



Department
of Health

NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015

Public Consultation

February 2015

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NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015

Public Consultation

Contents

| | |
|------------------------------------|---------|
| Summary | Page 5 |
| 1. Background | Page 6 |
| 2. The Draft Regulations | Page 8 |
| 3. Consultation Questions | Page 11 |
| 4. Responding to this consultation | Page 12 |
| Annex A - Draft Regulations | Page 13 |

Summary

- This consultation seeks views on the Government's proposal to amend the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, to bring NHS England's primary medical care functions within the permitted scope of partnership arrangements between local authorities and health bodies.
- Partnership arrangements and pooled budgets in particular can play an important role in underpinning a more joined-up approach to planning and commissioning across out-of-hospital care, and support efforts to deliver more integrated, person-centred care.
- Existing regulations already provide for pooled budgets across the key health functions of Clinical Commissioning Groups and the health-related functions of local authorities, including social care. They will underpin the operation of the Better Care Fund at local level in 2015/16.
- The proposed change will widen the potential scope of pooled budgets by making it possible for them to include funding for primary medical care, paving the way for greater integration across community health, social care and primary care.
- The proposed change provides greater flexibility and local powers around the use of pooled budget arrangements, and removes a potential legislative barrier to continued efforts to increase integration. It will not impose any *requirements* on areas or NHS England to make use of these additional flexibilities.

1. Background

- 1.1. Under Section 75 of the NHS Act 2006 (as amended), the Secretary of State can make provision for local authorities and National Health Service (NHS) bodies to enter into partnership arrangements in relation to certain functions, where these arrangements are likely to lead to an improvement in the way in which those functions are exercised. The specific provision for these arrangements is set out in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000. The regulations:
 - Set out the NHS bodies and local authorities that may participate in partnership arrangements;
 - Set out the functions of those bodies that may be the subject of partnership arrangements;
 - Enable partners to enter into arrangements for or in connection with the establishment of a pooled fund;
 - Enable partners to enter into arrangements for an NHS body to exercise the prescribed health-related functions of local authorities; and
 - Enable partners to enter into arrangements for a local authority to exercise prescribed NHS functions.
- 1.2. As set out in *Integrated Care and Support: Our Shared Commitment*¹, the Government is fully committed to supporting more integrated, person-centred care, as the means to improve outcomes for individuals and make the best use of public resources. The powers and joint arrangements possible under Section 75 of the NHS Act 2006 are already used extensively by health bodies and local government to support and underpin more effective joint working, and to help drive integration across health and social care.
- 1.3. From 2015/16 this will include the implementation of the Better Care Fund, a £3.8bn pooled fund across Clinical Commissioning Groups and local authorities. The BCF is being implemented at local level through local pooled funding arrangements ('Section 75 agreements'), making use of the powers available through Section 75 of the NHS Act 2006.

Scope of Current Regulations

- 1.4. The existing NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 set out the local authority and health body functions which may be the subject of Section 75 partnership arrangements. For the purposes of pooled funds (such as the BCF), this determines the health body or local authority functions that expenditure from the pool may be used to fund (and therefore the types of funding that partners are likely to contribute to the pool).
- 1.5. At present, the prescribed functions cover the majority of Clinical Commissioning Groups' general functions to commission health services, for example urgent and emergency care, hospital care, rehabilitation, mental health services, and community health². They also cover local authorities' key health-related functions, including public health and social care functions, and related services such as housing and services for the disabled.

¹ <https://www.gov.uk/government/publications/integrated-care>

² Certain CCG functions in relation to specialised services, such as radiotherapy and invasive treatments, are excluded.

- 1.6. However, the prescribed functions do not cover primary care services that are currently directly commissioned by NHS England, under their duties set out in Part 4, 5, 6 and 7 of the NHS Act 2006. This covers primary medical services (i.e. general practice), dental services, ophthalmic services and pharmaceutical services.

2. The Draft Regulations

The Proposed Amendment

- 2.1. The Government is clear that primary care, and general practice in particular, has an important role to play in delivering more integrated out-of-hospital care, and that more joined-up local commissioning models across primary care and wider community health and social care can offer significant benefits. Significant progress in this area is already being made, for example through the work on primary care co-commissioning being led by NHS England, and through innovative activity in local areas to put general practice at the forefront of delivering more person-centred care.
- 2.2. The Government wants to support further progress in this area, and provide local areas with as much flexibility as possible to develop future planning, partnership and commissioning arrangements that support the delivery of more integrated care. We are therefore proposing to amend existing regulations to bring NHS England's primary medical services functions (i.e. general practice) within the potential scope of Section 75 partnership arrangements.
- 2.3. This will create the flexibility to allow NHS England to participate in local Section 75 partnership arrangements, where this forms part of an agreed approach to working with local government and CCG partners to deliver more integrated care. Specifically, it would:
 - Enable NHS England to choose to pool funding for general practice alongside the CCG and local authority funding for community and social care. Although most general practice expenditure is based on nationally consistent contractual arrangements, there is some flexibility to vary contractual arrangements to reflect local priorities. This change would enable NHS England, CCGs and local authorities to use those flexibilities in ways that supported a more co-ordinated approach to planning and commissioning community-based health and social care services; and
 - Provide a more efficient and joined-up means for CCGs and local authorities to invest pooled budgets (such as the BCF) in additional services from general practice. The change would enable them to do this through asking NHS England to enter into a Section 75 agreement, and then using pooled funding to commission additional services through variations to core primary care contracts. This could be a more efficient and joined-up approach than the current typical use of standalone contracts with general practice providers held by the CCG or local authority.
- 2.4. The proposed amendment would provide additional flexibilities to NHS England and local areas around the use of pooled budgets – it does not impose any requirements for areas to make use of these flexibilities.

