

**2009 No. 309**

**NATIONAL HEALTH SERVICE, ENGLAND**

**SOCIAL CARE, ENGLAND**

**The Local Authority Social Services and National Health  
Service Complaints (England) Regulations 2009**

*Made* - - - - - *23rd February 2009*

*Laid before Parliament* *27th February 2009*

*Coming into force in accordance with regulation 1(2) and (3)*

The Secretary of State, in exercise of the powers conferred by sections 113(1), (3) and (4), 114(1), (2) and (5), 115(1), (2), (4) and (5) and 195(1) and (2) of the Health and Social Care (Community Health and Standards) Act 2003(a), makes the following Regulations:

**Citation, commencement, effect and application**

**1.**—(1) These Regulations may be cited as the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

(2) These Regulations, except for regulations 2(3) and 11, come into force on 1st April 2009.

(3) Regulations 2(3) and 11 come into force on 1st April 2010.

(4) The following provisions shall cease to have effect on 1st April 2010—

(a) regulation 2(2); and

(b) regulation 10.

(5) These Regulations apply in relation to England.

**Interpretation**

**2.**—(1) In these Regulations—

“the 1993 Act” means the Health Service Commissioners Act 1993(b);

“the 2004 Regulations” means the National Health Service (Complaints) Regulations 2004(c);

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

“the 2006 Regulations” means the Local Authority Social Services Complaints (England) Regulations 2006(e);

“adult” means an individual who has attained the age of 18;

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(a) 2003 c. 43.

(b) 1993 c. 46.

(c) S.I. 2004/1768, amended by S.I. 2006/552, 562 and 2084, 2007/1898 and 2008/528.

(d) 2006 c. 41.

(e) S.I. 2006/1681.

“adult social care” means social care within the meaning of Part 1 of the Health and Social Care Act 2008(a) which is provided to an adult;

“adult social care provider” means a person or body who carries on an activity which—

- (a) involves, or is connected with, the provision of adult social care; and
- (b) is a regulated activity within the meaning of Part 1 of the Health and Social Care Act 2008;

“child” means an individual who has not attained the age of 18;

“complaints manager” means the person designated in accordance with regulation 4(1)(b);

“local authority” means—

- (a) a county council in England;
- (b) a metropolitan district council;
- (c) a non-metropolitan district council for an area for which there is no county council;
- (d) a London borough council;
- (e) the Common Council of the City of London; or
- (f) the Council of the Isles of Scilly;

“general dental services contractor” means a person or body who has entered into a general dental services contract with a Primary Care Trust in accordance with section 100 of the 2006 Act;

“general medical services contractor” means a person or body who has entered into a general medical services contract with a Primary Care Trust in accordance with section 84 of the 2006 Act;

“general ophthalmic services contractor” means a person or body who has entered into a general ophthalmic services contract with a Primary Care Trust in accordance with section 117 of the 2006 Act;

“Health Service Commissioner” means the person appointed Health Service Commissioner for England in accordance with section 1 of, and Schedule 1 to, the 1993 Act;

“independent provider” means a person or body who—

- (a) provides health care in England under arrangements made with an NHS body; and
- (b) is not an NHS body or primary care provider;

“NHS body”, except in regulation 6(1)(a)(ii), means—

- (a) a Strategic Health Authority;
- (b) a Special Health Authority which does not exercise functions only or mainly in Wales and to which section 2 of the 1993 Act applies;
- (c) a Primary Care Trust;
- (d) an NHS trust managing a hospital, or other establishment or facility, in England;
- (e) NHS Direct National Health Service Trust; or
- (f) an NHS foundation trust;

“primary care provider” means a person or body who—

- (a) is a general medical services contractor;
- (b) provides primary medical services in accordance with arrangements made under section 83(2)(b) or 92 of the 2006 Act;
- (c) is a general dental services contractor;
- (d) provides primary dental services in accordance with arrangements made under section 107 of the 2006 Act;

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(a) 2008 c.14.

- (e) is a general ophthalmic services contractor;
- (f) provides pharmaceutical services in accordance with arrangements made under section 126 of the 2006 Act;
- (g) provides additional pharmaceutical services in accordance with arrangements made under section 127 of the 2006 Act; or
- (h) provides local pharmaceutical services in accordance with an LPS scheme established under paragraph 1 of Schedule 12 to the 2006 Act;

“registered person” has the meaning given in regulation 10;

“relevant complaints procedure” means—

- (a) any arrangements for the handling and consideration of complaints that may at any time be or have been required respectively by any of the following provisions—
  - (i) paragraph 32 of Schedule 1 to the National Health Service (Pharmaceutical Services) Regulations 2005(a);
  - (ii) paragraph 19 of Schedule 3 to the National Health Service (Pharmaceutical Services) Regulations 2005(b) ; or
  - (iii) paragraph 25 of Schedule 2 to the National Health Service (Local Pharmaceutical Services etc.) Regulations 2006(c); or
- (b) any complaints procedure that may at any time be or have been required respectively by any of the following provisions—
  - (i) paragraph 92 of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004(d);
  - (ii) paragraph 86 of Schedule 5 to the National Health Service (Personal Medical Services Agreements) Regulations 2004(e);
  - (iii) paragraph 47 of Schedule 3 to the National Health Service (General Dental Services Contracts) Regulations 2005(f);
  - (iv) paragraph 47 of Schedule 3 to the National Health Service (Personal Dental Services Agreements) Regulations 2005(g); or
  - (v) paragraph 22 of Schedule 1 to the General Ophthalmic Services Contracts Regulations 2008(h);

“responsible body” means a local authority, NHS body, primary care provider or independent provider;

“responsible person” means the person designated in accordance with regulation 4(1)(a);

“working day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England under section 1 of the Banking and Financial Dealings Act 1971(i).

