

## NHSE/I Committee in Common report on primary legislation; Prayer motion on amendment to secondary legislation

Tony O'Sullivan

### FIRST:

there was forward announcement of the joint board meeting of NHSE and NHSI, and this Committee in Common met today - thanks to Nora for the link.

The attached document (and web link: <https://www.england.nhs.uk/wp-content/uploads/2019/02/02-MiCIE-28-02-2019-building-the-case-for-primary-legislative-change.pdf>) contains their thinking on primary legislation - at first read, although no doubt there are and will be ongoing dangers, it is also evident that our campaigning work and the ACO JR, and our appearance at the Health & Social Care Select Committee in February 2018 has had an impact.

There is now a formal consultation period from 28/2/19 (today) to 25/4/19.

'Our engagement period starts today and will run until 25 April 2019'

<https://www.longtermplan.nhs.uk/publication/implementing-the-nhs-long-term-plan/>

KONP will submit a response.

### SECOND:

Government laid down amendments to secondary legislation on a large number of bits of NHS primary legislation 13th February - 'The Amendments Relating to the Provision of Integrated Care Regulations 2019'

Link: <http://www.legislation.gov.uk/ukxi/2019/248/contents/made>

999 has put out a call to get MPs to back a 'prayer motion'. See their website:

<http://999callforNHS.org.uk/prayer-motion/4594545864>

Jon Ashworth was considering last week whether to put down a prayer motion: **this has been done 25th February - the primary signatory, Jeremy Corbyn and supported by Jon Ashworth, and 23 MPs in all so far including Caroline Lucas:**

[https://edm.parliament.uk/early-day-motion/52605?fbclid=IwAR1BY\\_xRWOx09VbYiARmLZ9wt71i5CYcwYvYUKIvcnkEggcrD4nmd2vsk58](https://edm.parliament.uk/early-day-motion/52605?fbclid=IwAR1BY_xRWOx09VbYiARmLZ9wt71i5CYcwYvYUKIvcnkEggcrD4nmd2vsk58)

This was in response to Govt amendments to secondary regulations, with changes in relation to, particularly, GP contracts and amendments to allow for GPs working to amended contracts in integrated care systems and the integrated care provider contracts:

<http://www.legislation.gov.uk/ukxi/2019/248/made>

With this Labour Prayer Motion, backed by Caroline Lucas, I think things have moved on significantly.

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### FOLLOWS:

1. **PART 4 SECTION AMENDING GP CONTRACT TO ALLOW FOR ICP**
2. **Explanation by government for amendment to secondary regulations**

**1: PART 4 SECTION AMENDING GP CONTRACT TO ALLOW FOR ICP**  
**PART 4 AMENDMENT OF THE MEDICAL PROFESSION (RESPONSIBLE OFFICERS)**  
**REGULATIONS 2010**  
**Scope of Part**

13. The Medical Profession (Responsible Officers) Regulations 2010(8) are amended in accordance with this Part.

**Amendment of regulation 1**

14. In regulation 1 (interpretation), in paragraph (2), at the appropriate places insert—

““the 2006 Act” means the National Health Service Act 2006(9);”;

““integrated care provider” means a person, other than a person specified in regulation 1A(3), who is party to an integrated care provider contract;”;

““integrated care provider contract” has the meaning given in regulation 1A;”;

““primary medical services” has the meaning given in regulation 1A(7);”.

**Insertion of regulation 1A**

15. After regulation 1 insert—

*“Integrated care provider contracts*

1A.—(1) For the purposes of these Regulations, an integrated care provider contract is a contract entered into on or after 1st April 2019 which satisfies the following paragraphs.

(2) An integrated care provider contract must be between—

(a) one or more of the persons specified in paragraph (3); and

(b) a person who is a provider of services specified in paragraph (5).

(3) The persons specified in this paragraph are—

(a) the Board;

(b) one or more CCGs; or

(c) one or more local authorities in England.

(4) An integrated care provider contract must—

(a) relate to the provision of two or more services specified in paragraph (5); and

(b) not be a contract to which paragraph (6) applies.

