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

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Further provision about clinical commissioning groups

Section 25 – Clinical commissioning groups: establishment etc.

256. *Establishment of clinical commissioning groups.* This section inserts Chapter A2 into Part 2 of the NHS Act, which makes further provision about CCGs. New sections 14A to 14O of the NHS Act make provision about the establishment of CCGs.

257. *General duties of Board in relation to clinical commissioning groups.* New section 14A sets out the general duties of the NHS Commissioning Board in relation to CCGs. Subsection (1) requires the Board to ensure that, at any time after the date specified by an order of the Secretary of State, all providers of primary medical services (for instance GP practices) in England are members of a CCG.

258. Subsection (2) requires the NHS Commissioning Board also to ensure that, from the date so specified by the Secretary of State, the areas specified in each CCG's constitution taken together cover the whole of England and do not coincide or overlap. This will ensure, for instance, that there is no ambiguity as to which CCG is responsible for a person that is not registered with a GP practice or who needs access to emergency healthcare.

259. Subsection (3) specifies that a provider of primary medical services for the purposes of this Chapter is a person who is a party to a contract or arrangement that is described in subsection (4), in other words, a person or organisation that holds a General Medical Services (GMS) contract, a Personal Medical Services (PMS) agreement or an Alternative Provider Medical Services (APMS) contract to provide primary medical services of a type set out in regulations – it is intended that these regulations will prescribe essential primary medical services to registered patients in core hours. Together, these subsections have the effect that all GP practices that hold an NHS contract must be members of a CCG. Where two or more individuals practise as GPs in partnership, it is the partnership that is treated as a single provider of primary medical services, not the individuals in that partnership (subsection (6)). Similarly, where two or more individuals are parties to an arrangement in subsection (4) but are not a partnership they are to be treated as one person for these purposes (subsection (7)).

260. *Applications for the establishment of clinical commissioning groups.* New section 14B makes provision for applications to be established as a CCG to be made to the NHS Commissioning Board (subsection (1)). Under subsection (2), an application may be made by two or more persons, provided that each of them is either a provider of primary medical services (a GP contract holder) or wishes to be so and they wish to be a member of the proposed CCG. Under subsection (3), applications must include a copy of the CCG's proposed constitution, the name of the person whom the CCG wishes the NHS Commissioning Board to appoint as its accountable officer and such

other information that the NHS Commissioning Board may specify. Any specification made by the Board for these purposes must be published in a document. Subsection (4) provides for persons to become applicants or withdraw from being applicants at any time before the application is decided by the NHS Commissioning Board. Subsection (5) provides that, with the agreement of the NHS Commissioning Board, applicants can modify the proposed constitution at any time before the application is determined. Subsection (6) introduces Part 1 of Schedule 1A (inserted by Schedule 2 to the Act), which makes provision about the constitution of a CCG.

261. *Determination of applications.* New section 14C provides for the determination of applications by the NHS Commissioning Board. The NHS Commissioning Board must, under subsection (1), grant an application for the establishment of a CCG if it is satisfied of the matters covered in subsection (2). These matters are:

- that the constitution complies with the requirements set out in Part 1 of Schedule 1A: for example that it sets out the name (which must meet requirements to be set out in regulations), members and area of the constitution, that it specifies the arrangements the CCG has put in place for the discharge of its functions, and the procedures for decision making, discharging its duties in relation to conflicts of interest and ensuring effective participation by members; and that it is otherwise appropriate;
- that each member of a CCG will be a provider of primary medical services (i.e. that they will be a GP practice) on the date of establishment of the CCG;
- that the area of the CCG is appropriate;
- that the NHS Commissioning Board considers it appropriate to appoint as the CCG's accountable officer the person proposed by the applicants;
- that the applicants have made appropriate arrangements to discharge the CCG's functions; and
- that the applicants have made appropriate arrangements to ensure that the CCG will have a governing body that meets the requirements of the Act.

262. Regulations under subsection (2)(g) may set out other matters that the NHS Commissioning Board has to be satisfied about. Regulations under subsection (3) may set out factors that the Board must or may take into account when determining an application for establishment. Regulations under this subsection may also make provision about the procedure for the making and determination of applications.

263. *Effect of grant of application*. New section 14D provides for the establishment of a CCG upon the grant of an application (under section 14C). The grant of an application for establishment has the effect that the CCG is established as a statutory body and the CCG's proposed constitution then has effect. This section also introduces Part 2 of Schedule 1A, which makes further provision about CCGs.

264. *Variation of constitution*. New sections 14E and 14F make provision about the variation of a CCG's constitution. Under section 14E, a CCG may apply to the NHS Commissioning Board for its constitution to be varied. Regulations may make provision about the procedure to be followed when applying for a variation; the circumstances in which the NHS Commissioning Board must or may grant, or must or may refuse, an application; and factors the NHS Commissioning Board must or may take into account when deciding whether to grant or refuse an application.

265. Section 14F gives the NHS Commissioning Board powers to vary a CCG's constitution otherwise than on application by the CCG. The NHS Commissioning Board may change the area specified in a CCG's constitution, and may add any provider of primary medical services to, or remove any provider from, a CCG's list of members. Before exercising these powers, the NHS Commissioning Board must consult the CCG and any other

CCGs that, in the Board's view, might be affected by the proposed variation. The powers can only be exercised if the CCG whose constitution is to be varied agrees to the change, or if the NHS Commissioning Board considers that it is necessary to make the variation to discharge its duties under section 14A (that is, to ensure that every provider of primary medical services is a member of a CCG or to ensure that the areas specified in the constitutions of CCGs together cover the whole of England and do not coincide or overlap). Regulations may be made setting out further circumstances in which the NHS Commissioning Board may vary the constitution of a CCG, the circumstances in which those powers can be exercised and the procedure to be followed.

266. *Mergers, dissolution etc.* New sections 14G and 14H make provision about the merger and dissolution of CCGs. Section 14G allows CCGs to apply to the NHS Commissioning Board to merge, that is for those CCGs to be dissolved and for a new CCG to be established in their place. Any application under section 14G must include a copy of the proposed constitution of the new merged CCG, the name of the person whom the CCG wishes the NHS Commissioning Board to appoint as its accountable officer, and such other information that the NHS Commissioning Board may specify. Sections 14C and 14D, which make provision about the determination of applications and effect of grant of applications, also apply here.

267. Section 14H provides for a CCG to apply to the NHS Commissioning Board to be dissolved. Regulations under subsection (2) may make provision about the circumstances in which the NHS Commissioning Board must or may grant, or must or may refuse, applications under this section; the factors that the NHS Commissioning Board must or may take into account in determining whether to grant those applications; and the procedure for making and determining applications.

268. *Transfers in connection with variation, merger, dissolution etc.* Under section 14I, when variations, mergers or dissolutions take place, the NHS Commissioning Board may make a scheme providing for the transfer of property or staff, or any associated rights and liabilities, of the CCG to the NHS Commissioning Board or to another CCG. Section 14I also introduces Part 3 of Schedule 1A which makes further provision about transfer schemes.

269. *Publication of constitution of clinical commissioning groups*. Section 14J requires a CCG to publish its constitution. It also, under subsection (2), requires a CCG to publish a constitution if it is varied under 14E or 14F as it has been varied.

270. *Guidance about the establishment of clinical commissioning groups etc.* Under section 14K, the NHS Commissioning Board may publish guidance about how applications for establishment as a CCG should be made, including guidance as to the form, content and publication of the proposed constitutions and guidance on applications to vary, merge or dissolve a CCG). This would enable the NHS Commissioning Board, for instance, to issue guidance on how good governance principles might be reflected in a CCG's constitution.

271. *Governing bodies of clinical commissioning groups.* Section 14L specifies that each CCG must have a governing body. The governing body will have the role of assuring that the CCG has made the appropriate arrangements to ensure that it complies with its duty to act with effectiveness, efficiency and economy (new section 14Q). It must also ensure that the CCG has appropriate arrangements in place to comply with generally accepted principles of good governance as are relevant to it. These are described in subsection (2) as the 'main functions' of the governing body.

272. Governing bodies also have the function, under subsection (3)(a), of determining the remuneration, fees and allowances payable to CCG employees and others providing services to it (such as self-employed IT consultants) and of determining the allowances payable under a pension scheme established by the CCG under paragraph 11(4) of Schedule 1A (under subsection (3)(b)). Regulations under subsection (6) may require governing bodies to publish specified information in relation to such determinations In

addition, the NHS Commissioning Board may publish guidance (under subsection (7)) for governing bodies on the exercise of their functions in relation to pay and remuneration.

273. Subsection 3(c) allows the CCG constitution and regulations to confer further functions upon the governing body, provided that these are connected with the main functions of the governing body.

274. Subsection (4) specifies that only the following can be members of the governing body:

- A CCG member who is an individual;
- An individual, appointed by virtue of regulations made under 14N(2);
- An individual, of a description set out in the CCG's constitution.

275. Subsection (5) allows regulations to prescribe circumstances in which a CCG must obtain the approval of its governing body before the CCG exercises specified functions.

276. *Audit and remuneration committees of governing bodies.* Section 14M requires CCG governing bodies to have both an audit committee and a remuneration committee. The audit committee has such functions in relation to the financial duties of the CCG as the governing body considers appropriate. Its role is to assist the governing body in ensuring the CCG carries out its prescribed functions appropriately.

277. The remuneration committee has the function of making recommendations to the governing body about the determination of remuneration, fees and allowances payable to CCG employees and others providing services to it and determining the allowances payable under a pension scheme established by the CCG under paragraph 11(4) of Schedule 1A. Regulations and the CCG constitution can confer additional, functions on the audit and remuneration committees, provided that they are connected with the governing body's main functions.

278. *Regulations as to governing bodies of clinical commissioning groups*. Section 14N provides a number of regulation-making powers. It is intended that regulations made under these powers will, without being overly prescriptive, set out some of the detail needed for the set-up of CCGs' governing bodies and their statutory committees.

279. Regulations may:

- specify the minimum number of members of governing bodies;
- specify certain requirements as to membership of governing bodies and their statutory committees- for example that the governing body must include the CCG's accountable officer and requirements as to membership of healthcare professionals of a prescribed description and lay persons;
- make provision as to the qualification, appointment and tenure of members of governing bodies and their statutory committees;
- make provision as to the qualification, appointment and tenure of chairs;
- specify information to be included in constitutions (in relation to paragraph 7 of Schedule 1A (as set out in Schedule 2 to the Act) which concerns the decision making process; and
- make such other provision about the procedure of governing bodies or their statutory committees as the Secretary of State deems appropriate, including as regards frequency of meetings.

280. *Registers of interests and management of conflicts of interest.* New section 14O subsection (1) requires a CCG to maintain one or more registers of the interests of members of the group, the members of the governing body, employees of the group,

and members of committees and sub-committees of the group, and committees and sub-committees of the governing body. Sub-section (2) requires that the registers are published by the CCG or arrangements made by the CCG to ensure that they are available to the public on request.

281. Under subsection (3), each CCG must make arrangements to ensure that members of the group, the members of the governing body, employees of the group, and members of committees and sub-committees of the group and committees and sub-committees of the governing body declare any conflict of interest, or potential interest they may have in relation to a decision to be made by the group in the exercise of its commissioning functions,. The declaration must be made as soon as possible after the individual becomes aware of the potential conflict, and in any event within 28 days. The arrangements made by the CCG must ensure that the declaration so made is included in the appropriate register of interests.

282. Under subsection (4), the CCG must make arrangements for managing conflicts and potential conflicts of interest, so they do not influence the group's decision making, or appear to do so.

283. Under subsection (5), the NHS Commissioning Board must issue guidance for CCGs on the discharge of their functions under this section.

284. Subsection (6) requires that CCGs have regard to this guidance.

285. This section also inserts new Schedule 1A (set out in Schedule 2 to the Act) into the NHS Act.

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 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).

Section 26 – Clinical commissioning groups: general duties etc.

315. This section inserts new sections 14P to 14Z24 into the NHS Act, which contain CCGs' duties, and powers, and provision for the NHS Commissioning Board to intervene in the event of failure.

316. *Duty to promote the NHS Constitution*. New section 14P imposes a duty upon CCGs both to act in the exercise of its functions (for example through their commissioning functions) with a view to securing that health services are provided in a way that promotes the NHS Constitution and to promote awareness of it among staff, patients and the public. This means that not only must CCGs act in accordance with the NHS Constitution, but they should ensure that people are made aware of their rights under it. They may also do this by contributing, as far as possible, to the advancement of the Constitutions principles, rights, responsibilities and values, through their own actions and through facilitating the actions of stakeholders, partners and providers.

317. *Duty as to effectiveness, efficiency etc.* Under new section 14O, each CCG must exercise its functions effectively, efficiently and economically.

318. *Duty as to improvement in quality of services.* New section 14R places CCGs under a duty to exercise their functions with a view to securing continuous improvements in the quality of services provided to individuals, as part of the health service. This also reflects the accepted definition of quality[1] as comprising effectiveness, safety and patient experience. Subsection (4) requires CCGs, in discharging this duty, to have regard to any guidance issued by the NHS Commissioning Board under new section 14Z8 (on how CCGs should discharge their commissioning functions).

319. *Duty in relation to quality of primary medical services*. New section 14S provides that each CCG must assist and support the NHS Commissioning Board in discharging its duty under 13E as to improvement in the quality of services insofar as that relates to securing continuous improvement in the quality of primary medical services. In this way, each CCG would support the continuous improvement in the quality of primary medical services provided by CCG members.

320. *Duties as to reducing inequalities.* New section 14T sets out that CCGs must, in the exercise of their functions, have regard to the need to reduce inequalities between patients in access to health services and in the outcomes achieved from health services.

321. *Duty to promote involvement of each patient*. Section 14U requires CCGs in exercising their functions, to promote the involvement of patients and their carers and representatives in decisions about their own care (shared decision-making). This duty is intended to address the commitment outlined in the White Paper *Equity and Excellence: Liberating the NHS* to the policy of "no decision about me without me".

322. The duty would apply to any decisions at all stages of that individual's health care, from preventative measures, diagnosis of an illness, and any subsequent care and treatment they receive. Effective involvement of patients in these decisions might include such things as opportunities for patients to participate in treatment decisions in partnership with health professionals, to be supported to make informed decisions about the management of their care and treatment and to discuss opportunities for patients to

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1 See, for example, the NHS Outcomes Framework published by the Department of Health on 20 December 2010, available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_122944

manage their own condition. The NHS Commissioning Board must publish guidance on how to discharge this duty, to which CCGs must have regard.

323. *Duty as to patient choice*. Section 14V imposes a duty on CCGs, in the exercise of their functions, to act with a view to enabling patient choice (for example, by commissioning so as to allow patients a choice of treatments, or a choice of providers, for a particular treatment).

