
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force specified provisions of the Health and Care Act 2022 (c. 31) (“the Act”) on 1st July 2022 (regulation 2), on 31st July 2022 (regulation 3) and on 30th August 2022 (regulation 4). They are the second commencement regulations to be made under the Act. These Regulations also make transitional and saving provision in connection with the coming into force of the provisions brought into force by these Regulations.

Regulation 2(a) brings into force on 1st July 2022 provisions of the Act specified in the Schedule to these Regulations. In particular, in the Schedule, there is an entry relating to the commencement of section 38 of the Act (transfer schemes in connection with abolished bodies) to the extent, if any, that it is not already in force. Section 38 was commenced by S.I. 2022/515 (C. 20), however, in that instrument, the enabling power was incorrectly cited. A reference to the commencement of section 38 of the Act is included in the Schedule in order to ensure that that section is commenced, in case there might otherwise be a doubt in that regard.

Regulation 2(b) brings into force on 1st July 2022 section 77 (the NHS payment scheme) of, and Schedule 10 to, the Act for the purpose of the conduct of a consultation in accordance with section 114C(2) of the Health and Social Care Act 2012 (c. 7) and for related matters.

Regulation 3 brings into force on 31st July 2022 section 99 (collection of information about adult social care) of the Act for the purpose of inserting sections 277A(1) to (5) and (7), 277B and 277C into the Health and Social Care Act 2012.

Regulation 4 brings into force on 30th August 2022 section 178 (early medical termination of pregnancy) of the Act.

Regulation 5 makes transitional provision in relation to the Secretary of State’s power to require commissioning of services in accordance with section 3B of the National Health Service Act 2006 (c. 41) in relation to the period before section 13YB of the National Health Service Act 2006 (as inserted by section 13(2) of the Act) comes into force.

Regulation 6 secures that any licensing criteria set by Monitor under section 86(1) of the Health and Social Care Act 2012 are treated as if they were set by NHS England (Monitor is abolished by the Act).

Regulation 7 ensures that an investigation by the Parliamentary Commissioner of Administration into an action taken by or on behalf of Monitor can continue or be commenced after Monitor is abolished, and that reports of investigations that conclude after 1st July 2022 go to NHS England instead of Monitor. Regulation 8 makes equivalent provision about reports of investigations by the Health Service Commissioner for England into an action taken by or on behalf of the NHS Trust Development Authority.

Regulation 9 makes transitional provision in relation to mandatory information requests made by Monitor to the Health and Social Care Information Centre in order to ensure that upon the abolition of Monitor, certain mandatory information requests it has made under section 255 of the Health and Social Care Act 2012 are treated as directions made by NHS England under section 254 of that Act.

Regulations 10 to 12 make provision to secure the ongoing effectiveness of provisions dealing with requirements to produce annual reports, accounts and other documents for Monitor or the NHS Trust Development Authority (the NHS Trust Development Authority is abolished by the Act).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulation 13 makes provision to secure continuity between Monitor and the NHS Trust Development Authority and NHS England, which is taking over their functions.

Regulation 14 secures that a financial objective set under paragraph 2(2) of Schedule 5 to the National Health Service Act 2006 survives the substitution of sub-paragraph (2).

Regulations 15 to 18 make provision to secure the ongoing effectiveness of provisions dealing with requirements to produce financial annual reports, accounts and other documents for certain NHS bodies notwithstanding the abolition of Monitor and the NHS Trust Development Authority.

Regulation 19 makes provision arising from the abolition under the Act of Monitor and clinical commissioning groups in relation to the transition from the National Tariff currently provided for in Chapter 4 of the Health and Social Care Act 2012 to the NHS payment scheme which will be provided for in that Chapter upon full commencement of section 77 of the Act.

Regulation 20 makes transitional provision in relation to the provision of regulatory information or assistance to the Competition and Markets Authority until section 78 of the Act (regulations as to patient choice) comes into force.

Regulation 21 makes transitional provision in relation to the handling of complaints and investigations under the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (S.I. 2013/500) by NHS England following the abolition of Monitor. Where complaints relate to NHS England itself, provision is made for an investigation to be conducted by an employee of NHS England who has had no prior involvement with the conduct or alleged failure which is the subject of the investigation.

Regulation 22 makes transitional provision in respect of primary care services so that certain paragraphs of sections 98A and 125A of the National Health Service Act 2006 are to be read as if references to “clinical commissioning group” were references to “integrated care board”.

Regulation 22(3) and (4) further provides that any existing directions given to clinical commissioning groups under section 98A(4) or (5) or section 125A(4) or (5) of the National Health Service Act 2006 are to continue to apply to integrated care boards.

Regulation 23 saves section 14Z15 of the National Health Service Act 2006 (which relates to the preparation of annual reports by clinical commissioning groups) in respect of annual reports which have not been completed by the point of abolition of the clinical commissioning groups, and provides that these should be completed by the successor integrated care boards.

Regulation 24 saves section 14Z16 of the National Health Service Act 2006 (which relates to the performance assessment of clinical commissioning groups) in respect of performance assessments which have not been completed by the point of abolition of the clinical commissioning groups, and provides that these should be completed by NHS England.

Regulation 25 provides that, in determining the sums to be paid to an integrated care board during its first financial year under section 223G of the National Health Service Act 2006, NHS England should take account of the expenditure of any predecessor clinical commissioning group in the financial year ending with 31st March 2022 and in the period beginning with 1st April 2022 and ending with 30th June 2022.

Regulation 26 makes transitional provision to ensure that NHS England continues to take account of clinical commissioning groups when preparing its consolidated annual accounts for financial years ending 31st March 2022 and 2023. Regulation 27 makes similar provision in relation to consolidated interim accounts.

Regulation 28 makes transitional and saving provision to ensure that obligations under paragraph 17 of Schedule 1A to the National Health Service Act 2006 (which relates to preparation of accounts for clinical commissioning groups) which have not been completed by a clinical commissioning group before its abolition are completed by its successor integrated care board.

Regulation 29 makes transitional provision for continuity of affairs by integrated care boards following the abolition of clinical commissioning groups.

Regulation 30 makes transitional provision to allow integrated care boards to wind up the affairs of clinical commissioning groups.

Regulation 31 makes transitional provision for continuity of complaints processes relating to clinical commissioning groups which are abolished, and for reports to be sent to successor integrated care boards.

Regulation 32 makes transitional provision so that applications to court under the Children (Secure Accommodation) (No. 2) Regulations 1991 (S.I. 1991/2034) may be made by an integrated care board in respect of children in secure accommodation where the child was placed into accommodation by a clinical commissioning group.

Regulation 33 makes transitional provision so that integrated care boards may, to the extent they remain relevant, have regard to joint forward plans and joint capital resource use plans prepared by clinical commissioning groups before their abolition, rather than prepare their own plans.

Regulation 34 makes transitional provision so that sections 223C, 223D and 223E of the National Health Service Act 2006 (which relate to financial duties of NHS England) continue to take account of the expenditure of clinical commissioning groups in the period between 1st April 2022 and 30th June 2022, immediately before their abolition.

Regulation 35 makes transitional provision so that an integrated care board can appoint a local auditor for the purposes of section 7(1) of the Local Audit and Accountability Act 2014 (c.2) as soon as reasonably practicable after its creation and in any event before the 1st October 2022.

A full impact assessment has not been prepared for this instrument as the Regulations themselves have no impact on the private, voluntary or public sector. A full impact assessment has been prepared in relation to the Act, and a copy is available at <https://www.gov.uk/government/publications/health-and-care-bill-combined-impact-assessments>. A hard copy can be obtained by writing to the Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU.