

Guidance on the Health and Social care Act: Changes to Public Health functions that affects local authorities.

The Act puts in place the basic architecture of the reformed public health system by giving new duties and powers to local authorities and the Secretary of State for Health, and it takes effect on the whole from 1st April 2013. Below is a list of regulations and guidance that we have made or published that you will be aware of. We also attach a summary of the changes to secondary legislation that you may not be familiar with. These are high level summaries which are intended to draw the relevant provisions to your attention, and they are not intended to be a substitute for looking at the amended legislation itself.

Regulations and guidance

Various sections of the Act allow or require the Secretary of State to say more about public health duties and powers in either regulations or guidance. Regulations in force from 1st April 2013 provide that:

- delegate some of the Secretary of State's health protection duties to local authorities and require LAs to undertake some of their health improvement duties in particular ways (under section 18 of the Act)¹
- set out when LAs can charge for activity under their new duties, although no individual will have to pay new charges for their services (under section 50)²
- update the statutory responsibilities of directors of public health to maintain a match with the public health duties of local authorities (under section 30)³
- set out particular public dental health duties for local authorities⁴
- set out the process for consultation by local authorities on fluoridation of water supplies (under sections 35 – 37)⁵
- provide for the sharing of data on births and deaths between registrars, local authorities and other commissioners of health services (under sections 284 – 287)⁶

¹ The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2012

² ditto

³ The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

⁴ ditto

⁵ The Water Fluoridation (Consultation) (England) Regulations 2013

⁶ The National Health Service Commissioning Board and Clinical Commissioning Groups Functions, National Health Service and Public Health (Miscellaneous Provisions) Regulations 2013

Public Health Local Authorities: Other changes to secondary legislation due to come into force on 1 April 2013

The following changes are likely to be most interest to Public Health Local Authorities:

1. The National Health Service (Direct Payments) Regulations 2010

All Regulations

Impact of Change

The NHS Commissioning Board (NHS CB), Clinical Commissioning Groups (CCGs) and Local Authorities (LAs), as commissioners of health services, will now be able to make direct payments under pilot schemes for personal health budgets, which are planned to continue beyond 1 April 2013. The order amends the regulations governing the operation of pilot schemes (adding references to the Secretary of State, the NHS CB, CCGs and LAs), so that these new bodies can continue, or apply to set up, pilot schemes. There is transitional provision so that direct payments can continue to be made under the existing schemes by the NHS CB, CCGs and LAs.

2. The National Health Service (Charges to Overseas Visitors) Regulations 2011

Regulation 2

Impact of change

As a result of the amendments made by the order, LAs must charge overseas visitors for relevant services where no exemption from charge applies.

An overseas visitor is any person not “ordinarily resident” in the UK, which means, broadly, living in the UK on a lawful and properly settled basis for the time being.

An exemption from charge may be for the services provided, such as treatment for an infectious disease or family planning, or for a particular group of overseas visitor, such as an asylum seeker or victim of human trafficking.

LAs are being brought within scope of the Regulations, and will therefore have to make and recover charges to overseas visitors for services provided under the National Health Service Act 2006 where no exemption applies within the Regulations. However, it is only when a LA provides relevant services in a hospital (or, if outside a hospital, when provided by staff employed to work at, or under the direction of, a hospital) that they will have to make and recover charges if no exemption applies to the service or individual. It is considered that this will be a very rare occurrence. LAs that only commission services cannot apply charges to overseas visitors.

3. The Children's Homes Regulations 2001

Regulation 2, Schedule 5

Impact of change

The order requires the notification of the death of a child in a children's home to the CCG and the NHS CB.

Where the event is an outbreak of any infectious disease, which in the opinion of an attending registered medical practitioner is sufficiently serious to be so notified, the order requires the notification to the public health local authority in whose area the child is placed, in any case where that authority is not the authority responsible for placing the child in the home.

4. The Residential Family Centres Regulations 2002

Schedule 5

Impact of change

The regulations provide that the death of a child accommodated in a residential family centre should be reported now to the CCG and NHS CB.

Where the event is an outbreak of any infectious disease, which in the opinion of an attending registered medical practitioner is sufficiently serious to be so notified, the order requires the notification to the public health local authority in whose area the child is placed, in any case where that authority is not the authority responsible for placing the child in the centre.

5. The Care Quality Commission (Registration) Regulations 2009

Regulation 16

Impact of Change

The order amends regulation 16 so that local authorities exercising public health functions (within the meaning of the 2006 Act, as amended by the 2012 Act) are under the same obligation as health service bodies to notify the Care Quality Commission of the death of a service user.