324. *Duty to obtain appropriate advice.* New section 14W requires CCGs to obtain appropriate advice from people who taken together have a broad range of professional expertise in relation to the prevention, diagnosis or treatment of illness, and the protection or improvement of public health to enable them to discharge their functions effectively. This could involve, for example, a CCG employing or otherwise retaining healthcare professionals to advise the CCG on commissioning decisions for certain services, or appointing professionals to any committee that the CCG may set up to support commissioning decisions. It could also involve consulting clinical networks and senates. The NHS Commissioning Board may publish guidance on the exercise of this duty to which CCGs must have regard.

325. *Duty to promote innovation.* New section 14X imposes a duty on CCGs, in the exercise of their functions, to promote innovation in the provision of health services and in making arrangements for the provision of health services. This means that not only will CCGs have to encourage new ways of thinking through commissioning, but they will also have to promote different commissioning methodologies.

326. *Duty in respect of research.* New section 14Y puts a duty on CCGs in respect of research. Each CCG must, in the exercise of its functions, promote health research and the use of evidence obtained from such research. A CCG could, for example, use evidence obtained from health research to inform its commissioning plan.

327. *Duty as to promoting education and training.* New section 14Z places a duty on each CCG in the exercise of their functions to have regard to the need to promote education and training to persons who are employed, or who are considering becoming employed, in an activity which involves or is connected with the provision of services as part of the health service in England, to assist the Secretary of State under his duty under new section 1E to secure an effective system for the planning and delivery of education and training in England for these people.

328. *Duty as to promoting integration*. New section 14Z1 gives CCGs a duty in relation to promoting integration, where it would benefit patients. They must exercise their functions with a view to securing that services are provided in an integrated way where this would improve the quality of the services, reduce inequalities of access or reduce inequalities in outcomes. In this manner, integration is not the aim itself, but a tool to encourage service improvement. This integration can be integration of health services with other health services or health services with health-related services (such as housing services where these have an effect on the health of individuals), or health services with social care services.

329. *Public involvement and consultation by clinical commissioning groups.* New section 14Z2 sets out requirements for involving the public (whether by consultation or otherwise). CCGs must make arrangements to involve individuals to whom services are being or may be provided in the commissioning process. Specifically, individuals must be involved in planning commissioning arrangements; in developing and considering proposals for changes in the commissioning arrangements, where those proposals would have an impact on how services are provided or the range of health services available; and in decisions that would likewise have a significant impact.

330. Each CCG must set out in its constitution a description of the arrangements made by it to fulfil this duty and a statement of the principles it will follow in implementing those arrangements. The NHS Commissioning Board may publish guidance for CCGs

on how to discharge their duties under this section and CCGs must have regard to any such guidance.

331. The NHS Commissioning Board could, for instance, give guidance on effective ways of engaging and seeking views from members of the public, including how to engage people who do not regularly use healthcare services or are from disadvantaged communities. The NHS Commissioning Board could also give guidance to help CCGs decide in what circumstances the duty to involve might most appropriately be met by providing information and in what circumstances a CCG should actively seek people's views through consultation.

332. *Arrangements with others.* New sections 14Z3 and 14Z4 enable CCGs to collaborate with each other and, in particular circumstances, with Local Health Boards.

333. *Arrangements by clinical commissioning groups in respect of the exercise of functions.* New section 14Z3 enables CCGs to collaborate in respect of the exercise of their commissioning functions. CCGs may make arrangements under subsection (2)(a) for one CCG to take a role as lead commissioner and exercise commissioning functions on behalf of other CCGs. CCGs may, under subsection (2)(b), exercise their functions jointly. In exercising these powers, a CCG may make payments to other CCGs, may make the services of its employees or other resources available to other CCGs, and may establish pooled funds. Subsection (6) makes clear that these arrangements do not change the responsibility of any CCG to ensure its functions are discharged properly or any liabilities arising from the exercise of those functions.

334. *Joint exercise of functions with Local Health Boards*. Regulations may be made under new section 14Z4 to allow any prescribed functions of a CCG to be exercised jointly with a Local Health Board. Local Health Boards are the bodies responsible for commissioning and providing health services in Wales. Regulations may also make provision for any such functions to be exercised by a joint committee of the CCG and the Local Health Board. Subsection (3) makes it clear that these arrangements do not change the responsibility of any CCG to ensure its functions are discharged properly or any liabilities arising from the exercise of those functions.

335. A CCG may also provide advice or assistance to any public authority in the Isle of Man or Channel Islands, on such terms, including as to payment, as the CCG considers appropriate (section 298).

336. *Additional powers of clinical commissioning groups.* Additional powers for CCGs are set out in new sections 14Z5 and 14Z6.

337. *Raising additional income*. New section 14Z5 enables CCGs to undertake certain activities to raise additional income for improving the health service, provided that this does not significantly interfere with the CCG's ability to perform its functions. These activities are to acquire, produce, manufacture and supply goods; to acquire land by agreement and manage and deal with land; to provide instruction for any person; to develop and exploit ideas and exploit intellectual property; to do anything whatsoever which appears to the CCG to be calculated to facilitate, or to be conducive or incidental to, the exercise of any power conferred by this subsection - and to make such charge as the CCG considers appropriate.

338. *Power to make grants.* New section 14Z6 enables CCGs to make grants or loans, subject to such conditions as the CCG deems appropriate, to voluntary organisations that provide or arrange for the provision of services similar to the services in respect of which the CCG has functions.

339. *Board's functions in relation to clinical commissioning groups.* New sections 14Z7, 14Z8, 14Z9 and 14Z10 make provision for the NHS Commissioning Board to have functions in relation to assisting CCGs.

340. *Responsibility for payments to providers.* New section 14Z7 gives the NHS Commissioning Board the power to publish a document specifying the circumstances in which a CCG is liable to make payments to a provider to pay for services provided under arrangements commissioned by another CCG. This provision would, for instance, enable the NHS Commissioning Board to specify that, where a person uses an urgent care service commissioned by a CCG other than the CCG that is ordinarily responsible for that person's healthcare, the cost of that service is charged to the latter CCG. It could, for instance, decide that CCGs should be left to agree mutual arrangements for sharing costs where patients from a number of different CCGs use the same urgent care service. However, where the NHS Commissioning Board publishes such a specification, a CCG will be required to make payments in accordance with that document (subsections (2) and (3)). In those circumstances, no other CCG will be liable for the payment. Any sums payable by virtue of subsection (2) may be recovered under subsection (5) as a civil debt. Where the NHS Commissioning Board makes a specification, it may publish guidance for the purpose of assisting CCGs understand, and apply, it (subsection (6)).

341. *Guidance on commissioning by the Board.* Section 14Z8 provides that the NHS Commissioning Board must publish guidance for CCGs on the discharge of their commissioning functions (subsection (1)). CCGs must have regard to this guidance (subsection (2)). The Healthwatch England committee of the Care Quality Commission must be consulted before the NHS Commissioning Board publishes any guidance or any revised guidance containing changes that are in the NHS Commissioning Board's opinion significant (subsection (3)).

342. *Exercise of functions by the Board.* New section 14Z9 provides that the NHS Commissioning Board may act on behalf of a CCG and arrange for the provision of services and exercise related functions, if requested to do so by the CCG (or in other words, by mutual agreement between the NHS Commissioning Board and the CCG). Regulations may provide that the power does not apply to services or facilities of a prescribed description. Subsection (3) makes provision for terms, including payment terms, to be agreed between the NHS Commissioning Board and CCGs. Subsection (4) makes clear that these arrangements do not change the responsibility of any CCG to ensure its functions are discharged properly or any liabilities arising from the exercise of those functions.

343. *Power of Board to provide assistance or support.* New section 14Z10 provides that the NHS Commissioning Board has the power to provide assistance or support to CCGs (including financial assistance and making employees or other resources of the NHS Commissioning Board available to CCGs). This assistance may be provided on such terms as the NHS Commissioning Board considers appropriate, including payment terms. The NHS Commissioning Board can impose restrictions on the use of any such assistance.

344. *Commissioning plans.* New section 14Z11 makes provision with regard to commissioning plans. Section 14Z11(1) stipulates that each CCG must prepare a plan before the start of each relevant period to set out how it will exercise its functions. The plan must, in particular, explain how the CCG proposes to discharge its duties to seek continuous improvement in the quality of services (under new section 14R) and in relation to reducing inequalities (14T) and its financial duties (under sections 223H to 223J) and also its duty in relation to public involvement under 14Z2. This plan must be published and sent to the NHS Commissioning Board before a date specified by the Board. A copy must also be sent to the relevant health and wellbeing board. In a CCG's first financial year the 'relevant period' will begin on a date specified by the NHS Commissioning Board and end at the end of that financial year, it will then be each subsequent financial year. The NHS Commissioning Board may publish guidance on consultation on, and revision of, commissioning plans, to which CCGs must have regard.

345. *Revision of commissioning plans.* Under new section 14Z12, the commissioning plan may be revised. Should the proposed revision be deemed 'significant' by the CCG, it must give a copy to the NHS Commissioning Board by a date specified by the Board and must provide the relevant health and wellbeing board with a copy having carried out consultation under new section 14Z11 (below). Where the CCG revises the plan and the changes are not significant, it must still publish the revised plan. A copy must also be provided to each relevant health and wellbeing board and the NHS Commissioning Board.

346. *Consultation about commissioning plans.* Under new section 14Z12, when preparing a commissioning plan, or making a change it deems significant, the CCG must:

- consult individuals for whom it has responsibility for the purposes of section 3 of the NHS Act, for example the people to whom its members provide primary care services and those included within the CCG's geographic area responsibilities; and
- involve the relevant health and wellbeing board.

347. It must, in particular, provide the relevant health and wellbeing board with a copy of the draft plan or revised plan (as the case may be) and consult it on whether it adequately takes the latest joint health and wellbeing strategy into account. This means that CCGs would need to discuss their plans in advance with health and wellbeing boards to help ensure that they reflected joint health and wellbeing strategies.

