



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 1

#### THE HEALTH SERVICE IN ENGLAND

##### *Functions relating to fluoridation of water*

### 36 Procedural requirements in connection with fluoridation of water supplies

[<sup>F1</sup>After section 88A of the Water Industry Act 1991 insert—

#### **“Requirement for fluoridation proposal: England**

- (1) The Secretary of State may not request a water undertaker to enter into arrangements under section 87(1) unless a fluoridation proposal is made to the Secretary of State.
- (2) A fluoridation proposal is a proposal that the Secretary of State enter into arrangements with one or more water undertakers to increase the fluoride content of the water supplied by the undertaker or undertakers to premises within such area or areas in England as may be specified in the proposal.
- (3) A fluoridation proposal may be made by one or more local authorities in England.
- (4) A local authority may not make a fluoridation proposal unless its area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.
- (5) In the following provisions of this Chapter, “proposer”, in relation to a fluoridation proposal, means the local authority or authorities which made the proposal.
- (6) Any reference in the following provisions of this Chapter to a local authority affected by a fluoridation proposal is a reference to a local authority whose area

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includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.

#### **Initial consultation etc. on fluoridation proposal**

- (1) This section applies if a fluoridation proposal is made.
- (2) The proposer must consult the Secretary of State as to whether the arrangements which would result from implementing the proposal would be operable and efficient.
- (3) The proposer must consult each water undertaker who supplies water to premises within the area or areas specified in the proposal as to whether the arrangements which would result from implementing the proposal, insofar as they might affect the undertaker, would be operable and efficient.
- (4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.
- (5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (3).
- (6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements would not be operable and efficient, no further steps may be taken in relation to the proposal.

#### **Additional requirements where other local authorities affected**

- (1) This section applies where—
  - (a) a fluoridation proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,
  - (c) one or more local authorities other than the proposer are affected by the proposal, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must notify any other local authority which is affected by the proposal.
- (3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.
- (4) The Secretary of State must by regulations—
  - (a) make provision as to the arrangements which must be made for the purposes of subsection (3), and
  - (b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

#### **Decision on fluoridation proposal**

- (1) This section applies where—

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- (a) a fluoridation proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,
  - (c) in a case where section 88D applies, the conditions prescribed under subsection (4)(b) of that section are satisfied, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.
- (3) The proposer may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.
- (4) But the proposal may not be modified so as to extend the boundary of any area to which it relates, or to add another area, except in circumstances prescribed in regulations by the Secretary of State.
- (5) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to make such requests under section 87(1) as are necessary to implement the proposal.
- (6) The Secretary of State may by regulations make provision—
  - (a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (5);
  - (b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (5).

#### **Decision-making procedure: exercise of functions by committee**

- (1) This section applies in relation to the exercise of functions under or by virtue of section 88E(2) to (5) (“the fluoridation functions”) except where the proposer is a single local authority and either—
  - (a) no other local authorities are affected by the proposal, or
  - (b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the fluoridation functions.
- (2) The local authorities affected by the proposal must—
  - (a) arrange for an existing joint committee of the authorities to exercise the fluoridation functions,
  - (b) establish a joint committee of the authorities for that purpose, or
  - (c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the fluoridation functions.
- (3) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the fluoridation functions.

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- (4) The Secretary of State may by regulations make provision—
- (a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;
  - (b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);
  - (c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (3);
  - (d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the fluoridation functions.

#### **Secretary of State's duty in relation to fluoridation proposal**

- (1) This section applies if the Secretary of State is requested to make such requests under section 87(1) as are necessary to implement a fluoridation proposal.
- (2) The Secretary of State must comply with the request if the Secretary of State is satisfied that the requirements imposed by sections 88B to 88F have been met in relation to the proposal.
- (3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88C(2) or (3), 88D(4) or 88E(2).

#### **Payments by local authorities towards fluoridation costs**

- (1) This section applies where a water undertaker enters into arrangements with the Secretary of State under section 87(1).
- (2) The Secretary of State may require all local authorities affected by the arrangements to make payments to the Secretary of State to meet any costs incurred by the Secretary of State under the terms of the arrangements.
- (3) The amount to be paid by each of the affected local authorities is to be determined—
  - (a) where a joint committee, or a joint sub-committee of Health and Wellbeing Boards, has exercised the fluoridation functions of the authorities in relation to the proposal which resulted in the arrangements being made and the committee or sub-committee continues to exist at the time when the Secretary of State exercises the power conferred by subsection (2), by that committee or sub-committee;
  - (b) in any other case, by agreement between the local authorities.
- (4) If the amount to be paid by the affected local authorities is not determined as mentioned in subsection (3), the Secretary of State may—
  - (a) determine the amount to be paid, or
  - (b) refer the matter for determination by such other person as the Secretary of State considers appropriate.

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- (5) The amount determined in accordance with subsection (3) may, at the request of one or more of the affected local authorities, be varied with the agreement of all of them.
- (6) If the affected local authorities fail to reach agreement for the purposes of subsection (5), the Secretary of State may—
  - (a) determine whether to vary the amount (and, if so, how), or
  - (b) refer the matter for determination by such other person as the Secretary of State considers appropriate.
- (7) Any reference in this section to a local authority affected by arrangements under section 87(1) is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.