- (a) S.I. 2005/641, relevant amendments are made by paragraph 1 of the Schedule to these Regulations. A new paragraph 32 of Schedule 1 is substituted with effect from 1st April 2009 by paragraph 1(2) of the Schedule to these Regulations.
- (b) S.I. 2005/641. A new paragraph 19 of Schedule 3 is substituted with effect from 1st April 2009 by paragraph 1(4) of the Schedule to these Regulations.
- (c) S.I. 2006/552. A new paragraph 25 of Schedule 2 is substituted with effect from 1st April 2009 by paragraph 2 of the Schedule to these Regulations.
- (d) S.I. 2004/291, amended by S.I. 2004/2694 and 2007/3491, and paragraph 3 of the Schedule to these Regulations. A new paragraph 92 of Schedule 6 is substituted with effect from 1st April 2009 by paragraph 3(2) of the Schedule to these Regulations.
- (e) S.I. 2004/627, amended by S.I. 2004/2694 and 2007/3491, and paragraph 4 of the Schedule to these Regulations. A new paragraph 86 of Schedule 5 is substituted with effect from 1st April 2009 by paragraph 4(2) of the Schedule to these Regulations.
- (f) S.I.2005/3361, amended by paragraph 5 of the Schedule to these Regulations. Paragraph 47 of Schedule 3 is amended with effect from 1st April 2009 by paragraph 5(3) of the Schedule to these Regulations.
- (g) S.I.2005/3373, amended by paragraph 6 of the Schedule to these Regulations. Paragraph 47 of Schedule 3 is amended with effect from 1st April 2009 by paragraph 6(3) of the Schedule to these Regulations..
- (h) S.I. 2008/1185, amended by paragraph 7 of the Schedule to these Regulations. Paragraph 22 of Schedule 1 is amended with effect from 1st April 2009 by paragraph 7(3) of the Schedule to these Regulations.
- (i) 1971 c.80.

- (2) “Care standards complaint” means a complaint which—
- (a) relates to services provided by an establishment or agency in respect of which a person is required to be registered under section 11 of the Care Standards Act 2000(a); and
  - (b) does not relate to the exercise by a local authority of—
    - (i) its social services functions (as defined in section 148 of the Health and Social Care (Community Health and Standards) Act 2003(b); or
    - (ii) any function discharged by it under arrangements made under section 75 of the 2006 Act.
- (3) “Social care provider complaint” means a complaint which—
- (a) relates to action taken by an adult social care provider in connection with the provision of adult social care; and
  - (b) does not relate to the exercise by a local authority of—
    - (i) its social services functions; or
    - (ii) any function discharged by it under arrangements made under section 75 of the 2006 Act.

### **Arrangements for the handling and consideration of complaints**

3.—(1) Each responsible body must make arrangements (“arrangements for dealing with complaints”) in accordance with these Regulations for the handling and consideration of complaints.

- (2) The arrangements for dealing with complaints must be such as to ensure that—
- (a) complaints are dealt with efficiently;
  - (b) complaints are properly investigated;
  - (c) complainants are treated with respect and courtesy;
  - (d) complainants receive, so far as is reasonably practical—
    - (i) assistance to enable them to understand the procedure in relation to complaints; or
    - (ii) advice on where they may obtain such assistance;
  - (e) complainants receive a timely and appropriate response;
  - (f) complainants are told the outcome of the investigation of their complaint; and
  - (g) action is taken if necessary in the light of the outcome of a complaint.

### **Responsibility for complaints arrangements**

- 4.—(1) Each responsible body must designate—
- (a) a person, in these Regulations referred to as a responsible person, to be responsible for ensuring compliance with the arrangements made under these Regulations, and in particular ensuring that action is taken if necessary in the light of the outcome of a complaint; and
  - (b) a person, in these Regulations referred to as a complaints manager, to be responsible for managing the procedures for handling and considering complaints in accordance with the arrangements made under these Regulations.

(2) The functions of the responsible person may be performed by any person authorised by the responsible body to act on behalf of the responsible person.

(3) The functions of the complaints manager may be performed by any person authorised by the responsible body to act on behalf of the complaints manager.

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(a) 2000 c.14.  
(b) 2003 c.43.

- (4) The responsible person is to be—
- (a) in the case of a local authority or NHS body, the person who acts as the chief executive officer of the authority or body;
  - (b) in the case of any other responsible body, the person who acts as the chief executive officer of the body or, if none—
    - (i) the person who is the sole proprietor of the responsible body;
    - (ii) where the responsible body is a partnership, a partner; or
    - (iii) in any other case, a director of the responsible body, or a person who is responsible for managing the responsible body.
- (5) The complaints manager may be—
- (a) a person who is not an employee of the responsible body;
  - (b) the same person as the responsible person;
  - (c) a complaints manager designated by another responsible body under paragraph (1)(b).

