income which counts for the purposes of this limit would include, for instance, funds received as a result of the power in paragraph 21 for HEE to generate its own income.
574. The Secretary of State has the power to determine by directions what will and what will not count as total expenditure for the purposes of sub-paragraph (1). Sub-paragraph (3) gives the Secretary of State a power to determine in directions the extent to which, and the circumstances in which, sums received by HEE under *paragraph 19* but not yet spent must be treated for the purposes of this section as part of total expenditure, and to which financial year's expenditure they must be attributed.

575. The Secretary of State also has a power to direct HEE to use banking facilities that he specifies in the Directions.

Financial duties: use of generated income

576. *Paragraph 21* provides that any income that HEE generates must be re-invested for education and training purposes.

Financial duties: controls on total resource use

577. *Paragraph 22* is concerned with HEE's annual resource allocation. Under this paragraph, the total use of capital resources and the total use of revenue resources by HEE in a financial year must not exceed amounts specified by the Secretary of State. HEE is placed under a duty to ensure that these total limits are not exceeded.
578. The resource allocations include not only HEE's expenditure in the form of cash spending (that is, the cash spending that should be accounted for in that financial year, in line with resource accounting standards), but also consumption of other resources and the reduction in value of assets belonging to HEE (paragraph 22(4)). For example, the reduction in value of a photocopier across the year, or the distribution of leaflets previously kept in storage would be counted as part of the resource allocation. This system of setting not only a cash limit on HEE's expenditure but also a limit on use of resources reflects the system for controlling government resources under the Government Resources and Accounts Act 2000.
579. Sub-paragraph (2) gives the Secretary of State a power to give directions that specify what descriptions of resources must be treated as capital or revenue resources, and the uses of resources that must, or must not, be taken into account, when determining whether HEE has remained within the resource allocations for a financial year.
580. As with the allotment, the Secretary of State may only vary the resource allocations within a financial year if certain conditions are met. These conditions are set out in sub paragraph (3) and are that if HEE agrees that the change is necessary, if there is a parliamentary general election, or if the Secretary of State considers that exceptional circumstances require a variation of the allocation.

Financial duties: additional controls on resource use

581. *Paragraph 23* enables the Secretary of State to specify additional limits within the total revenue resource limit on the maximum use of resources attributable to administrative matters by HEE (sub-paragraph (1)(c)). Sub-paragraph (2) provides that the matters relating to administration which count for the purposes of these limits may be set out in directions.
582. Under sub-paragraphs (1)(a) and (1)(b), the Secretary of State will also be able to set additional limits on total revenue or total capital resource use attributable to particular matters specified in directions. Sub-paragraph (3) requires that the Secretary of State may only impose such limits for the purpose of complying with limits imposed by HM Treasury. These limits relate to specific budgetary limits applied across all Government Departments on certain elements of spending. For example within the revenue Departmental Expenditure Limit, HM Treasury applies a ring-fence to spending on depreciation. HM Treasury applies controls on Annually Managed Expenditure under which there are limits on the creation of new provisions (charges for spending that is likely to happen in future years e.g. the economic cost of providing student loans over the full repayment period. The Department of Health would also apply a limit on the balance of spending not covered by the specific limits, again to provide consistency with the controls applied by HM Treasury. These types of spending will fall within the total resource limits but need to be separately controlled within them.

Losses and liabilities etc

583. *Paragraph 24* provides that HEE is included in the list of authorities covered by section 265 of the Public Health Act 1875. The effect of this is to protect members and officers of HEE from personal liability in certain circumstances.
584. Sub-paragraph (3) includes HEE in the list of bodies eligible to enter into schemes for meeting losses and liabilities as set out in section 71 of the National Health Service Act 2006.

Accounts

585. *Paragraph 25* requires HEE to keep proper accounts and proper records in relation to the accounts (with such content and in such form, and using such methods and principles to prepare the accounts, as the Secretary of State may direct with the approval of HM Treasury). The chief executive of HEE is to be the chief accounting officer.

Annual accounts

586. *Paragraph 26* requires HEE to prepare consolidated accounts annually in respect of each financial year. HEE's consolidated accounts must include the accounts of each LETB, any other committees of HEE, and HEE's activities.
587. Sub-paragraph (3) provides that HEE must submit the accounts to the Secretary of State and to the Comptroller and Auditor General within such period as is directed by the Secretary of State. The Comptroller and Auditor General must examine, certify and report on the accounts of HEE and lay copies of the accounts, along with a report of them, before Parliament.

Interim accounts

588. Additional provision is made in *paragraph 27* for the Secretary of State, with the approval of HM Treasury, to direct HEE to prepare interim accounts. The interim accounts must include the accounts of any committees, including the LETBs.
589. HEE must submit the interim accounts to the Secretary of State and, if the Secretary of State directs, to the Comptroller and Auditor General within such period as is directed by the Secretary of State. The Comptroller and Auditor General must examine the interim accounts of HEE and if the Secretary of State directs, send a copy of the report to the Secretary of State, and lay copies of the accounts, along with a report of them, before Parliament.

Annual report

590. *Paragraph 28* requires HEE to prepare an annual report for each financial year about how it has exercised its functions. This assessment must include an assessment of HEE's achievement of the objectives and reflection of the priorities set by the Secretary of State under subsection (1) of section 100 and an assessment of its achievement of the outcomes set by the Secretary of State for the purposes of subsection (2) of section 100. HEE must provide this report as soon as possible after the end of the financial year.
591. HEE must send a copy of the report to the Secretary of State and lay a copy of the report before Parliament. HEE must also provide such other reports and information relating to the exercise of its functions as the Secretary of State requests.