EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (NHS PAYMENT SCHEME – CONSULTATION) REGULATIONS 2022

2022 No. 1189

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument will define "relevant providers" for the purpose of those bodies that NHS England is required to consult prior to publishing the NHS payment scheme.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Health and Care Act 2022 (c. 31) ("the 2022 Act) amends the Health and Social Care Act 2012 (c. 7) ("the 2012 Act") to replace the national tariff, which set out the prices and rules for determining prices payable by NHS commissioners to providers for providing NHS-funded healthcare, with the NHS Payment Scheme.

6.2 The 2012 Act requires NHS England to publish the NHS payment scheme, and prior to publication NHS England must consult each integrated care board, each 'relevant provider' and such other persons as NHS England considers appropriate (section 114C(2) of the 2012 Act). This instrument defines 'relevant provider' for the purposes of NHS England's consultation on the NHS payment scheme, pursuant to the power at section 114C(8)(b). Separate regulations, which will follow the affirmative procedure, will make provision setting out the "objection percentages" referred to in section 114D(1)(b) – that is, the percentage of ICBs or of relevant providers that, if objecting, would trigger the processes set out at sections 114D(3) to (5).

7. Policy background

What is being done and why?

7.1 The National Tariff sets out prices and rules for determining prices payable by NHS commissions to providers for providing NHS-funded healthcare. Upon the full commencement of section 77 of and Schedule 10 to the 2022 Act, the National Tariff will be replaced by the NHS Payment Scheme. (Section 77 and Schedule 10 have been commenced for the purpose of NHS England conducting the consultation with which these regulations are concerned).

7.2 The NHS payment scheme will set rules around how commissioners establish prices to pay providers for healthcare services for the purposes of the NHS, or public health services which are commissioned by an integrated care board, or NHS England, on behalf of the Secretary of State for Health and Social Care. As well as specifying prices, under the NHS payment scheme NHS England will have power to set rules determining the price payable by a commissioner for NHS health care services and public health services, for example by publishing a formula to take into account local factors.

7.3 NHS England must consult on the rules set out in the proposed NHS payment scheme. In doing so, they must consult relevant providers. Relevant providers include holders of licences to provide health care services for the purposes of the NHS, in addition to persons prescribed in regulation 2 of this instrument.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 NHS England previously consulted on the rules set out in the National Tariff, as per their duty in section 118 of the Health and Social Care Act 2012. The duty to consult on the NHS Payment Scheme is provided in the new section 114C of the Health and Social Care Act 2012, inserted by Schedule 10 to the Health and Care Act 2022. The definition of "relevant provider" prescribed by regulation 2 of this instrument is substantively the same as previous definition used for consultations made on the national tariff as provided in regulation 6 of the National Health Service (Licensing and Pricing) Regulations 2013. insofar as providers of health services for the NHS are concerned. As the NHS Payment Scheme will additionally cover the prices payable for public health services under arrangements made by commissioners by virtue of sections 7A or 7B of the National Health Service Act 2006, these regulations also set out the public health providers who will fall within the definition of "relevant provider", at regulation 2.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not consolidate any other instrument.

10. Consultation outcome

10.1 No consultation was required for the instrument.

11. Guidance

11.1 Guidance on completing the consultation process of the new NHS Payment Scheme will be published by NHS England alongside the consultation.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because of low or no impact to business.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The implementation of this legislation will be monitored and reviewed by the Department of Health and Social Care.

15. Contact

15.1 James Richardson at the Department of Health and Social Care, Telephone: 0207 210 6336 or email: james.richardson@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Ed Jewell, Deputy Director for NHS Finance, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Will Quince MP, the Minister of State for Health and Secondary Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.