### **Persons who may make complaints**

- 5.—(1) A complaint may be made by—
- (a) a person who receives or has received services from a responsible body; or
  - (b) a person who is affected, or likely to be affected, by the action, omission or decision of the responsible body which is the subject of the complaint.
- (2) A complaint may be made by a person (in this regulation referred to as a representative) acting on behalf of a person mentioned in paragraph (1) who—
- (a) has died;
  - (b) is a child;
  - (c) is unable to make the complaint themselves because of—
    - (i) physical incapacity; or
    - (ii) lack of capacity within the meaning of the Mental Capacity Act 2005<sup>(a)</sup>; or
  - (d) has requested the representative to act on their behalf.
- (3) Where a representative makes a complaint on behalf of a child, the responsible body to which the complaint is made—
- (a) must not consider the complaint unless it is satisfied that there are reasonable grounds for the complaint being made by a representative instead of the child; and
  - (b) if it is not so satisfied, must notify the representative in writing, and state the reason for its decision.
- (4) This paragraph applies where—
- (a) a representative makes a complaint on behalf of—
    - (i) a child; or
    - (ii) a person who lacks capacity within the meaning of the Mental Capacity Act 2005; and
  - (b) the responsible body to which the complaint is made is satisfied that the representative is not conducting the complaint in the best interests of the person on whose behalf the complaint is made.
- (5) Where paragraph (4) applies—
- (a) the complaint must not be considered or further considered under these Regulations; and

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(a) 2005 c.9.

- (b) the responsible body must notify the representative in writing, and state the reason for its decision.

(6) In these Regulations any reference to a complainant includes a reference to a representative.

### **Duty to handle complaints**

**6.**—(1) This regulation applies to a complaint made on or after 1st April 2009 in accordance with these Regulations to—

- (a) a local authority about the exercise by the local authority of the following functions—
  - (i) its social services functions; or
  - (ii) any function discharged or to be discharged by it under arrangements made between it and an NHS body under section 75 of the 2006 Act in relation to the functions of an NHS body;
- (b) an NHS body about—
  - (i) the exercise of its functions; or
  - (ii) the exercise of any function discharged or to be discharged by it under arrangements made between it and a local authority under section 75 of the 2006 Act in relation to the exercise of the health-related functions of a local authority;
- (c) a primary care provider about the provision of services by it under arrangements with an NHS body; or
- (d) an independent provider about the provision of services by it under arrangements with an NHS body.

(2) This regulation does not apply to a complaint specified in regulation 8(1).

(3) In paragraph (1)(a)(ii), “NHS body” has the meaning given in section 28 of the 2006 Act, but does not include a Special Health Authority.

(4) Where this regulation applies to a complaint, the responsible body to which the complaint is made must handle the complaint in accordance with these Regulations.

(5) This paragraph applies where—

- (a) a responsible body (“the first body”) receives a complaint on or after 1st April 2009;
- (b) it appears to the first body that the complaint, if it had been made to another responsible body (“the second body”), would be a complaint which would fall to be handled in accordance with these Regulations by the second body; and
- (c) the first body sends the complaint to the second body.

(6) Where paragraph (5) applies, the complainant is deemed to have made the complaint to the second body under these Regulations.

### **Complaints about the provision of health services**

**7.**—(1) This regulation applies to a complaint which is—

- (a) made to a Primary Care Trust in accordance with these Regulations on or after 1st April 2009;
- (b) about the services provided by a provider under arrangements with the Primary Care Trust; and
- (c) not specified in regulation 8(1).

(2) In this regulation, “provider” means an NHS body, primary care provider or independent provider.

(3) Where a Primary Care Trust receives a complaint to which this regulation applies—

- (a) the Primary Care Trust must ask the complainant whether the complainant consents to details of the complaint being sent to the provider; and

- (b) if the complainant so consents, the Primary Care Trust must as soon as reasonably practicable send details of the complaint to the provider.
- (4) If the Primary Care Trust considers that it is appropriate for the Primary Care Trust to deal with the complaint—
  - (a) it must so notify the complainant and the provider; and
  - (b) it must continue to handle the complaint in accordance with these Regulations.
- (5) If the Primary Care Trust considers that it is more appropriate for the complaint to be dealt with by the provider, and the complainant consents—
  - (a) the Primary Care Trust must so notify the complainant and the provider;
  - (b) when the provider receives the notification given to it under sub-paragraph (a)—
    - (i) the provider must handle the complaint in accordance with these Regulations; and
    - (ii) the complainant is deemed to have made the complaint to the provider under these Regulations.

### **Complaints not required to be dealt with**

**8.**—(1) Subject to paragraph (2), the following complaints are not required to be dealt with in accordance with these Regulations—

- (a) a complaint by a responsible body;
  - (b) a complaint by an employee of a local authority or NHS body about any matter relating to that employment;
  - (c) a complaint which—
    - (i) is made orally; and
    - (ii) is resolved to the complainant’s satisfaction not later than the next working day after the day on which the complaint was made;
  - (d) a complaint the subject matter of which is the same as that of a complaint that has previously been made and resolved in accordance with sub-paragraph (c);
  - (e) a complaint the subject matter of which has previously been investigated under—
    - (i) these Regulations;
    - (ii) the 2004 Regulations, in relation to a complaint made under those Regulations before 1st April 2009;
    - (iii) the 2006 Regulations, in relation to a complaint made under those Regulations before 1st April 2009; or
    - (iv) a relevant complaints procedure in relation to a complaint made under such a procedure before 1st April 2009;
  - (f) a complaint the subject matter of which is being or has been investigated by—
    - (i) a Local Commissioner under the Local Government Act 1974(a); or
    - (ii) a Health Service Commissioner under the 1993 Act;
  - (g) a complaint arising out of the alleged failure by a responsible body to comply with a request for information under the Freedom of Information Act 2000(b); and
  - (h) a complaint which relates to any scheme established under section 10 (superannuation of persons engaged in health services, etc.) or section 24 (compensation for loss of office, etc.) of the Superannuation Act 1972(c), or to the administration of those schemes.
- (2) Where a responsible body decides that a complaint is a complaint specified in paragraph (1)—

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(a) 1974 c. 7.  
 (b) 2006 c.36.  
 (c) 1972 c.11.

