



Cities and Local Government Devolution Act 2016

2016 CHAPTER 1

Combined and local authorities: governance, constitution and functions etc

15 Governance arrangements etc of local authorities in England

- (1) The Secretary of State may by regulations make provision about—
 - (a) the governance arrangements of local authorities;
 - (b) the constitution and membership of local authorities under Part 1 of the Local Government Act 1972;
 - (c) the structural and boundary arrangements, or electoral arrangements, in relation to local authorities under Part 1 of the Local Government and Public Involvement in Health Act 2007 or under Part 3 of the Local Democracy, Economic Development and Construction Act 2009.
- (2) In subsection (1) “governance arrangements” means the executive arrangements, committee system or prescribed arrangements operated by a local authority under Part 1A of the Local Government Act 2000.
- (3) Regulations under this section may in particular make provision—
 - (a) about how the enactments mentioned in subsection (1) or (2) are to apply in relation to particular cases (including by disapplying the application of any such enactment to a particular case or applying it subject to any variations that are specified in the regulations);
 - (b) about any of the matters listed in section 11(3) or (4) of the Local Government and Public Involvement in Health Act 2007 (including provision in relation to matters of a kind mentioned in section 12 of that Act).

Nothing in paragraph (a) limits the power to make provision under subsection (9)(d).

- (4) Regulations under this section may be made only with the consent of the local authorities to whom the regulations apply (subject to subsection (5)).

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- (5) Regulations under this section, so far as including structural or boundary provision in relation to a non-unitary district council area, may be made if at least one relevant local authority consents.
- (6) “Relevant local authority” means—
- (a) a non-unitary district council whose area is, or forms part of, the non-unitary district council area;
 - (b) a county council whose area includes the whole or part of the non-unitary district council area.
- (7) For the purposes of subsections (5) and (6)—
- “non-unitary district council area” means the area or areas of one or more non-unitary district councils;
 - “non-unitary district council” means a district council for an area for which there is also a county council;
 - “structural or boundary provision” means provision about the structural or boundary arrangements of local authorities in regulations made by virtue of subsection (1)(c).
- (8) Subsections (5) to (7) expire at the end of 31st March 2019 (but without affecting any regulations already made under this section by virtue of subsection (5)).
- (9) The power to make regulations under this section—
- (a) is exercisable by statutory instrument;
 - (b) includes power to make different provision for different purposes;
 - (c) includes power to make incidental, supplementary, consequential, transitional, transitory or saving provision;
 - (d) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an Act passed before this Act or in the same Session.
- (10) Section 15 of the Local Government and Public Involvement in Health Act 2007 (power to transfer functions, property etc as part of incidental etc provision) applies in relation to subsection (9)(c) above as it applies in relation to sections 13 and 14 of that Act.
- (11) A statutory instrument containing regulations under this section may be made only if a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.
- (12) At the same time as laying a draft of a statutory instrument containing regulations under this section before Parliament, the Secretary of State must lay before Parliament a report explaining the effect of the regulations and why the Secretary of State considers it appropriate to make the regulations.
- (13) The report must include—
- (a) a description of any consultation taken into account by the Secretary of State,
 - (b) information about any representations considered by the Secretary of State in connection with the regulations, and
 - (c) any other evidence or contextual information that the Secretary of State considers it appropriate to include.

- (14) If a draft of regulations under this section would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.
- (15) In this section “local authority” means a county council in England, a district council or a London borough council.