(5) The services specified in this paragraph are—

(a) primary medical services;

- (b) secondary care services;
- (c) public health services; and
- (d) adult social care services,

and include such services where they are provided under arrangements entered into by an NHS body or a local authority in England by virtue of section 75 of the 2006 Act(10).

(6) This paragraph applies to a contract for the provision of primary medical services to which directions given by the Secretary of State under section 98A of the 2006 Act (exercise of functions) relating to the provision of alternative provider medical services under section 83(2) of the 2006 Act apply(11).

(7) In this regulation—

“adult social care services” means services provided pursuant to the exercise of the adult social services functions of a local authority in England;

“adult social services functions” means social services functions within the meaning of section 1A of the Local Authority and Social Services Act 1970(12) so far as relating to persons aged 18 or over, excluding any function to which Chapter 4 of Part 8 of the Education and Inspections Act 2006(13) applies;

“CCG” means a clinical commissioning group established by section 14D of the 2006 Act(14);

“primary medical services” means services which the Board considers appropriate to secure the provision of under section 83(2) of the 2006 Act (primary medical services)(15);

“public health functions” means—

(a)

the public health functions of the Secretary of State under the following provisions of the 2006 Act—

(i)

section 2A (Secretary of State’s duty as to protection of public health)(16);

(ii)

section 2B (functions of local authorities and Secretary of State as to improvement of public health)(17);

(iii)

paragraph 8 and 12 of Schedule 1 (further provision about the Secretary of State and services under this Act)(18);

(b)

the public health functions of a local authority in England under the following provisions of the 2006 Act, and any regulations made under these provisions—

(i)

section 2B (functions of local authorities and Secretary of State as to improvement of public health);

(ii)

section 111 (dental public health)(19);

(iii)

paragraphs 1 to 7B or 13 of Schedule 1 (further provision about the Secretary of State and services under this Act)(20);

(c)

the public health functions of the Secretary of State that a local authority in England is required to exercise by virtue of regulations made under section 6C(1) (regulations as to the exercise by local authorities of certain public health functions)(21) of the 2006 Act; or

(d)

the public health functions of the Secretary of State where they are exercised by the Board, a CCG or a local authority in England, where those bodies are acting pursuant to arrangements made under section 7A (exercise of the Secretary of Health's public health functions)(22) of the 2006 Act;

“public health services” means services which are provided pursuant to the exercise of public health functions;

“secondary care services” means—

(a)

such services, accommodation or facilities as a CCG considers it appropriate to make arrangements for the provision of under or by virtue of section 3 (duties of clinical commissioning groups as to commissioning of health services)(23) or 3A (power of clinical commissioning groups to commission certain health services)(24) of the 2006 Act; or

(b)

such services or facilities as the Board is required by the Secretary of State to arrange by virtue of regulations made under section 3B (power to require Board to commission certain health services)(25) of the 2006 Act.

(8) For the purposes of this regulation, any of the following is a local authority in England—

- (a) a county council;
- (b) a county borough council;
- (c) a district council;
- (d) a London borough council;
- (e) the Common Council of the City of London;
- (f) the Council of the Isles of Scilly.”.

### **Amendment of regulation 3**

16. In regulation 3 (application and extent) after paragraph (2) insert—

“(3) In so far as these Regulations are amended by Part 4 of the Amendments Relating to the Provision of Integrated Care Regulations 2019—

- (a) they extend to England and Wales; and
- (b) they apply in relation to England only.”.

### **Amendment of regulation 10**

17. In regulation 10 (connection between designated bodies and medical practitioners), after paragraph (1)(a) insert—

“(aa) where none of the preceding sub-paragraphs apply, the designated body is an integrated care provider where the medical practitioner—

- (i) is employed by an integrated care provider to provide primary medical services; or
- (ii) provides health services under the 2006 Act (which are not primary medical services) for or on behalf of an integrated care provider or is engaged by such a provider to provide such services;”.

### **Amendment of the Schedule**

18. In the Schedule (designated bodies), after paragraph 2 insert—

“2A. Integrated care providers.”.

## 2: Explanation by government for amendment to secondary regulations

### Explanation by government for amendment to secondary regulations

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend secondary legislation relating to the National Health Service, and the regulation of the medical professions in consequence of the implementation of integrated care provider (“ICP”) contracts. ICP contracts will be a single contract, through which general practice, wider NHS and, in some cases, local authority services can be commissioned from a lead provider organisation, responsible for delivering integrated care.

Part 2 amends the National Health Service (Travel Expenses and Remission of Charges) Regulations 2003 ([S.I. 2003/2382](#)). The amendments maintain the position that the travel expenses and the remission of certain charges are not available in the context of primary medical services. But the amendments also ensure that the existing entitlements to travel expenses and remission of charges are available in relation to an ICP contracts. A clarificatory amendment is also made in relation to sub-contracting.

Part 3 amends the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 ([S.I. 2009/309](#)). The amendments ensure that requirements relating to the handling of complaints about health service provision apply to a greater range of persons and bodies in order to reflect new models of health service provision under an ICP contract. The amendments also ensure that requirements relating to the handling of complaints by local authorities about health or social care provision apply in a broader range of circumstances.

Part 4 amends the Medical Profession (Responsible Officers) Regulations 2010 ([S.I. 2010/2841](#)). The amendments insert a new definition of “integrated care provider” which is consequential on the changes made to designated bodies in the Schedule to those Regulations. Further definitions are also added to reflect the introduction of ICP contracts. Part 4 also inserts a new provision that enables an ICP to be the designated body for medical practitioners who are employed by it or provide to it health services other than primary medical services, under or pursuant to an ICP contract.

Part 5 amends the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 ([S.I. 2012/2996](#)) (“the Standing Rules”). The amendments insert a new definition of “integrated care provider contract”, amend the definition of “commissioning contract”

so that it includes such a contract, and excludes such a contract from the definition of “primary care contract”. These amendments ensure that the Standing Rules allow for commissioning of ICP contracts.

Part 6 amends the National Health Service (Performers Lists) (England) Regulations ([S.I. 2013/335](#)). The amendments insert definitions of an “APMS contract”, “integrated care provider contract” and “primary medical services” into those Regulations to include the new contractual arrangements for the delivery of primary medical services under an ICP contract. This enables medical practitioners performing services under these contracts to be on the medical performers’ list.

Part 7 amends the National Health Service (Licence Exemptions, etc.) Regulations 2013 ([S.I. 2013/2677](#)). The amendments amend the applicable turnover exemption in those Regulations by prescribing a new prospective assessment of applicable turnover. Providers of NHS health care services must estimate their prospective applicable turnover on the date they started providing NHS services, and every month thereafter, for the purpose of determining whether their applicable turnover is reasonably expected to be less than the £10 million exemption threshold in those Regulations. The new test requires providers that estimate that their applicable turnover will be less than the £10 million threshold to consider if any contracts they still hold previously required them to be licensed.

Part 8 amends the National Health Service (Charges for Drugs and Appliances) Regulations 2015 ([S.I. 2015/570](#)). The amendments clarify that primary medical services provided under section 83(2) of the National Health Service Act 2006, which were formerly only provided under arrangements between Alternative Medical Services Providers and the National Health Service Commissioning Board, may now be commissioned under ICP contracts. However, the underlying position of the circumstances in which prescription charges are levied, or exemptions from charging may be obtained, is unaltered.

Parts 9 and 10 amend respectively the National Health Service (General Medical Services Contracts) Regulations 2015 ([S.I. 2015/1862](#)) and the National Health Service (Personal Medical Services Agreements) Regulations 2015 ([S.I. 2015/1879](#)). These two sets of Regulations make provision in respect of the services provided under a general medical services (“GMS”) contract and a personal medical services (“PMS”) agreement made pursuant to Part 4 of the National Health Service Act 2006. The amendments make provision for a GP practice which holds a GMS contract or a PMS agreement to suspend the obligation to provide primary medical services under that contract or agreement, so that such services may be provided by that GP practice under an ICP contract. Provision is also made for a suspended GMS contract or PMS

agreement to be reactivated at specified intervals and where specified conditions are met.

Part 11 makes transitional provision to ensure that where a complaint under the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 ([S.I. 2009/309](#)) has started before this instrument commences, the complaint will proceed under those regulations as if this instrument had not been made.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.