Other Primary Care Functions

- 2.5. The draft regulations address NHS England's primary medical services (general practice) functions, and do not add the NHS England's other primary care services (dental services, ophthalmic services and pharmaceutical services) to the list of prescribed NHS functions. Although each of these parts of primary care can play a role in supporting integrated care, the Government considers that the most significant benefits of formal partnership and pooled fund arrangements across health and local government bodies are likely to relate to general practice. However, as

part of this consultation the Government is keen to receive views from stakeholders on whether they think there would be significant benefits to allowing pooled fund arrangements across others aspects of primary care.

Outline of Draft Regulations

2.6. A draft of the *NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015* is included at **Annex A**. The draft regulations make an amendment to the existing regulations by adding to the list of prescribed NHS functions which may be the subject of prescribed partnership arrangements. Specifically, it adds NHS England's duty under section 83 of the NHS Act 2006 (as amended) to secure the provision of primary medical services. The addition of this NHS function to the list of prescribed functions will mean that, in addition to what is currently permitted:

- NHS England may enter into partnership arrangements in relation to the exercise of their primary medical services functions;
- A pooled fund established under Section 75 may be used to fund expenditure incurred in exercising NHS England's primary medical services function; and
- NHS England may enter into partnership arrangements for the exercise of their primary medical services functions by a local authority.

Managing Conflicts of Interest

2.7. If local areas and NHS England choose to make use of these additional flexibilities in future pooled funding arrangements, they should help to support the closer involvement of CCGs and local authorities in commissioning decisions in relation to general practice. While this could be an important part of creating a more joined-up approach to planning and commissioning across out-of-hospital care, the Government recognises the continued imperative of guarding against any potential conflicts of interest, given that the membership of CCGs is made up of GP practices.

2.8. The Government does not consider that the proposed amendment to the regulations will create new or increased risks around conflicts of interests, and believes that the current framework should continue to provide sufficient safeguards where these flexibilities are used. CCGs can and already do commission some additional services from general practice, and through the co-commissioning programme NHS England are already giving CCGs the opportunity to play a much greater role in decisions over 'mainstream' primary care commissioning (including, where appropriate, delegated commissioning arrangements).

2.9. In terms of existing safeguards:

- Section 14O of the NHS Act 2006 (as amended) sets out a range of statutory duties for CCGs around conflicts of interest, such as maintaining a register of interests, making arrangements for managing conflicts and potential conflicts of interest, and having regard to guidance on conflicts of interest published by NHS England;
- NHS England have recently published updated statutory guidance to CCGs on managing conflicts of interest. This includes strengthened requirements to reflect the additional role that CCGs will play under co-commissioning arrangements;

- The existing Section 75 pooled fund regulations include requirements for partners entering into pooled fund arrangements to have a formal written agreement in place, and for the ‘host’ partner to submit quarterly reports on income, expenditure and other information on the effectiveness of the fund to other partners – this will help ensure other partners have adequate oversight over spending decisions in relation to primary care; and
- The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 include a formal requirement that a CCG relevant body must not award a contract for the provision of health care services for the purposes of the NHS where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract.

Consultation requirements and the Better Care Fund

- 2.10. The draft regulations also make a minor amendment to the existing requirement for areas to consult before entering into pooled fund arrangements, to take account of arrangements around the Better Care Fund. Existing regulations specify that the local bodies intending to enter into Section 75 partnership arrangements must consult affected persons before doing so.
- 2.11. However, in the case of the Better Care Fund, under Section 223GA of the NHS Act 2006 (inserted through the Care Act 2014), CCGs and local authorities are effectively required to establish a Section 75 agreement for the purposes of the fund. The draft NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015 therefore amend the existing regulations to disapply the requirement to consult, where the bodies are already required to enter into partnership arrangements in connection with Section 223GA of the NHS Act 2006.