- (a) it is not required to consider the complaint, or consider it further, under these Regulations; and
- (b) except where the complaint is a complaint specified in paragraph (1)(c), it must as soon as reasonably practicable notify the complainant in writing of its decision and the reason for the decision.

(3) Where a complaint specified in paragraph (1) is part of, or is connected with, another complaint which is not so specified, nothing in this regulation prevents that other complaint being handled in accordance with these Regulations.

### **Duty to co-operate**

**9.**—(1) This regulation applies where—

- (a) a responsible body (“the first body”) is considering a complaint made in accordance with these Regulations; and
- (b) it appears to the first body that the complaint contains material which, if it had been sent to another responsible body (“the second body”), would be a complaint which would fall to be handled in accordance with these Regulations by the second body.

(2) The first body and the second body must co-operate for the purpose of—

- (a) co-ordinating the handling of the complaint; and
- (b) ensuring that the complainant receives a co-ordinated response to the complaint.

(3) The duty to co-operate under paragraph (2) includes, in particular, a duty for each body—

- (a) to seek to agree which of the two bodies should take the lead in—
  - (i) co-ordinating the handling of the complaint; and
  - (ii) communicating with the complainant;
- (b) to provide to the other body information relevant to the consideration of the complaint which is reasonably requested by the other body; and
- (c) to attend, or ensure it is represented at, any meeting reasonably required in connection with the consideration of the complaint.

### **Care standards complaints**

**10.**—(1) This regulation applies where it appears to a local authority considering a complaint that the complaint is wholly or in part a care standards complaint.

(2) The local authority must—

- (a) ask the complainant whether the complainant consents to details of the complaint being sent to the registered person; and
- (b) if the complainant so consents, send such details to the registered person as soon as reasonably practicable.

(3) Where a complaint is in part a care standards complaint and in part for the local authority to consider, the local authority must—

- (a) as soon as reasonably practicable notify the complainant which part of the complaint will be handled by the local authority in accordance with these Regulations; and
- (b) where the local authority has sent details of the complaint to the registered person under paragraph (2)(b), co-operate as much as is reasonable and practicable with the registered person for the purpose of ensuring that the complainant receives a co-ordinated response to the complaint.

(4) In this regulation, “registered person” means the person registered under section 11 of the Care Standards Act 2000 in respect of the establishment or agency complained about.

### **Social care provider complaints**

**11.**—(1) This regulation applies where it appears to a local authority considering a complaint that the complaint is wholly or in part a social care provider complaint.

(2) The local authority must—

- (a) ask the complainant whether the complainant consents to details of the complaint being sent to the relevant adult social care provider; and
- (b) if the complainant so consents, send such details to the relevant adult social care provider as soon as reasonably practicable.

(3) Where a complaint is in part a social care provider complaint and in part for the local authority to consider, the local authority must—

- (a) as soon as reasonably practicable notify the complainant which part of the complaint will be handled by the local authority in accordance with these Regulations; and
- (b) where the local authority has sent details of the complaint to the relevant adult social care provider under paragraph (2)(b), co-operate as much as is reasonable and practicable with the relevant adult social care provider for the purpose of ensuring that the complainant receives a co-ordinated response to the complaint.

(4) In this regulation, “relevant adult social care provider” means the adult social care provider in relation to whom the social care provider complaint was made.

### **Time limit for making a complaint**

**12.**—(1) Except as mentioned in paragraph (2), a complaint must be made not later than 12 months after—

- (a) the date on which the matter which is the subject of the complaint occurred; or
- (b) if later, the date on which the matter which is the subject of the complaint came to the notice of the complainant.

(2) The time limit in paragraph (1) shall not apply if the responsible body is satisfied that—

- (a) the complainant had good reasons for not making the complaint within that time limit; and
- (b) notwithstanding the delay, it is still possible to investigate the complaint effectively and fairly.

### **Procedure before investigation**

**13.**—(1) A complaint may be made orally, in writing or electronically.

(2) Where a complaint is made orally, the responsible body to which the complaint is made must—

- (a) make a written record of the complaint; and
- (b) provide a copy of the written record to the complainant.

(3) Except where regulation 6(5) or 7(1) applies in relation to a complaint, the responsible body must acknowledge the complaint not later than 3 working days after the day on which it receives the complaint.

(4) Where paragraph (5) of regulation 6 applies, and a responsible body (“the recipient body”) receives a complaint sent to it by another responsible body in accordance with that paragraph, the complaint must be acknowledged by the recipient body not later than 3 working days after the day on which it receives the complaint.

(5) Where regulation 7(1) applies to a complaint—

- (a) the Primary Care Trust which receives the complaint must acknowledge the complaint not later than 3 working days after the day on which it receives it; and

- (b) where a responsible body receives notification given to it under regulation 7(5)(a), it must acknowledge the complaint not later than 3 working days after the day on which it receives the notification.
- (6) The acknowledgement may be made orally or in writing.
- (7) At the time it acknowledges the complaint, the responsible body must offer to discuss with the complainant, at a time to be agreed with the complainant—
  - (a) the manner in which the complaint is to be handled; and
  - (b) the period (“the response period”) within which—
    - (i) the investigation of the complaint is likely to be completed; and
    - (ii) the response required by regulation 14(2) is likely to be sent to the complainant.
- (8) If the complainant does not accept the offer of a discussion under paragraph (7), the responsible body must—
  - (a) determine the response period specified in paragraph (7)(b); and
  - (b) notify the complainant in writing of that period.