348. The health and wellbeing board would have to give the CCG its opinion on this. It could also give its opinion to the NHS Commissioning Board. If it did so, the CCG must be given a copy of the opinion. If the CCG went on to make further changes, this process would have to be repeated. The revised plan would have to be published and a copy given the relevant health and wellbeing board and the NHS Commissioning Board.

349. When CCGs send their commissioning plans to the NHS Commissioning Board, they would be under an obligation to include:

- a summary of the views of individuals consulted;
- an explanation of how those views were taken into account; and
- a statement as to whether the relevant health and wellbeing board(s) agreed that the plans has due regard to the joint health and well-being strategy or strategies.

350. *Opinion of health and wellbeing boards on commissioning plans*. 14Z14 enables each health and wellbeing board to provide the NHS Commissioning Board with its opinion on whether a CCG's commissioning plan has taken proper account of the relevant joint health and wellbeing strategy. If it does so, it must provide a copy of this opinion to the CCG in question.

351. *Reports by clinical commissioning groups.* Under section 14Z15, in each financial year, save the first year of operation, each CCG must prepare and provide to the NHS Commissioning Board an annual report on how it has discharged its functions in the previous financial year. The report must, in particular, explain how it has fulfilled its duties to seek continuous improvement in the quality of services (section 14R), in relation to reducing inequalities (14T), and to involve patients and the public in commissioning decisions (section 14Z2). The CCG must publish the report and present it at a public meeting. The NHS Commissioning Board can give directions, which may include further provision on the form and content of an annual report. For example, these directions could specify that the report include a review of joint arrangements with local authorities and the outcome of any consultations undertaken under 14Z2.

352. *Performance assessment of clinical commissioning groups.* New section 14Z16 specifies that the NHS Commissioning Board must conduct an assessment of how well each CCG has discharged its functions during each financial year. In particular, it must assess how well the CCG has discharged its duty to seek continuous improvement

in the quality of services (under new section 14R), its duty in relation to reducing inequalities (14T), its duty to obtain appropriate advice (14W), its duty to involve and consult the public (14Z2), its financial duties (under new sections 223H to 223J) and its duty to have regard to any relevant joint health and wellbeing strategy. In assessing performance, the NHS Commissioning Board must consult each relevant health and wellbeing board on whether the CCG has taken proper account of the relevant joint health and wellbeing strategy. It must also have regard to any relevant document published by the Secretary of State, which includes the NHS Outcomes Framework, and to any commissioning guidance published by the NHS Commissioning Board. Each financial year, the NHS Commissioning Board must publish a report containing a summary of the results of the performance assessments.

353. *Power to require documents and information etc.* New sections 14Z17 to 14Z20 are concerned with the NHS Commissioning Board's powers to require and use information. The NHS Commissioning Board can use the powers in section 14Z18 and 14Z19 to require documents, information and explanations, where it has reason to believe that a CCG might have failed, might be failing or might fail to discharge any of its functions properly, or where it believes the area of a CCG is no longer appropriate (see new section 14Z17(1)). A failure to discharge a function properly for these purposes includes a failure to discharge it consistently with what the NHS Commissioning Board considers to be the interests of the health service.

354. New section 14Z18 provides that, where the conditions in section 14Z17 are met, the NHS Commissioning Board may require the provision of any information, documents, records or other items from a CCG or any member or employee of the CCG having possession or control of the item, where the NHS Commissioning Board considers that it is necessary or expedient to have this for the purposes of any of its functions in relation to the CCG. When that information is stored on a computer, it must be provided to the NHS Commissioning Board in a legible form. By virtue of subsection (5) this power does not include the power to require the provision of personal records, as defined by reference to section 12 of the Police and Criminal Evidence Act 1984. This power does not therefore permit the NHS Commissioning Board to require documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating to his physical or mental health; to spiritual counselling or assistance given or to be given to him; or to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who because of his office or occupation has responsibilities for his personal welfare; or by reason of an order of a court has responsibilities for his supervision.

355. *Power to require explanation.* New section 14Z19 sets out the NHS Commissioning Board's power, where the conditions in section 14Z17 are met, to require an explanation, either orally (at such time and place as the NHS Commissioning Board may specify), or in writing, regarding any matter relating to the CCG's exercise of its functions. That explanation can include an explanation of how the CCG is proposing to exercise its functions.

356. *Use of information*. Where the NHS Commissioning Board obtains information from a CCG in these ways, new section 14Z20 permits the NHS Commissioning Board to use this information in connection with any of its functions which relate to CCGs.

357. *Intervention powers:* New section 14Z21 sets out the NHS Commissioning Board's powers to intervene in the operations of CCGs.

