

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Further provision about clinical commissioning groups

Schedule 2 – Clinical commissioning groups

New Schedule 1A, Part 1

286. *Constitution of clinical commissioning groups.* Part 1 of new Schedule 1A makes provision for the constitution of CCGs. Paragraph 1 provides that a CCG must have a constitution.
287. [Paragraph 2](#) provides that the constitution must specify the name and members of the CCG and the geographical area of the CCG. This geographical area is relevant (among other matters) to the CCG's commissioning responsibilities under subsection (1B) of amended section 3 of the NHS Act (for example in relation to people who are not registered with any GP practice). The geographical area is also relevant to the health and wellbeing board(s) of which it must be a member. Under paragraph 2(2), each CCG's name must comply with any requirements as may be set out in regulations.
288. [Paragraph 3](#) provides that the constitution must specify the arrangements for the discharge of the CCG's functions, including functions in relation to determining the terms and conditions of its employees. Those arrangements may include the appointment of committees or sub-committees; the membership of these committees may include persons other than members of the CCG and its employees, such as members of the public. The arrangements may also include provision for any of the functions of the CCG to be exercised on its behalf by any of its members or employees, its governing body or a committee or subcommittee of the group.
289. [Paragraph 4](#) provides that the constitution must specify the procedures that the CCG will follow in making decisions and the arrangements made to secure that decisions are made transparently.
290. [Paragraph 5](#) provides that the constitution must specify the arrangements made by the group for the discharge of its duties under section 14O. .
291. [Paragraph 6](#) sets out that the provision made by virtue of paragraphs 3 and 4 must ensure that there is effective participation by each member of the CCG in the exercise of the CCG's functions
292. [Paragraphs 7 and 8](#) provide that CCG's constitutions must specify a number of matters as regards governing bodies.
293. [Paragraph 7](#) provides that the constitution must specify the arrangements made by the CCG for the discharge of the governing body's functions. Those arrangements must include provision for the appointment of the audit and remuneration committees

and may include arrangements for the appointment of any other committees and sub-committees of the governing body. The arrangements for the audit committee may allow for people who are not members of the governing body to sit on the audit committee. Only members of the governing body can sit on the remuneration committee. As regards other committees that may be established, the committee members may include persons who are not members of the governing body, but are members of the CCG, or individuals of a description as specified in the constitution. Arrangements specified may also include arrangements for governing body functions to be delegated to committees, individual governing body members, individual CCG members, or individuals of a description as specified in the constitution. These arrangements may include arrangements in respect of functions delegated to the governing body by the CCG under paragraph 3(3) of the Schedule.

294. [Paragraph 8](#) sets out that the constitution must specify: the procedure to be followed by the governing body in its decision-making, and the arrangements made to ensure transparency of decision making. In particular these last arrangements must include provision for making meetings of the governing body open to the public, except where it would not be in the public interest in relation to all or part of a meeting.
295. [Paragraph 9](#) provides that CCGs may include other matters in their constitutions over and above those matters required to be included under Part 1. Such provision should be consistent with the provisions of the Act

New Schedule 1A, Part 2

296. New Schedule 1A Part 2 makes further provision about CCGs. Each CCG is to be a body corporate (paragraph 10) which may appoint employees on such terms and conditions as it determines, with such remuneration and other allowances in accordance with determinations made by its governing body (paragraph 11).
297. CCGs are to be granted the status of ‘Employing Authorities’ by amending the NHS Pension Scheme Regulations (after the passage of the Act). This means that (like other NHS bodies such as foundation trusts) CCGs would then be required to offer the NHS pension scheme to their employees, and would have to enrol their employees automatically in that scheme unless they opted out. Should any employees opt out, CCGs would have the power under paragraph 11(3) to (5) to offer alternative pension arrangements or schemes should they wish. Foundation trusts already have this power.
298. [Paragraph 12](#) provides that each CCG must have an accountable officer, who may be either a member of the CCG or an employee. The accountable officer is appointed by the NHS Commissioning Board. They may be the accountable officer for more than one CCG. If the accountable officer is not an employee of a CCG, the CCG may remunerate and pay other allowances to the accountable officer in accordance with determinations made by its governing body.
299. The CCG may make arrangements to provide pensions, allowances and gratuities to its accountable officer, including by way of compensation in respect of loss of office or loss or reduction of total remuneration access to any pension scheme the CCG establishes (under paragraph 11(4) of Schedule 1A) – note that this would be an alternative to the NHS Pension Scheme.
300. The accountable officer is responsible for ensuring the CCG complies with its financial obligations (under new sections 223H to 223J of the NHS Act), its requirements for keeping proper accounts (under paragraph 17 of this schedule), its requirements for providing financial information to the NHS Commissioning Board (under paragraph 18) and its duty to provide information required by the Secretary of State (under paragraph 19). The accountable officer is also responsible for ensuring that the CCG fulfils its duties to exercise its functions effectively, efficiently and economically under new section 14Q, and its duties under new section 14R in relation to improvement in the quality of services. Furthermore, the accountable officer must ensure that the

*These notes refer to the Health and Social Care Act 2012
(c.7) which received Royal Assent on 27 March 2012*

CCG exercises its functions in a way which provides good value for money. Other obligations under the NHS Act may be specified in a document published by the NHS Commissioning Board for these purposes.