### **Investigation and response**

- 14.—**(1) A responsible body to which a complaint is made must—
- (a) investigate the complaint in a manner appropriate to resolve it speedily and efficiently; and
  - (b) during the investigation, keep the complainant informed, as far as reasonably practicable, as to the progress of the investigation.
- (2) As soon as reasonably practicable after completing the investigation, the responsible body must send the complainant in writing a response, signed by the responsible person, which includes—
- (a) a report which includes the following matters—
    - (i) an explanation of how the complaint has been considered; and
    - (ii) the conclusions reached in relation to the complaint, including any matters for which the complaint specifies, or the responsible body considers, that remedial action is needed; and
  - (b) confirmation as to whether the responsible body is satisfied that any action needed in consequence of the complaint has been taken or is proposed to be taken;
  - (c) where the complaint relates wholly or in part to the functions of a local authority, details of the complainant’s right to take their complaint to a Local Commissioner under the Local Government Act 1974(a); and
  - (d) except where the complaint relates only to the functions of a local authority, details of the complainant’s right to take their complaint to the Health Service Commissioner under the 1993 Act.
- (3) In paragraph (4), “relevant period” means the period of 6 months commencing on the day on which the complaint was received, or such longer period as may be agreed before the expiry of that period by the complainant and the responsible body.
- (4) If the responsible body does not send the complainant a response in accordance with paragraph (2) within the relevant period, the responsible body must—
- (a) notify the complainant in writing accordingly and explain the reason why; and
  - (b) send the complainant in writing a response in accordance with paragraph (2) as soon as reasonably practicable after the relevant period.

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(a) 1974 c.7.

### **Form of communications**

**15.**—(1) Any communication which is required by these Regulations to be made to a complainant may be sent to the complainant electronically where the complainant—

- (a) has consented in writing or electronically; and
- (b) has not withdrawn such consent in writing or electronically.

(2) Any requirement in these Regulations for a document to be signed by a person is satisfied, in the case of a document which is sent electronically in accordance with these Regulations, by the individual who is authorised to sign the document typing their name or producing their name using a computer or other electronic means.

### **Publicity**

**16.** Each responsible body must make information available to the public as to—

- (a) its arrangements for dealing with complaints; and
- (b) how further information about those arrangements may be obtained.

### **Monitoring**

**17.** For the purpose of monitoring the arrangements under these Regulations each responsible body must maintain a record of the following matters—

- (a) each complaint received;
- (b) the subject matter and outcome of each complaint; and
- (c) where the responsible body informed the complainant of—
  - (i) the response period specified in regulation 13(7)(b); or
  - (ii) any amendment to that period,

whether a report of the outcome of the investigation was sent to the complainant within that period or any amended period.

### **Annual reports**

**18.**—(1) Each responsible body must prepare an annual report for each year which must—

- (a) specify the number of complaints which the responsible body received;
- (b) specify the number of complaints which the responsible body decided were well-founded;
- (c) specify the number of complaints which the responsible body has been informed have been referred to—
  - (i) the Health Service Commissioner to consider under the 1993 Act; or
  - (ii) the Local Commissioner to consider under the Local Government Act 1974; and
- (d) summarise—
  - (i) the subject matter of complaints that the responsible body received;
  - (ii) any matters of general importance arising out of those complaints, or the way in which the complaints were handled;
  - (iii) any matters where action has been or is to be taken to improve services as a consequence of those complaints.

(2) In paragraph (1), “year” means a period of 12 months ending with 31st March.

(3) Each responsible body must ensure that its annual report is available to any person on request.

(4) This paragraph applies to a responsible body which is—

- (a) an NHS body other than a Primary Care Trust; or

(b) a primary care provider or an independent provider,  
and which in any year provides, or agrees to provide, services under arrangements with a Primary Care Trust.

(5) Where paragraph (4) applies to a responsible body, the responsible body must send a copy of its annual report to the Primary Care Trust which arranged for the provision of the services by the responsible body.

(6) Each Primary Care Trust must send a copy of its annual report to the Strategic Health Authority whose area includes any part of the area of the Primary Care Trust.

(7) The copy of the annual report required to be sent in accordance with paragraph (5) or (6) must be sent as soon as reasonably practicable after the end of the year to which the report relates.

#### **Transitional provision: complaints to local authorities**

19.—(1) This paragraph applies to a complaint where, immediately before 1st April 2009—

- (a) the complaint falls to be handled under the 2006 Regulations; and
- (b) the complaint is not a complaint which, under regulation 5 of those Regulations, is not to be considered or further considered.

(2) Where paragraph (1) applies, the 2006 Regulations shall continue to have effect in relation to the complaint.

(3) References in this regulation to a complaint include—

- (a) any investigation of the complaint which has been requested under regulation 8 of the 2006 Regulations; and
- (b) any complaint in respect of which a review panel has been established, or has been requested to be established, in accordance with those Regulations.

#### **Transitional provision: complaints to NHS bodies, primary care providers and independent providers, and investigation by Health Service Commissioner**

20.—(1) This paragraph applies to—

- (a) a complaint which—
  - (i) immediately before 1st April 2009 falls to be handled under the 2004 Regulations; and
  - (ii) is not a complaint which, under regulation 7 of those Regulations, is excluded from the scope of the arrangements required under Part 2 of those Regulations; or
- (b) a complaint which before 1st April 2009 a complainant has requested the Healthcare Commission to consider under regulation 14 of the 2004 Regulations.