358. *Power to give directions, dissolve clinical commissioning groups etc*. Under new section 14Z21, if the NHS Commissioning Board is satisfied that a CCG is failing or has failed to discharge any of its functions (which includes a failure to discharge a function consistently with what the Board considers to be the interests of the health service), or there is a significant risk that it will fail to do so, the NHS Commissioning Board has powers to:

- direct the CCG to discharge a functions in a particular way and within a specified period;
- direct the CCG or the accountable officer to cease to perform any functions for a specified period;
- terminate the accountable officer's appointment and appoint another person to be accountable officer;
- vary a CCG's constitution (including by varying its area, adding any GP practice to its list of members, or removing any GP practice from its list of members); or
- dissolve that CCG.

359. Subsection (8) provides that, where a direction is given for the CCG to cease performing any specified functions, the NHS Commissioning Board may exercise those specified functions. Alternatively, the NHS Commissioning Board may direct that another CCG or the accountable officer of another CCG discharge those functions (providing the NHS Commissioning Board has consulted that CCG). Where the NHS Commissioning Board changes the constitution of a CCG or dissolves a CCG, it may make a scheme transferring any property, liabilities, or staff (as at Part 3 of Schedule 1A) of the affected CCG to the NHS Commissioning Board or another CCG. Subsection (9) sets out that where the NHS Commissioning Board exercises the function of a CCG under subsection (8), the CCG must co-operate with the NHS Commissioning Board. Subsection (9) also provides that when a CCG's functions are being discharged by another CCG or the accountable officer of another CCG, the CCG whose functions are being discharged must co-operate with the other CCG or the accountable officer in question.

360. *Procedural requirements in connection with certain intervention powers.* New section 14Z22 impose procedural requirements which the NHS Commissioning Board must follow before dissolving a CCG under new section 14Z21(7). The NHS Commissioning Board must consult with that CCG, any relevant local authorities (defined in subsection (7)), and any other persons the NHS Commissioning Board considers appropriate; and provide those persons with a statement explaining its proposed actions and the reasons for them. The NHS Commissioning Board must, under subsection (3), publish a report in response to this consultation and, where it decides to exercise its power to dissolve a CCG, explain in the report its reasons for doing so (subsection (4)).

361. Subsection (5) of new section 14Z22 provides that regulations may be made as to the procedure that the NHS Commissioning Board must follow before exercising its powers to require information or explanation (under new sections 14Z18 or 14Z19) or before exercising the intervention powers in new section 14Z21. This will enable regulations to set out a clear, transparent set of triggers or criteria for different stages of intervention and to help ensure that the nature of the intervention is proportionate to the nature of the failure or risk.

362. Subsection (6) of new section 14Z22 provides that the NHS Commissioning Board must publish guidance setting out how it proposes to exercise its powers to require information or explanation and its powers of intervention, so as to ensure that the arrangements are clear and transparent.

363. *Permitted disclosures of information.* New section 14Z23 makes provision as to the circumstances when a CCG may disclose information obtained in the exercise of its functions. Unless the information has previously been lawfully disclosed to the public, the disclosure would be made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services), in accordance with any enactment or court order,

or for the purpose of criminal proceedings, the CCG may not disclose information under section 14Z23 if to do so would be contrary to any rule of common law..

364. *Interpretation*. New section 14Z24 sets out when references to CCGs' functions include public health functions of the Secretary of State that have been delegated to them by virtue of arrangements under section 7A of the NHS Act. This list includes certain provisions of other Acts of Parliament that are amended by this Act. There is also a power for the list of provisions specified to be amended by order of the Secretary of State.

Section 27 - Financial arrangements for clinical commissioning groups

365. This section sets out the financial arrangements for CCGs, inserting new sections 223G to 223K into the NHS Act. The Secretary of State and the Department's Accounting Officer will remain accountable to Parliament for the Parliamentary Estimates of spending and to the Treasury for the Department of Health's Departmental Expenditure Limit (DEL), the annual spending limit for a government department arising from its agreed, long term financial settlement with HM Treasury. The Department will allocate resources for NHS commissioning to the NHS Commissioning Board and the NHS Commissioning Board has statutory duties to ensure that the commissioning sector as a whole lives within its spending and resource limits. The NHS Commissioning Board will in turn allocate resources to CCGs and CCGs will have a duty to live within their own spending and resource limits.

366. *Means of meeting expenditure of clinical commissioning groups out of public funds*. New section 223G sets out the NHS Commissioning Board's duties to make annual financial allotments to CCGs and, over the course of the relevant financial year, allows CCGs to draw down funding from this allotment to meet the CCG's expenditure. Subsection (1) sets out the latter duty. The funds that a CCG can draw down to meet its expenditure must not exceed the allotted amount. For these purposes, the funds that it draws down will be net of designated elements of pharmaceutical expenditure, which are paid by the NHS Commissioning Board, but which are treated as paid by the CCG (see section 51 and Schedule 3 to the Act).

367. Subsection (2) provides that, in determining a CCG's annual allotment, the NHS Commissioning Board may take into account the expenditure of the CCG during any previous financial year. This enables the NHS Commissioning Board to reduce a CCG's allotment to reflect any over-spends against its allotment in previous years, or conversely to increase that allotment to reflect any under-spends, provided that the NHS Commissioning Board keeps within its overall expenditure limit. Subsection (2) also enables the NHS Commissioning Board to take into account any amount that it proposes to hold as a contingency fund.