16 Power to transfer etc public authority functions to certain local authorities

- (1) The Secretary of State may by regulations—
- (a) make provision for a function of a public authority that is exercisable in relation to a relevant local authority’s area to be a function of the local authority;
 - (b) make provision for conferring on a relevant local authority in relation to its area a function corresponding to a function that a public authority has in relation to another area.
- (2) Regulations under subsection (1) may include further provision about the exercise of the function including—
- (a) provision for the function to be exercisable by the public authority or relevant local authority subject to conditions or limitations specified in the regulations;
 - (b) provision as to joint working arrangements between the relevant local authority and public authority in connection with the function (for example, provision for the function to be exercised by a joint committee).
- (3) The provision that may be included in regulations under subsection (1)(a) includes, in particular, provision—
- (a) for the relevant local authority to have the function instead of the public authority,
 - (b) for the function to be exercisable by the relevant local authority concurrently with the public authority,
 - (c) for the function to be exercisable by the relevant local authority and the public authority jointly, or
 - (d) for the function to be exercisable by the relevant local authority jointly with the public authority but also continue to be exercisable by the public authority alone.
- (4) Regulations under subsection (1)(a) may, in particular, include—
- (a) provision for the making of a scheme to transfer property, rights and liabilities (including criminal liabilities) from the public authority to the relevant local authority (including provision corresponding to any provision made by section 17(4) to (7) of the Localism Act 2011);
 - (b) provision to abolish the public authority in a case where, as a result of the regulations, it will no longer have any functions.
- (5) Regulations under this section may not provide for a regulatory function that is exercisable by a public authority in relation to the whole of England to be exercisable by a relevant local authority in relation to its area if the regulated function is itself exercisable by the relevant local authority by virtue of regulations under this section.
- (6) Subsection (7) applies where regulations under subsection (1) contain a reference to a document specified or described in the regulations (for example, in imposing a

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condition by virtue of subsection (2)(a) for an authority to have regard to, or to comply with, a statement of policy or standards set out in the document).

- (7) If it appears to the Secretary of State necessary or expedient for the reference to the document to be construed—
- (a) as a reference to that document as amended from time to time, or
 - (b) as including a reference to a subsequent document that replaces that document, the regulations may make express provision to that effect.
- (8) See also section 18 (devolving health service functions) which contains further limitations.
- (9) In this section—
- “function” (except in subsection (4)(b)) does not include a power to make regulations or other instruments of a legislative character;
 - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
 - “public authority” includes a Minister of the Crown or a government department;
 - “regulated function” means the function of carrying out an activity to which a regulatory function relates;
 - “regulatory function” has the meaning given by section 32 of the Legislative and Regulatory Reform Act 2006;
 - “relevant local authority” means a county council in England or a district council.

17 Section 16: procedure etc

- (1) The Secretary of State may make regulations under section 16 only if—
- (a) the relevant local authority by whom a function becomes exercisable by virtue of the regulations consents, and
 - (b) the Secretary of State considers that the making of the regulations is likely to improve the exercise of statutory functions in the relevant local authority’s area.
- (2) The power to make regulations under section 16—
- (a) is exercisable by statutory instrument;
 - (b) includes power to make incidental, supplementary, consequential, transitional, transitory or saving provision;
 - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an Act whenever passed or made.
- (3) The requirement in subsection (1)(a) for the relevant local authority to consent to the making of regulations under section 16 does not apply where—
- (a) the regulations revoke (in whole or in part), or otherwise amend, previous regulations under that section, and
 - (b) the only purpose of the regulations is to provide for a health service function of the relevant local authority to cease to be exercisable by the authority (which may include provision under subsection (2)(b) in relation to that purpose).
- (4) In subsection (3)(b), “health service function of a relevant local authority” means a function which—

- (a) relates to the health service, as defined by section 275(1) of the National Health Service Act 2006, and
 - (b) is exercisable by the authority by virtue of regulations under section 16.
- (5) A statutory instrument containing regulations under section 16 may be made only if a draft of the instrument has been laid before each House of Parliament and approved by a resolution of each House.
- (6) At the same time as laying a draft of a statutory instrument containing regulations under section 16 before Parliament, the Secretary of State must lay before Parliament a report explaining the effect of the regulations and why the Secretary of State considers it appropriate to make the regulations.
- (7) The report must include—
- (a) a description of any consultation taken into account by the Secretary of State,
 - (b) information about any representations considered by the Secretary of State in connection with the regulations, and
 - (c) any other evidence or contextual information that the Secretary of State considers it appropriate to include.
- (8) If a draft of regulations under section 16 would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

18 Devolving health service functions

- (1) Regulations under section 16 of this Act or an order under section 105A of the Local Democracy, Economic Development and Construction Act 2009 (transfer of public authority functions to combined authorities) (“the 2009 Act”)—
- (a) must not transfer any of the Secretary of State’s core duties in relation to the health service,
 - (b) must not transfer health service regulatory functions vested in national bodies responsible for such functions, and
 - (c) must, if transferring functions relating to the health service to a local authority or a combined authority, make provision about the standards and duties to be placed on that authority having regard to the national service standards and the national information and accountability obligations placed on the authority responsible for the functions being transferred.
- (2) For the purposes of subsection (1)(a), “the Secretary of State’s core duties in relation to the health service” means the duties of the Secretary of State under—
- (a) sections 1 to 1G of the National Health Service Act 2006 (“the NHTSA 2006”) (duty to promote comprehensive health service etc.),
 - (b) sections 6A to 6BB of that Act (duties regarding the reimbursement of costs of services provided in another EEA state),
 - (c) section 12E of that Act (duty as respects variation in provision of health services),
 - (d) sections 13A, 13B, 13U and 223B of that Act (duties regarding mandate to, and annual report and funding of, the NHS Commissioning Board),
 - (e) section 247C of that Act (duty to keep health service functions under review),
 - (f) section 247D of that Act (duty to publish annual report on performance of the health service in England),