(2) Where paragraph (1) applies to a complaint—

- (a) the 2004 Regulations, except for regulations 14 to 22 of those Regulations, shall continue to have effect in relation to the complaint;
- (b) regulation 13 of those Regulations shall have effect in relation to the complaint as if, in paragraph (4), the words “Health Service Commissioner under the Health Service Commissioners Act 1993” were substituted for the words “Healthcare Commission in accordance with regulation 14”; and
- (c) any request made under regulation 14 before 1st April 2009 for the Healthcare Commission to consider the complaint shall have effect as a request to the Health Service Commissioner to consider the complaint under the 1993 Act.

**Transitional provision: investigation by Health Service Commissioner in relation to complaints about NHS foundation trusts**

**21.**—(1) This paragraph applies where a person has made a complaint before 1st April 2009 to an NHS foundation trust and either—

- (a) the complainant is not satisfied with the outcome of any investigation of that complaint by the NHS foundation trust in accordance with any procedures it may have; or
- (b) the NHS foundation trust has no complaints procedures.

(2) Where paragraph (1) applies, any request made under regulation 15 of the 2004 Regulations before 1st April 2009 for the Healthcare Commission to consider the complaint shall have effect as a request to the Health Service Commissioner to consider the complaint under the 1993 Act.

**Revocations**

**22.**—(1) Subject to regulations 20 and 21, the 2004 Regulations are revoked.

(2) Subject to regulation 19, the 2006 Regulations are revoked.

**Consequential and transitional provisions**

**23.** The Schedule (consequential and transitional provisions) has effect.

Signed by authority of the Secretary of State for Health.

23rd February 2009

*Ann Keen*  
Parliamentary Under-Secretary of State,  
Department of Health

## SCHEDULE

### CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

#### **Amendment of the National Health Service (Pharmaceutical Services) Regulations 2005**

1.—(1) The National Health Service (Pharmaceutical Services) Regulations 2005(a) are amended as follows.

(2) In Schedule 1 (terms of service of pharmacists), for paragraph 32 (complaints) substitute—

#### **“Complaints**

32.—(1) A pharmacist must have in place—

- (a) arrangements which are essentially the same as those set out in Part 2 of the National Health Service (Complaints) Regulations 2004(b), for the handling and consideration of any complaints—
  - (i) which were made on or before 31st March 2009; and
  - (ii) in respect of which the complaints process has not yet been concluded; and
- (b) arrangements which comply with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009(c), for the handling and consideration of any complaints made on or after 1st April 2009.

(2) The reference in sub-paragraph (1)(a) to the National Health Service (Complaints) Regulations 2004 is a reference to those Regulations as they had effect on 31st March 2009 and as if they had not been revoked.

(3) In this paragraph, “complaint” means a complaint about a matter connected with the provision of pharmaceutical services by the pharmacist.”.

(3) In Schedule 2 (terms of service of dispensing doctors), in paragraph 9(1)(c) (complaints procedures), after “relevant APMS contract” add “, in accordance with any obligation imposed on the APMS contractor by the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009,”.

(4) In Schedule 3 (terms of service of suppliers of appliances), for paragraph 19 (complaints) substitute—

#### **“Complaints**

19.—(1) A supplier of appliances must have in place—

- (a) arrangements which are essentially the same as those set out in Part 2 of the National Health Service (Complaints) Regulations 2004, for the handling and consideration of any complaints—
  - (i) which were made on or before 31st March 2009; and
  - (ii) in respect of which the complaints process has not yet been concluded; and
- (b) arrangements which comply with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009(d),

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(a) S.I. 2005/641, to which there are amendments not relevant to these Regulations.

(b) S.I. 2004/1768.

(c) S.I. 2009/309.

(d) S.I. 2009/309.

for the handling and consideration of any complaints made on or after 1st April 2009.

(2) The reference in sub-paragraph (1)(a) to the National Health Service (Complaints) Regulations 2004 is a reference to those Regulations as they had effect on 31st March 2009 and as if they had not been revoked.

(3) In this paragraph, “complaint” means a complaint about a matter connected with the provision of pharmaceutical services by the supplier of appliances.”.

### **Amendment of the National Health Service (Local Pharmaceutical Services etc.) Regulations 2006**

2. In Schedule 2 to the National Health Service (Local Pharmaceutical Services etc.) Regulations 2006(a) (contract terms), for paragraph 25 (complaints) substitute—

#### **“Complaints**

**25.**—(1) A contractor must have in place—

- (a) arrangements which are essentially the same as those set out in Part 2 of the National Health Service (Complaints) Regulations 2004, for the handling and consideration of any complaints—
  - (i) which were made on or before 31st March 2009; and
  - (ii) in respect of which the complaints process has not yet been concluded; and
- (b) arrangements which comply with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009(b), for the handling and consideration of any complaints made on or after 1st April 2009.

(2) The reference in paragraph (1)(a) to the National Health Service (Complaints) Regulations 2004 is a reference to those Regulations as they had effect on 31st March 2009 and as if they had not been revoked.

(3) In this paragraph, “complaint” means a complaint about a matter connected with the provision of local pharmaceutical services by the contractor.”.

### **Amendment of the National Health Service (General Medical Services Contracts) Regulations 2004**

3.—(1) Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004(c) (other contractual terms) is amended as follows.

