

This publication was withdrawn on 1 April 2022

These directions have now expired, but are preserved here for reference.

DIRECTIONS

NATIONAL HEALTH SERVICE, ENGLAND

The Exercise of Functions by the National Health Service Commissioning Board (Coronavirus) Directions 2021

The Secretary of State for Health and Social Care gives the following Directions in exercise of the powers conferred by sections 253, 272(7) and (8) and 273(1) of the National Health Service Act 2006(a).

The Secretary of State considers that the incidence of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England constitutes an emergency for the purposes of section 253(1) of that Act, and that accordingly it is appropriate to give these Directions.

Citation, commencement and application

1.—(1) These Directions may be cited as the Exercise of Functions by the National Health Service Commissioning Board (Coronavirus) Directions 2021 and come into force at 06:30 p.m. on 31st March 2021.

(2) These Directions are given to the Board.

Interpretation

2. In these Directions—

“the Act” means the National Health Service Act 2006;

“the Board” means the National Health Service Commissioning Board(b);

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“coronavirus disease” means COVID-19(c);

“the Exercise of Commissioning Functions No. 3 Directions” means the Exercise of Commissioning Functions by the National Health Service Commissioning Board (Coronavirus) (No. 3) Directions 2020(d) given on 18th December 2020;

“the Exercise of Functions No. 2 Directions” means the Exercise of Functions by the National Health Service Commissioning Board (Coronavirus) (No. 2) Directions 2020(e) given on 4th August 2020;

“foundation trust” means an NHS foundation trust within the meaning given in section 30(1)(f) of the Act;

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- (a) 2006 c. 41. Section 253 was amended by section 47(1) to (6) of the Health and Social Care Act 2012 (c. 7). By virtue of section 273(4)(c), directions under section 253 must be given by regulations or an instrument in writing.
- (b) The National Health Service Commissioning Board (known as “NHS England”) was created by section 1H of the National Health Service Act 2006, as inserted by section 9(1) of the Health and Social Care Act 2012.
- (c) That is the official designation of the disease which can be caused by coronavirus.
- (d) The Exercise of Commissioning Functions No. 3 Directions can be viewed at: <https://www.gov.uk/government/publications/the-exercise-of-commissioning-functions-by-the-nhs-commissioning-board-coronavirus-directions-2020>.
- (e) The Exercise of Functions No. 2 Directions can be viewed at: <https://www.gov.uk/government/publications/the-exercise-of-commissioning-functions-by-the-nhs-commissioning-board-coronavirus-no-2-directions-2020>.
- (f) Section 30(1) was amended by section 159(1) of the Health and Social Care Act 2012.

“independent provider” means any person (other than an NHS body^(a)) that provides health services for the purposes of the NHS;

“the NHS” has the meaning given in section 64(4) of the Health and Social Care Act 2012;

“NHS trust” has the meaning given in section 25(1) of the Act;

“voluntary organisation” has the meaning given in section 275(1) of the Act.

Board to exercise functions of clinical commissioning groups

3.—(1) The Secretary of State directs the Board to exercise the following functions of clinical commissioning groups^(b), in accordance with paragraph (2)—

- (a) functions under section 3 of the Act (duties of clinical commissioning groups as to commissioning certain health services)^(c);
- (b) functions under section 3A of the Act (power of clinical commissioning groups to commission certain health services)^(d).

(2) The functions mentioned in paragraph (1) must be exercised by the Board during the period ending on 30th September 2021 for the purposes of—

- (a) commissioning mobile diagnostic services from independent providers, for the purposes of directly or indirectly supporting the provision of services by NHS bodies to address coronavirus and coronavirus disease;
- (b) commissioning services from voluntary organisations for the purposes of directly or indirectly supporting the provision of services by NHS bodies to address coronavirus and coronavirus disease;
- (c) facilitating the performance of residual contractual obligations in relation to any arrangements made pursuant to the Exercise of Functions No. 2 Directions, including taking all reasonable steps in relation to the termination of such arrangements.

(3) The direction given in paragraph (1) does not preclude the exercise of any function under section 3 or 3A of the Act by a clinical commissioning group.

Board to exercise functions of NHS trusts and foundation trusts

4.—(1) The Secretary of State directs the Board to exercise the following functions in accordance with paragraph (2)—

- (a) functions of NHS trusts under paragraph 14 of Schedule 4 to the Act (general powers of NHS trusts);
- (b) functions of NHS trusts under paragraph 25 of Schedule 4 to the Act (NHS trusts: staff);
- (c) functions of foundation trusts under section 47 of the Act (general powers of NHS foundation trusts).

(2) The functions mentioned in paragraph (1) must be exercised by the Board during the period ending on 30th September 2021 for the purposes of—

- (a) facilitating the management of volunteering arrangements, for the purposes of directly or indirectly supporting the provision of services by NHS bodies to address coronavirus and coronavirus disease;
- (b) facilitating the performance of residual contractual obligations in relation to any arrangements made pursuant to the Exercise of Functions No. 2 Directions, including taking all reasonable steps in relation to the termination of such arrangements.

(a) See section 275 of the National Health Service Act 2006 for the definition of “NHS body”, as inserted by paragraph 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012.

(b) Clinical commissioning groups were established by virtue of sections 11 and 14A to 14D of the National Health Service Act 2006, as inserted by sections 10 and 25(1) of the Health and Social Care Act 2012.

(c) Section 3 was amended by section 13(1) to (7) of the Health and Social Care Act 2012.

(d) Section 3A was inserted by section 14 of the Health and Social Care Act 2012.

- (3) The direction given in paragraph (1) does not preclude the exercise of any function—
- (a) under paragraph 14 or 25 of Schedule 4 to the Act by an NHS trust,
 - (b) under section 47 of the Act by a foundation trust.

Board to exercise functions of the Secretary of State

5.—(1) The Secretary of State directs the Board to exercise the Secretary of State's functions under section 254A of the Act (a) (support functions of the Secretary of State), in accordance with paragraphs (2) and (3).

(2) The functions mentioned in paragraph (1) must be exercised by the Board during the period ending on 30th September 2021, for the purpose of facilitating the performance of residual contractual obligations in relation to any arrangements made pursuant to the Exercise of Functions No. 2 Directions, including taking all reasonable steps in relation to the termination of such arrangements.

(3) In exercising a function under section 254A(3) of the Act, the Board may only make available the services of any person employed by the Board.

(4) The direction given in paragraph (1) does not preclude the exercise of any function under section 254A of the Act by the Secretary of State.

Date on which these Directions cease to have effect

6. These Directions cease to have effect at the end of 30th September 2021.

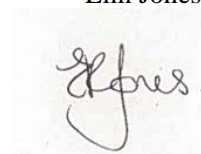
Revocation and saving

7.—(1) The Exercise of Functions No. 2 Directions and the Exercise of Commissioning Functions No. 3 Directions are revoked.

(2) Notwithstanding the revocation of the Exercise of Functions No. 2 Directions and the Exercise of Commissioning Functions No. 3 Directions, those Directions continue to have effect in relation to any function exercised by the Board pursuant to those Directions before the giving of these Directions.

Signed by authority of the Secretary of State for Health and Social Care.

Elin Jones



Member of the Senior Civil Service
Department of Health and Social Care

Date: 31st March 2021

(a) Section 254A was inserted by paragraph 128 of Schedule 4 to the Health and Social Care Act 2012.