6. The Fostering Services (England) Regulations 2011

Regulations 2 and Schedule 7

Impact of Change

The regulations provide that the death of a child placed in foster care should be reported now to the CCG and NHS CB.

Where the event is an outbreak of any infectious disease, which in the opinion of an attending registered medical practitioner is sufficiently serious to be so notified, the order requires the notification to the public health local authority in whose area the child is placed, in any case where that authority is not the authority responsible for placing the child.

7. The Education (Student Support) Regulations 2011

Regulation 38

Impact of change

The regulations deal with support for students starting or continuing their courses in 2012/13 in the context of students undertaking sandwich courses. In certain cases, a student would not qualify for a grant unless the work he or she does is “unpaid service”.

The amendments made by the order mean that unpaid work with the NHS CB, CCGs, public health LAs, NICE and IC from 1 April 2013 will qualify as “unpaid service”. There is transitional provision for any students who did part of a sandwich year with SHAs/PCTs between September 2012 and April 2013 and ended it with LAs or the new bodies.

8. Healthy Start Scheme and Welfare Foods (Amendment) Regulations SI 2005/3262

Regulation 2 and 8A

Impact of change

The Healthy Start and Welfare Food (Amendment) Regulations 2005 are being amended to transfer responsibility for local provision of Healthy Start vitamins to bodies commissioning maternity and child health clinics from April 2013. CCGs, the NHS CB and LAs will all be able to commission these services, and the amendments to the 2005 regulations require the commissioning body – whichever it is in any given location - to provide or arrange the provision of vitamins as part of the service.

If a LA chooses to commission such a service and so acquires the responsibility for Healthy Start vitamins, it will be exercising that responsibility under the new public health duties conferred on it by the 2012 Act. This means that the function will also become the responsibility of its director of public health (DPH). Regulation 22 ensures that in those circumstances a precise match is maintained between the specific statutory public health responsibilities of LAs and those of their DsPH by adding the function to earlier regulations that expanded DsPH role in a different way but for a similar reason.

9. Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations SI 2006/1832

Regulation 3

Impact of change

The Mental Capacity Act 2005 requires an NHS body to instruct an independent mental capacity advocate in certain circumstances where it proposes to provide, or to secure the provision of, serious medical treatment to a person who lacks capacity to consent to the treatment. Also where it proposes to make arrangements for such a person's accommodation in a hospital or care home.

The order now makes reference to the NHS CB, CCGs and LAs with public health functions. This takes account of the fact that any of the three bodies might need to appoint an advocate in respect of serious medical treatment if the person lacks capacity to consent and has no one else who could be consulted about the treatment.

10. NHS Direct NHS Trust (Establishment) Order SI 2007/48

Article 3

Impact of change

The order gives NHS Direct the function of providing goods and services for the purposes of the health service, including health related information to, amongst others, "NHS bodies".

The order now gives NHS Direct the function of providing such services and information to the NHS CB, CCGs and public health LAs.

11. Crime and Disorder (Prescribed Information) Regulations SI 2007/1831

Impact of change

The regulations specify the sets of depersonalised information that relevant authorities (which include local authorities) have a duty to disclose to each other if held by them. In the health context, this includes information on, for example, hospital admissions resulting from assault, substance misuse, and domestic abuse.

This information will be held in future by the NHS CB and CCGs, and in some cases by public health LAs.

12. Human Medicines Regulations SI 2012/1916

Part 12 of the regulations

Impact of change

This deals with prescription-only medicines. It sets out requirements that need to be met in relation to such medicines and exempts some persons from some of these requirements.

Exemptions are available for the NHS CB, CCGs, and/or public health LAs as appropriate.

13. Health, Social Care and Well-being Strategies (Wales) Regulations SI 2003/154 W24

Regulation 2

Impact of change

The regulations deal with the health, social care and well-being strategies to be prepared by Local Health Boards in Wales. They define “health and well-being services”. There are requirements to consult bodies providing health and well-being services in preparing the strategy.

The order amends the definition of “health and well-being services” so that it better “includes” local authority public health services (bearing in mind that local authorities in England will take on some public health functions currently performed by SHAs and PCTs).

14. NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations SI 2011/1706 W192

Part 7 of the regulations

Impact of change

This deals with services an English NHS body has provided or arranged the provision of under arrangements with a Welsh NHS body. If the English NHS body is notified of a concern, it must consider whether it might give rise to a qualifying liability for which redress may be available. If so, it must notify the Welsh NHS body and provide it with information. The definition of English NHS body now includes the NHS CB and CCGs, and public health LAs as they might in future provide a public health service to a Welsh NHS body.