(2) For paragraph 92 (complaints procedure) substitute—

#### **“Complaints procedure**

**92.**—(1) The contractor shall establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the contract.

(2) In respect of complaints made on or after 1st April 2009, the complaints procedure required by sub-paragraph (1) shall comply with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009(d).

(3) In respect of complaints received by the contractor prior to 1st April 2009 which have not been resolved by that date, the contractor shall continue to deal with such complaints in

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(a) S.I. 2006/552, to which there are amendments not relevant to these Regulations.

(b) S.I. 2009/309.

(c) S.I. 2004/291, amended by S.I. 2004/2694 and 2007/3491.

(d) S.I. 2009/309.

accordance with the complaints procedure that it was required to establish and operate prior to 1st April 2009.”.

(3) In paragraph 97 (co-operation with investigations)—

(a) in sub-paragraph (1)(a)(ii), for “the Commission for Healthcare Audit and Inspection” substitute “the Health Service Commissioner”;

(b) at the end of sub-paragraph (2), add—

““Health Service Commissioner” means the person appointed Health Service Commissioner for England in accordance with section 1 of, and Schedule 1 to, the Health Service Commissioners Act 1993(a).”.

(4) Paragraphs 93 to 96 and 98 are omitted.

#### **Amendment of the National Health Service (Personal Medical Services Agreements) Regulations 2004**

4.—(1) Schedule 5 to the National Health Service (Personal Medical Services Agreements) Regulations 2004(b) (other contractual terms) is amended as follows.

(2) For paragraph 86 (complaints procedure) substitute—

##### **““Complaints procedure**

**86.**—(1) The contractor shall establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the agreement.

(2) In respect of complaints made on or after 1st April 2009, the complaints procedure required by sub-paragraph (1) shall comply with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009(c).

(3) In respect of complaints received by the contractor prior to 1<sup>st</sup> April 2009 which have not been resolved by that date, the contractor shall continue to deal with such complaints in accordance with the complaints procedure that it was required to establish and operate prior to 1st April 2009.”.

(3) In paragraph 91 (co-operation with investigations)—

(a) in sub-paragraph (1)(b), for “the Commission for Healthcare Audit and Inspection” substitute “the Health Service Commissioner”;

(b) in sub-paragraph (3), for “In sub-paragraph (2)” substitute “In this paragraph”;

(c) at the end of sub-paragraph (3), add—

““Health Service Commissioner” means the person appointed Health Service Commissioner for England in accordance with section 1 of, and Schedule 1 to, the Health Service Commissioners Act 1993(d).”.

(4) Paragraphs 87 to 90 and 92 are omitted.

#### **Amendment of the National Health Service (General Dental Services Contracts) Regulations 2005**

5.—(1) Schedule 3 to the National Health Service (General Dental Services Contracts) Regulations 2005(e) (other contractual terms), is amended as follows.

(2) Before Part 6 (complaints) insert—

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(a) 1993 c. 46.

(b) S.I. 2004/627, amended by S.I. 2004/2694 and 2007/3491.

(c) S.I. 2009/309.

(d) 1993 c. 46.

(e) S.I. 2005/3361.

## “PART 5A

### Complaints received on or after 1st April 2009

**46A.** As regards complaints relating to any matter reasonably connected with the provision of services under the contract which are received on or after 1st April 2009, the contractor must have in place a complaints procedure which meets the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009(a).”.

(3) In Part 6 (complaints)—

(a) in paragraph 47 (complaints procedure), in sub-paragraph (1) for the words from “The contractor” to “the contract” substitute—

“As regards complaints relating to any matter reasonably connected with the provision of services under the contract which are received before 1st April 2009, the contractor shall operate a complaints procedure”;

(b) in paragraph 51 (co-operation with investigations)—

(i) in sub-paragraph (1)(a)(ii), for “the Commission for Healthcare Audit and Inspection” substitute “the Health Service Commissioner”;

(ii) at the end of sub-paragraph (2), add—

““Health Service Commissioner” means the person appointed Health Service Commissioner for England in accordance with section 1 of, and Schedule 1 to, the Health Service Commissioners Act 1993(b).”.

### Amendment of the National Health Service (Personal Dental Services Agreements) Regulations 2005

**6.**—(1) Schedule 3 to the National Health Service (Personal Dental Services Agreements) Regulations 2005(c) (other contractual terms) is amended as follows.

(2) Before Part 6 (complaints) insert—

## “PART 5A

### Complaints received on or after 1st April 2009

**46A.** As regards complaints relating to any matter reasonably connected with the provision of services under the agreement which are received on or after 1st April 2009, the contractor must have in place a complaints procedure which meets the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009(d).”.

(3) In Part 6 (complaints)—

(a) in paragraph 47 (complaints procedure), in sub-paragraph (1) for the words from “The contractor” to “the agreement” substitute—

“As regards complaints relating to any matter reasonably connected with the provision of services under the agreement which are received before 1st April 2009, the contractor shall operate a complaints procedure”;

(b) in paragraph 51 (co-operation with investigations)—

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(a) S.I. 2009/309.  
(b) 1993 c. 46.  
(c) S.I. 2005/3373.  
(d) S.I. 2009/309.

- (i) in sub-paragraph (1)(a)(ii), for “the Commission for Healthcare Audit and Inspection” substitute “the Health Service Commissioner”;
- (ii) at the end of sub-paragraph (2), add—  
 ““Health Service Commissioner” means the person appointed Health Service Commissioner for England in accordance with section 1 of, and Schedule 1 to, the Health Service Commissioners Act 1993(a).”.