#### **Variation or termination of arrangements under section 87(1)**

- (1) The Secretary of State may not request a water undertaker to vary arrangements entered into by the water undertaker under section 87(1) unless a proposal (“a variation proposal”) is made to the Secretary of State for a variation in the arrangements.
- (2) The Secretary of State may not give notice to a water undertaker under section 87C(7) to terminate arrangements entered into by the water undertaker under section 87(1) unless a proposal (“a termination proposal”) is made to the Secretary of State for the termination of the arrangements.
- (3) Subsection (1) does not apply in relation to a variation to provide for the concentration of fluoride in the area specified in the arrangements (or any part of it) to be lower than the general target concentration.
- (4) The Secretary of State may by regulations provide that subsection (1) or (2) does not apply in prescribed circumstances.
- (5) A variation or termination proposal may be made by one or more of the local authorities affected by the arrangements.
- (6) The Secretary of State may by regulations provide that, where a termination proposal is made in relation to arrangements under section 87(1), no further termination proposal may be made in relation to the arrangements until the end of such period as may be specified in the regulations.
- (7) In the following provisions of this Chapter, “proposer”, in relation to a variation or termination proposal, means the local authority or authorities which made the proposal.
- (8) Any reference in this section and in the following provisions of this Chapter to a local authority affected by a variation or termination proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.
- (9) In relation to a proposal for the variation of the area specified in arrangements under section 87(1), any reference in this section and in the following provisions of this Chapter to a local authority affected by the proposal also includes a reference to a local authority whose area would include, coincide

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with or be wholly or partly within the area specified in the arrangements if the variation were made.

### **Initial consultation etc. on variation or termination proposal**

- (1) This section applies if a variation or termination proposal is made.
- (2) In the case of a variation proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether the arrangements as varied in accordance with the proposal would be operable and efficient.
- (3) In the case of a termination proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether it would be reasonably practicable to terminate the arrangements.
- (4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.
- (5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (2) or (3).
- (6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements as varied would not be operable and efficient or (as the case may be) that it would not be reasonably practicable to terminate the arrangements, no further steps may be taken in relation to the proposal.

### **Additional requirements where other local authorities affected**

- (1) This section applies where—
  - (a) a variation or termination proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements as varied would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,
  - (c) one or more local authorities other than the proposer are affected by the proposal, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must notify any other local authority which is affected by the proposal.
- (3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.
- (4) The duty in subsection (3) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (5) The Secretary of State may by regulations provide that the duty in subsection (3) does not apply in prescribed circumstances.
- (6) The Secretary of State must by regulations—
  - (a) make provision as to the arrangements which must be made for the purposes of subsection (3), and

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- (b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

#### **Decision on variation or termination proposal**

- (1) This section applies where—
  - (a) a variation or termination proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,
  - (c) in a case where the duty in section 88K(3) applies, the conditions prescribed under subsection (6)(b) of that section are satisfied, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.
- (3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.
- (5) The proposer of a variation proposal may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.
- (6) But, except in circumstances prescribed in regulations by the Secretary of State, the proposal may not be modified so as to propose the extension of the boundary of the area specified in the arrangements or, if the proposal is that the arrangements be varied so as to extend the boundary, may not be modified so as to propose a further extension of it.
- (7) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to request the water undertaker to vary the arrangements or (as the case may be) to give notice under section 87C(7) to the water undertaker to terminate the arrangements.
- (8) The Secretary of State may by regulations may make provision—
  - (a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (7);
  - (b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (7).

#### **Decision-making procedure: exercise of functions by committee**

- (1) This section applies in relation to the exercise of functions under or by virtue of section 88L(2) to (7) (“the relevant functions”) except where the proposer is a single local authority and either—
  - (a) no other local authorities are affected by the proposal, or

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- (b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the functions.
- (2) The local authorities affected by the proposal must—
- (a) arrange for an existing joint committee of the authorities to exercise the relevant functions,
  - (b) establish a joint committee of the authorities for that purpose, or
  - (c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the relevant functions.
- (3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.
- (5) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the relevant functions.
- (6) The Secretary of State may by regulations make provision—
- (a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;
  - (b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);
  - (c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (5);
  - (d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the relevant functions.

#### **Secretary of State's duty in relation to requests for variation or termination**

- (1) This section applies if (following the making of a variation or termination proposal) the Secretary of State is requested—
- (a) to request a variation of arrangements entered into under section 87(1), or
  - (b) (as the case may be) to give notice under section 87C(7) to a water undertaker to terminate such arrangements.
- (2) The Secretary of State must comply with the request if satisfied that the requirements imposed by sections 88I to 88M have been met in relation to the proposal.
- (3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88J(2) or (3), 88K(6) or 88L(2).



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### **Power to make regulations as to maintenance of section 87 arrangements**

- (1) The Secretary of State may by regulations prescribe circumstances in which arrangements must be made in accordance with the regulations—
  - (a) for consulting and ascertaining opinion on whether arrangements under section 87(1) (“section 87(1) arrangements”) should be maintained, and
  - (b) for enabling authorities affected by section 87(1) arrangements to decide whether to propose to the Secretary of State that they be maintained.
- (2) The regulations must make provision requiring the Secretary of State to give notice under section 87C(7) to a water undertaker to terminate section 87(1) arrangements entered into by the undertaker if—
  - (a) the outcome of arrangements made by virtue of subsection (1)(b) is that the affected authorities decide not to propose that the section 87(1) arrangements be maintained, and
  - (b) the Secretary of State is satisfied that any requirements imposed by regulations under subsection (1), as to the arrangements to be made for the purposes mentioned in that subsection, have been met.
- (3) Subsection (2)(b) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed by regulations made under subsection (1).
- (4) The provision that may be made by regulations under subsection (1) (as to the arrangements to be made for the purposes mentioned in that subsection) includes provision corresponding, or similar, to any requirements imposed by or under sections 88K to 88M.”]

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#### **Textual Amendments**

- F1** S. 36 omitted (1.11.2022 for specified purposes) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 175\(8\)](#), [186\(6\)](#); [S.I. 2022/1003](#), [reg. 3\(a\)](#)
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#### **Commencement Information**

- I1** S. 36 partly in force; s. 36 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)
- I2** S. 36 in force at 1.4.2013 for E. by [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)