301. [Paragraph 13](#) allows for payment to be made to members of the governing body of remuneration, travelling or other allowances and gratuities, as well as for provision of pensions. These arrangements may include the establishment and administration of pension schemes, or access to any pension scheme the CCG establishes (under paragraph 11(4) of Schedule 1A) and arrangements for the provision of pensions, allowances or gratuities by way of compensation for loss or reduction of total remuneration. However, the arrangements for providing pensions, allowances or gratuities do not apply to members of the governing body who are members or employees of the CCG, or members or employees of a practice which is a member of the CCG.
302. [Paragraph 14](#) permits a CCG to pay such travel and other allowances as it considers appropriate to members of the group who are individuals (as opposed to practices), individuals authorised to act on behalf of a member of the group in its dealings with the group, and any members of committees or sub-committees of the group or its governing body. This is intended to ensure that, where persons who are not employees undertake work on behalf of the group, they can receive expenses.
303. CCGs may hold property on trust and paragraph 15 confers a power on the Secretary of State to make an order appointing trustees to oversee the management of any property held on trust. The order may make provision for naming the trustees, the number of trustees, their term of office and any conditions of appointment. Where an order has been made, the Secretary of State may transfer property from the CCG to the trustees.
304. [Paragraph 15](#) enables a CCG to enter into externally financed development agreements. Such an agreement is certified by the Secretary of State, who may issue a certificate where he considers that the purpose or main purpose of the agreement is the provision of services or facilities in connection with the CCG's discharge of its functions; and a person proposes to make a loan or other form of finance for another party in connection with that agreement.
305. Under paragraph 17 a CCG must keep proper accounts and records, and prepare annual accounts for each financial year. The NHS Commissioning Board may direct a CCG, with the approval of the Secretary of State, to prepare a set of accounts in respect of a "particular" period or periods of time. Powers are conferred on the NHS Commissioning Board to direct CCGs, with the approval of the Secretary of State as to the form and content of accounts, the methods and principles by which they are prepared, and the timescales for submitting audited annual accounts and any other accounts including unaudited annual accounts. Annual accounts must be audited in line with extant legislation. The Comptroller and Auditor General may examine a CCG's annual accounts and any related records, and any report on those accounts produced by an auditor or auditors. Section 306(7)(a) will ensure that the Secretary of State may, in a commencement order under section 306(4), provide that the duties to keep proper accounts and records, and to prepare annual accounts for each financial year, do not apply in relation to the whole or part of the "initial period" (the period between the coming into force of the provisions for the establishment of CCGs and the date specified by the Secretary of State by which every provider of primary medical services in England is to be a member of a CCG, proposed to be 1 April 2013). The power may be exercised in relation to all CCGs or only groups meeting certain conditions (e.g. those groups which were receiving income or incurring expenditure).
306. [Paragraph 18](#) enables the NHS Commissioning Board to direct a CCG to supply it with information relating to its accounts, income or expenditure or its use of resources, within a specified period. The required information may include estimates of future CCG income, expenditure or use of resources.

307. [Paragraph 19](#) requires disclosure by all CCGs to the NHS Commissioning Board of such information, in such form, and at such time or within such period, as the Secretary of State may require if the Secretary of State considers that information is necessary for the purposes of the Secretary of State's functions in relation to the health service.
308. The NHS Commissioning Board can also be required to provide, to the Secretary of State, any information obtained from CCGs.
309. Just as with the NHS Commissioning Board, CCGs sit within the Department of Health accounting and budgeting boundaries. The Department require information to effectively and efficiently manage its financial position against, for instance, Departmental Expenditure Limits. In addition, the Department has a responsibility to provide information on those bodies for which it is accountable in order to meet requirements that may be set by HM Treasury and others on both financial and non-financial matters. Under this paragraph, it would not be possible for Secretary of State to request information from a single CCG or a "particular" group of CCGs. The Secretary of State must exercise the power in the same way in relation to all CCGs, for example by making the same request for information to all CCGs.
310. [Paragraph 20](#) clarifies that CCGs under section 2 of the NHS Act have the power to acquire and dispose of property, enter into agreements including contracts, or accept gifts of property. Property in this sense means any possession, it is not limited to buildings or land.
311. [Paragraph 21](#) gives CCGs the ability to execute a deed, for example, where passing a legal title, interest or right in relation to a transfer of land, under seal. It allows a CCG to authorise an individual or individuals, whose signature would authenticate use of a seal, so it would be taken as evidence that this was on behalf of the CCG. As an alternative, the CCG may authorise an individual to execute a document by signature, and this too must be taken as evidence that this was on behalf of the CCG.

New Schedule 1A, Part 3

312. [Part 3](#) (paragraphs 22 to 26) of new Schedule 1A sets out further details in respect of property and staff transfer schemes that may be made under new section 14I. These schemes may transfer property, rights and liabilities, including those that could not otherwise be transferred, those arising after the making of the scheme, and criminal liabilities (paragraph 22).
313. A property or staff transfer scheme may also make supplementary, incidental, transitional and consequential provision (paragraph 23). New rights can be created, or liabilities imposed, in relation to the property or rights transferred. Provision may be made in the scheme about the continuing effect of things the person ("the transferor"-the person from whom the things are being transferred) has done in respect of the things transferred. Provision may also be made about the continuation of things that are being done by, on behalf of or in relation to the transferor in respect of the things transferred. Provision may also be made for references to "the transferor" in legal instruments and documents to be treated as references to "the transferee" (the person whom the things are being transferred to).
314. A property scheme may make provision for the shared ownership or use of property (paragraph 24). A staff transfer scheme may make provision that is the same or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([SI 2006/246](#)) (paragraph 25). Both a property and staff transfer scheme can provide for the scheme to be modified by agreement after it comes into effect, and those modifications to have effect from the date when the original scheme comes into effect (paragraph 26).