**Amendment to the General Ophthalmic Services Contracts Regulations 2008**

7.—(1) Schedule 1 to the General Ophthalmic Services Contracts Regulations 2008(b) (other contractual terms) is amended as follows.

- (2) Before Part 5 (complaints) insert—

**“Part 4A**

**Complaints received on or after 1st April 2009**

**21A.** As regards complaints relating to any matter reasonably connected with the provision of services under the contract which are received on or after 1st April 2009, the contractor must have in place a complaints procedure which meets the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009(c).”.

- (3) In Part 5 (complaints), in paragraph 22 (complaints procedure)—

- (a) for sub-paragraph (1) substitute—

“(1) As regards complaints relating to any matter reasonably connected with the provision of services under the contract which are received before 1st April 2009, the contractor shall operate a complaints procedure and that complaints procedure shall comply with the requirements of paragraphs 23 to 25 and 27.”;

- (b) in paragraph 26 (co-operation with investigations)—

- (i) in sub-paragraph (1)(a)(ii), for “the Commission for Healthcare Audit and Inspection” substitute “the Health Service Commissioner”;

- (ii) at the end of sub-paragraph (2), add—

““Health Service Commissioner” means the person appointed Health Service Commissioner for England in accordance with section 1 of, and Schedule 1 to, the Health Service Commissioners Act 1993(d).”.

**Transitional provision: the Primary Ophthalmic Services Amendment, Transitional and Consequential Provisions Regulations 2008, and the General Dental Services, Personal Dental Services and Abolition of the Dental Practice Board Transitional and Consequential Provisions Order 2006**

- 8.—(1) This sub-paragraph applies to a complaint which—

- (a) was made before 1st April 2009; and

- (b) falls to be investigated by a Primary Care Trust under—

- (i) regulation 4(2) or 5(2) of the Primary Ophthalmic Services Amendment, Transitional and Consequential Provisions Regulations 2008(e); or

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(a) 1993 c. 46.  
 (b) S.I. 2008/1185.  
 (c) S.I. 2009/309.  
 (d) 1993 c. 46.  
 (e) S.I. 2008/1700.

- (ii) article 5(5), 6(2), 21(2) or 22(2) of the General Dental Services, Personal Dental Services and Abolition of the Dental Practice Board Transitional and Consequential Provisions Order 2006<sup>(a)</sup>.

(2) Where sub-paragraph (1) applies to a complaint, the investigation of the complaint shall be carried out in accordance with the 2004 Regulations as if—

- (a) notwithstanding their revocation, the 2004 Regulations, except for regulations 14 to 22 of those Regulations, continued to have effect;
- (b) in paragraph (4) of regulation 13, the words “Health Service Commissioner under the Health Service Commissioners Act 1993” were substituted for the words “Healthcare Commission in accordance with regulation 14”; and
- (c) any request made under regulation 14 before 1st April 2009 for the Healthcare Commission to consider the complaint shall have effect as a request to the Health Service Commissioner to consider the complaint under the 1993 Act.

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<sup>(a)</sup> S.I. 2006/562.

## EXPLANATORY NOTE

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

These Regulations make provision for complaints made on or after 1st April 2009 in relation to local authority social services and the National Health Service.

Regulation 3 requires “responsible bodies” to make arrangements for the handling and consideration of complaints. “Responsible bodies” are defined (in regulation 2) to mean local authorities, NHS bodies and certain other providers who provide services under arrangements with NHS bodies.

Regulation 4 requires responsible bodies to designate a person to be responsible for ensuring compliance with the arrangements, and a complaints manager to be responsible for managing the complaints procedure.

Regulation 5 makes provision as to who may make a complaint. Regulations 6 and 7 specify the complaints which are to be handled by responsible bodies in accordance with the Regulations. Regulation 8 specifies certain types of complaint that are not required to be dealt with in accordance with these Regulations.

Regulation 9 provides for responsible bodies to co-operate in relation to complaints being considered by one body which also fall to be handled by another body. Regulations 10 and 11 make provision for disclosure and co-operation by local authorities considering a complaint.

Regulation 10 applies where a complaint wholly or in part relates to services in relation to which a person is registered under the Care Standards Act 2000. Regulation 11 applies where a complaint wholly or in part relates to action taken by a person who carries on an activity connected with the provision of adult social care, and the activity is a regulated activity under Part 1 of the Health and Social Care Act 2008. Regulation 11 is to come into force on 1st April 2010.

Regulation 12 specifies the time limits for making a complaint. Regulation 13 provides for how complaints are to be made and processed initially, including a discussion with the complainant as to how the complaint is to be handled and the likely period for investigating the complaint and responding to the complainant. Regulation 14 provides for the investigation of the complaint and the response to the claimant. Regulation 15 makes provision for electronic communications.

Each responsible body is required to ensure that its complaints arrangements are made available to the public (regulation 16), to record certain matters about complaints for monitoring purposes (regulation 17) and to prepare and make available an annual report (regulation 18).

Regulations 19 to 21 make transitional provision for complaints made before 1st April 2009 under the Local Authority Social Services Complaints (England) Regulations 2006, or the National Health Service (Complaints) Regulations 2004, which are revoked by regulation 22. Regulation 23 and the Schedule make consequential and transitional amendments to regulations relating to complaints about services provided by certain providers of health care.

An impact assessment has been prepared in relation to these Regulations and is available from the Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.

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