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- (g) section 258 of that Act (duty regarding the availability of facilities for university clinical teaching and research), and
- (h) sections 3 to 6 of the Health Act 2009 (duties in relation to the NHS Constitution and the Handbook to it),

in so far as those duties would (apart from subsection (1)(a)) be transferable by regulations under section 16 or an order under section 105A of the 2009 Act.

- (3) For the purposes of subsection (1)(b)—
 - (a) “health service regulatory function” means a function in relation to the health service which is a regulatory function within the meaning given by section 32 of the Legislative and Regulatory Reform Act 2006,
 - (b) the functions of the National Health Service Commissioning Board under Chapter A2 of Part 2 of the NHTSA 2006 (clinical commissioning groups) are to be treated as “health service regulatory functions” in so far as they do not fall within the definition in paragraph (a), and
 - (c) functions exercisable by a body by virtue of directions given under section 7 of the NHTSA 2006 (functions of Special Health Authorities) are not “vested in” that body.
- (4) But subsection (1)(b) does not prevent the transfer of functions of the National Health Service Commissioning Board which—
 - (a) arise from arrangements under section 1H(3)(a) of the NHTSA 2006 (provision of services for the purpose of the health service), and
 - (b) relate to those providing services under those arrangements.
- (5) For the purposes of subsection (1)(c), “national service standards” means the standards contained in any of the following—
 - (a) the NHS Constitution (within the meaning of Chapter 1 of Part 1 of the Health Act 2009);
 - (b) the standing rules under section 6E of the NHTSA 2006 (regulations as to the exercise of functions by the NHS Commissioning Board or clinical commissioning groups);
 - (c) the terms as to service delivery required by regulations or directions under the NHTSA 2006 for contracts or other arrangements for the provision of primary medical services, primary dental services, primary ophthalmic services or pharmaceutical services under Part 4, 5, 6 or 7 of that Act;
 - (d) the recommendations or guidance of the National Institute for Health and Care Excellence made or given pursuant to regulations under section 237 of the Health and Social Care Act 2012;
 - (e) the quality standards prepared by that Institute under section 234 of that Act;
 - (f) the guidance published under section 14Z8 of the NHTSA 2006 (guidance on commissioning by the NHS Commissioning Board);

and such standards are “placed on” a body if the body is required to have regard to or comply with them.
- (6) For the purposes of subsection (1)(c)—
 - (a) “national information obligations” means duties regarding the obtaining, retention, use or disclosure of information, and
 - (b) “national accountability obligations” means duties (for example, those to keep accounts or records, or to provide or publish reports, plans or other

information) which enable the management of a body, or the way in which functions are discharged, to be examined, inspected, reviewed or studied.

- (7) For the purposes of this section, a function is transferred by regulations under section 16 or by an order under section 105A of the 2009 Act, if—
- (a) provision is made under subsection (1)(a) of the section in question for the function to be the function of a local authority or a combined authority, or
 - (b) provision is made under subsection (1)(b) of that section for a function corresponding to the function to be conferred on a local authority or a combined authority.
- (8) Nothing in this section prevents the conferral on a local authority or a combined authority of duties to have regard to, or to promote or secure, the matters mentioned in sections 1 to 1F of the NHSA 2006 when exercising a function transferred to it by regulations under section 16, or by an order under section 105A of the 2009 Act.
- (9) In this section, “the health service” has the meaning given by section 275(1) of the NHSA 2006.

19 Amendments of the National Health Service Act 2006

Schedule 4 contains amendments of the National Health Service Act 2006 in connection with the exercise of health service functions of combined or local authorities and the control of information about local authority social care.

20 Referendums to undo change to mayor and cabinet executive

In the Local Government Act 2000, omit section 9NA (effect of section 9N order).