

## SCHEDULES

### SCHEDULE 4

Section 19

#### AMENDMENTS OF THE NATIONAL HEALTH SERVICE ACT 2006

- 1 The National Health Service Act 2006 is amended as follows.
- 2 (1) Section 7A (exercise of Secretary of State’s public health functions) is amended as follows.
- (2) In subsection (2), after paragraph (c) insert—  
“*(d) a combined authority.*”
- (3) In subsection (4), after “group” insert “or a combined authority”.
- 3 In section 13Z (exercise of functions), after subsection (6) insert—  
“*(7) This section is subject to sections 13ZA and 13ZB in the case of arrangements that are devolved arrangements (within the meaning of section 13ZA).*”
- 4 After section 13Z insert—

#### **“13ZA Section 13Z: further provision in relation to devolved arrangements**

- (1) This section applies to arrangements under section 13Z(2) for one or more functions of the Board to be exercised in relation to a particular area by or jointly with a relevant prescribed body (“devolved arrangements”).
- (2) “Relevant prescribed body” means a body prescribed under section 13Z(2) (c) that is either—
- (a) a combined authority whose area includes the whole or part of the area to which the arrangements relate, or
- (b) a local authority (within the meaning of section 2B) whose area includes the whole or part of that area.
- (3) The power of the Board under section 13Z(2) to enter into devolved arrangements in relation to any functions includes power to arrange for such functions to be exercised in relation to the area to which the arrangements relate—
- (a) by the relevant prescribed body jointly with one or more other eligible bodies;
- (b) jointly with the Board, the relevant prescribed body and one or more other eligible bodies.
- (4) A body is an “eligible body” if it—
- (a) falls within paragraph (a), (b) or (c) of section 13Z(2), and
- (b) exercises functions in relation to the area to which the arrangements relate.

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- (5) Where, by virtue of subsection (3), the Board enters into devolved arrangements with a relevant prescribed body and one or more eligible bodies, at least one of those eligible bodies must be a clinical commissioning group.
- (6) Where, by virtue of subsection (3), one or more eligible bodies are a party to devolved arrangements, the power under section 13Z(4) to establish a joint committee includes a power to establish a joint committee of which one or more of the eligible bodies are members.
- (7) But the members of a joint committee established under section 13Z(4) by virtue of subsection (6) must include—
  - (a) the relevant prescribed body;
  - (b) at least one clinical commissioning group with whom a function is exercised jointly under the devolved arrangements;
  - (c) if under the devolved arrangements a function is exercisable jointly with the Board, the Board.
- (8) The terms and conditions on which devolved arrangements are made may include terms authorising a joint committee established by virtue of subsection (6) to establish and maintain a pooled fund.
- (9) A pooled fund is a fund—
  - (a) which is made up of payments received from the Board under the devolved arrangements in accordance with terms of payment agreed under section 13Z(5), and
  - (b) out of which payments may be made towards expenditure incurred in the discharge of any of the functions in relation to which the devolved arrangements are made.

**13ZB Section 13Z: arrangements in relation to the function under section 3B(1)(d)**

- (1) This section applies to arrangements under section 13Z(2) that are or include arrangements in relation to the exercise of a relevant commissioning function.
- (2) “Relevant commissioning function” means a function of the Board under section 3B(1)(d) of arranging for the provision of services or facilities in respect of a particular area (“the commissioning area”).
- (3) The power to enter into the arrangements under section 13Z is subject to the following provisions of this section.
- (4) The arrangements must provide for the relevant commissioning function to be exercisable by at least one relevant prescribed body jointly with—
  - (a) one or more eligible bodies, or
  - (b) the Board and one or more eligible bodies,
 (and the arrangements are, accordingly, devolved arrangements to which section 13ZA applies).
- (5) At least one of the eligible bodies mentioned in subsection (4) must be a clinical commissioning group.

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- (6) The Board may enter into the arrangements in relation to the provision of a service or facility in the commissioning area only if it considers it appropriate to do so having regard to—
  - (a) the impact on the provision of the service or facility in the commissioning area;
  - (b) the impact on the provision of the service or facility in other areas;
  - (c) the number of persons in the commissioning area to whom the service or facility is provided;
  - (d) the number of persons who are able to provide the service or facility;
  - (e) the cost of providing the service or facility;
  - (f) the financial implications for the relevant prescribed body, and for other bodies, with whom the arrangements are made.
- (7) Regulations may provide for this section not to apply to arrangements so far as relating to a relevant commissioning function of a prescribed description.
- (8) In this section, “eligible body” and “relevant prescribed body” have the same meaning as in section 13ZA.”

5 After section 14Z3 insert—

**“14Z3A Joint exercise of functions with combined authorities**

- (1) A clinical commissioning group may arrange for—
  - (a) any commissioning function of the group to be exercised jointly with a combined authority;
  - (b) any commissioning function that the group exercises on behalf of another clinical commissioning group under section 14Z3(2)(a) to be exercised jointly with a combined authority.
- (2) Two or more clinical commissioning groups may arrange for any commissioning functions of those groups that are exercised jointly with each other under section 14Z3(2)(b) to be exercised jointly also with a combined authority.
- (3) Regulations may provide that the powers in subsections (1) and (2) do not apply in relation to a commissioning function of a prescribed description.
- (4) Where any commissioning functions of a clinical commissioning group (or groups) are exercised jointly with a combined authority under subsection (1) or (2), they may be exercised by a joint committee of the group (or groups) and the authority.
- (5) Arrangements under subsection (1) or (2) may be on such terms and conditions (including terms as to payment) as may be agreed between the clinical commissioning group (or groups) and the combined authority.
- (6) Where two or more clinical commissioning groups enter into arrangements with the same combined authority under subsection (1) or (2), the terms as to payment mentioned in subsection (5) may include terms authorising a joint committee established under subsection (4) to establish and maintain a pooled fund.
- (7) A pooled fund is a fund—

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- (a) which is made up of payments received under the arrangements from all the groups that are parties to the arrangements, and
  - (b) out of which payments may be made towards expenditure incurred in the exercise of any of the commissioning functions in respect of which the arrangements are made.
- (8) Arrangements under subsection (1) or (2) do not affect the liability of a clinical commissioning group for the exercise of any of its functions.
- (9) In this section “commissioning functions” means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (but does not include the function of making a request to the Board for the purposes of section 14Z9).”
- 6 In section 75 (arrangements between NHS bodies and local authorities), after subsection (7) insert—
- “(7A) For the purposes of this section, a combined authority that exercises a prescribed function within subsection (1)(a) of an NHS body under voluntary arrangements is to be treated as an NHS body.
- (7B) “Voluntary arrangements” means arrangements made with the combined authority under—
- (a) section 7A (exercise of Secretary of State’s public health functions),
  - (b) section 13Z (exercise of the Board’s functions), or
  - (c) section 14Z3A (joint exercise of functions with clinical commissioning groups).
- (7C) Regulations under this section, so far as made before or in the same Session as that in which the Cities and Local Government Devolution Act 2016 is passed, apply to a combined authority that is treated as an NHS body by virtue of subsection (7A) as if it were a prescribed NHS body for the purposes of those regulations.
- (7D) But a combined authority to which regulations under this section apply by virtue of subsection (7C) may enter into prescribed arrangements in relation to the exercise only of functions within subsection (1)(a) that are exercisable by the authority under voluntary arrangements.
- (7E) Regulations under this section may provide for the regulations to apply in relation to a combined authority subject to any prescribed limitations or conditions.
- (7F) Nothing in subsection (7D) prevents a combined authority from being a party to arrangements made by virtue of this section in relation to any prescribed functions of an NHS body that are exercisable by the authority as a result of an order under section 105A of the Local Democracy, Economic Development and Construction Act 2009 (public authority functions exercisable by combined authorities).”
- 7 (1) Section 251 (control of patient information) is amended as follows.
- (2) In subsection (2)(a), after “health service bodies” insert “or relevant social care bodies”.
- (3) After subsection (12) insert—

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“(12A) In this section—

“care” includes local authority social care,

“local authority social care” means—

- (a) social care provided or arranged for by a local authority, and
- (b) any other social care all or part of the cost of which is paid for with funds provided by a local authority,

“patient” includes an individual who needs or receives local authority social care or whose need for such care is being assessed by a local authority,

“social care” includes all forms of personal care and other practical assistance provided for individuals who are in need of such care or assistance by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs or other similar circumstances.”

(4) In subsection (13), at the end insert—

““relevant social care body” means—

- (a) a local authority, or
- (b) any other body or person engaged in the provision of local authority social care.”

8 In section 275(1) (interpretation), after the definition of “clinical commissioning group” insert—

““combined authority” means a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009,”.

9 In section 276 (index of defined expressions), at the appropriate place insert—

“combined authority | section 275(1)”.