3. Consultation Questions

3.1. The Government would welcome views on the proposed amendment to the regulations. In particular:

- (1) Do you agree that the proposed amendment will provide helpful additional flexibility, and support the Government's and local areas' continued efforts to drive more integrated and person-centred out-of-hospital care?**
- (2) Do you agree with the Government's proposal to limit the proposed amendment to primary medical services / general practice (rather than other aspects of primary care), on the basis that this is where the benefits of pooled fund arrangements are likely to be greatest?**
- (3) Do you agree that existing safeguards and guidance are sufficient to address any potential conflicts of interests where primary care funding forms parts of pooled funding arrangements?**
- (4) If not, what additional measures do you think are necessary?**
- (5) Do you have any other comments on the draft regulations?**
- (6) 'Do the proposals have any impact (adverse or positive) on people sharing protected characteristics, as defined in the Equality Act 2010?'**

4. Responding to this Consultation

- 4.1. The deadline for this consultation is 8 March 2015. You may respond:
- In writing, to Jessica Sharp, Department of Health, Wellington House, 133-155 Waterloo Road, London SE1 8UG
 - By email, to Jessica.sharp@dh.gsi.gov.uk
 - By completing an online survey: <http://consultations.dh.gov.uk/better-care/nhs-bodies-and-local-authorities-partnership-arran>
- 4.2. As part of your response it would be helpful where relevant if you could confirm the name or type of organisation for which you are responding. A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the Gov.UK website (www.gov.uk)

Comments on the consultation process itself

- 4.3. If you have concerns or comments which you would like to make relating specifically to the consultation process itself please contact

Consultations Coordinator

Department of Health

2e26, Quarry House

Leeds

LS2 7UE

e-mail: consultations.co-ordinator@dh.gsi.gov.uk

(Please do not send consultation responses to this address)

Confidentiality of information

- 4.4. We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter.
- 4.5. Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 4.6. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

- 4.7. The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

ANNEX A – DRAFT REGULATIONS

STATUTORY INSTRUMENTS

2015 No.

NATIONAL HEALTH SERVICE, ENGLAND

LOCAL GOVERNMENT, ENGLAND

NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - - - ***

The Secretary of State, in exercise of the powers conferred by section 75(1), (2) and (3) and 272(7) of the National Health Service Act 2006⁽³⁾, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2014 and come into force on [] 2015.

Amendment of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000

2.—(1) The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000⁽⁴⁾ are amended as follows.

(a) In regulation 4 (partnership arrangements between NHS bodies and local authorities), for paragraph (2A) substitute—

“(2A) Paragraph (2) does not apply where the partnership arrangements—

(a) have been consulted upon pursuant to section 77(1A)(b) of the 2006 Act⁽⁵⁾ and regulation 4 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (consultation arrangements)⁽⁶⁾; or

⁽³⁾ 2006 c.41. By virtue of section 271(1) of the National Health Service Act 2006 the powers conferred by these sections are exercisable by the Secretary of State only in relation to England.

⁽⁴⁾ S.I. 2000/617; relevant amendments are S.I. 2003/629 and 2012/3094.

⁽⁵⁾ Section 77(1A)(b) of the National Health Service Act 2006 was inserted by section 200(2) of the Health and Social Care Act 2012 (c.7).

⁽⁶⁾ S.I. 2012/3094.

(b) are entered into pursuant to section 223GA(3) of the 2006 Act (expenditure on integration)⁽⁷⁾.”

(b) In regulation 5 (functions of NHS bodies), paragraph (a), for “sections 3, 3A and 3B” substitute “sections 3, 3A, 3B and 83”.

(c) In regulation 7 (pooled fund arrangements)—

(i) in paragraph (6), for “the Audit Commission” substitute “the appropriate person or body”; and

(ii) after paragraph (6), insert—

“(7) “the appropriate person or body” for the purposes of paragraph (6) means the person or body appointed to exercise the functions of the Audit Commission under section 28(1)(d) of the Audit Commission Act 1998, by virtue of an order made under section 49(5) of the Local Audit and Accountability Act 2014⁽⁸⁾.”

Signed by authority of the Secretary of State for Health

| | |
|------|--|
| | <i>Name</i> |
| | Parliamentary Under Secretary of State |
| Date | Department of Health |

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (“the 2000 Regulations”). The 2000 Regulations make provision for certain NHS bodies and local authorities to enter into partnership arrangements under section 75 of the National Health Service Act 2006 (“the NHS Act”). Those arrangements include the establishment of funds made up of contributions by one or more NHS bodies and one or more local authorities (“pooled funds”).

Sections 223B and 223GA of the NHS Act, as amended by section 121 of the Care Act 2014, make provision for a fund for the integration of care and support with health services (known as the Better Care Fund). As part of the Better Care Fund arrangements, the National Health Service Commissioning Board must require NHS bodies (in this case clinical commissioning groups) to make payments into a pooled fund as part of arrangements made with local authorities under section 75 of the NHS Act.

These Regulations amend the 2000 Regulations to include the function of arranging primary medical services under section 83 of the NHS Act (a function of the National Health Service Commissioning Board) as a function in respect of which partnership arrangements can be entered into.

These Regulations also amend the 2000 Regulations so that, in the case of partnership arrangements entered into as part of the Better Care Fund, there is no longer a requirement on clinical commissioning groups and local authorities to consult persons who appear to be affected by such arrangements.

The Regulations also amend regulation 7 of the 2000 Regulations to reflect the fact that the Audit Commission is abolished by section 1 of the Local Audit and Accountability Act 2014.

An impact assessment has not been produced for this instrument as no significant cost impact in the private or voluntary sector is foreseen.

⁽⁷⁾ Section 223GA was inserted by section 121 of the Care Act 2014 (c.23).

⁽⁸⁾ 2014 c.2.