368. Subsection (3) provides for the NHS Commissioning Board to notify a CCG in writing of its annual financial allotment.

369. Subsection (4) allows the NHS Commissioning Board to make an in-year adjustment to a CCG's allotment, provided that it acts reasonably in line with general administrative law controls and subsection (5) provides that, where the NHS Commissioning Board allots an amount to a CCG or makes a new allotment, it must notify the Secretary of State.

370. Subsection (6) provides that the NHS Commissioning Board may direct that sums paid to a CCG as part of an increase in a CCG's allotment are spent in a certain way. The direction would apply only to the amount by which the allotment has increased, rather than the total allotment. The power might be used when, for instance, additional funds have been made available to make a specific service or therapy more widely available.

371. The NHS Commissioning Board may also give directions to a CCG in respect of charges and other sums related to the valuation and disposal of assets, which are payable to the

NHS Commissioning Board. This would allow for monies from the sale of assets to be clawed back and therefore prevent CCGs from selling assets and using the proceeds inappropriately, for example by using the proceeds to fund a deficit. In practice, the monies would not be directly paid back to the NHS Commissioning Board, but the Board would deduct these amounts from the amount of capital funding provided.

372. *Financial duties of clinical commissioning groups: expenditure.* Section 223H sets out the duty for CCGs to break even on their commissioning budget, in other words to ensure that their cash expenditure in a financial year does not exceed the allotment given to them by the NHS Commissioning Board together with any other sums received by the CCG by other means. The NHS Commissioning Board has powers of direction to determine whether specified sums count for these purposes as being received by a CCG (in other words whether or not this income is treated as increasing the amount that a CCG can spend in a financial year) and whether specified expenditure made by a CCG, or sums received by a CCG from its allotment but not yet spent, must be treated for these purposes as counting towards its expenditure.

373. New section 223H also specifies that the Secretary of State may make directions requiring CCGs to use banking facilities specified in those directions for the purposes specified in those directions. It is an HM Treasury requirement that all NHS money is held in Government Banking Service (GBS) accounts. However, under this Act, the Secretary of State does not have general powers of direction over CCGs. The Government needs to ensure that firstly, all allocations to CCGs are held by CCGs in a GBS account, and secondly, that this is the account in which CCGs keep their allocation and that the monies allocated to CCGs stay in GBS accounts until paid out (although there may be circumstances in which other commercial accounts may be held). This money is held in the GBS to offset the national debt.

374. *Financial duties of clinical commissioning groups: use of resources.* Section 223I sets out the duty for CCGs to ensure that their use of resources in a financial year does not exceed an amount specified by the NHS Commissioning Board. The NHS Commissioning Board will specify in directions a limit on capital resource use and a limit on revenue resource use. The NHS Commissioning Board can vary those limits in-year, provided that it acts reasonably in line with general administrative law principles. A CCG's use of resources will differ from its cash expenditure during a financial year. For instance, insofar as resources are consumed (e.g. a service is received) in a different year from that in which the payment for that service is made or insofar as there is a change in the value of assets belonging to the CCG, such as through depreciation. Any Secretary of State's directions under section 223D as to the descriptions and uses of resources, which must or must not be taken into account, apply for the purposes of these limits. In addition, the NHS Commissioning Board may give directions determining to which CCG a use of resources applies, when examining whether a CCG has lived within its resource limit. Where the NHS Commissioning Board gives directions to CCGs under this section, it must notify the Secretary of State.

375. The resource-use limits include not only CCGs' expenditure in the form of cash spending (that is, the cash spending that should be accounted for in that financial year, in line with resource accounting standards), but also consumption of other resources and the reduction in value of assets belonging to the CCG. For example, the reduction in value of a photocopier across the year, or the distribution of leaflets previously kept in storage would be counted as part of the CCG's resource-use limit. This system of setting not only a cash limit on the CCG expenditure, but also a limit on use of resources reflects the system for controlling government resources under the Government Resources and Accounts Act 2000.

376. *Financial duties of clinical commissioning groups: additional controls on resource use.* Section 223J gives the NHS Commissioning Board a power to direct the maximum amounts of resources a CCG may use in respect of particular matters specified in the direction or prescribed matters relating to administration. Such administration

costs will, for instance, include the cost of employing or engaging staff to carry out commissioning functions or the cost of paying for an external organisation to provide commissioning support. The NHS Commissioning Board can vary any of these specified amounts and can determine by directions. the uses of capital and revenue resources that must or must not be taken into account for the purposes of any of these limits. In addition, any Secretary of State directions under section 223D of the NHS Act (inserted by section 24 of the Act), as to the description of resources which must or must not be treated as capital or revenue resources, apply for the purposes of these limits. Similarly, if the Secretary of State specifies in directions under section 223D(5) that a particular use of resources must not be taken into account, that use must not be taken into account for the purposes of the resource limits of CCGs.

377. The NHS Commissioning Board may not give directions to specify limits on the use of capital resources on specified matters, or the use of revenue resources on specified matters, unless the Secretary of State has given directions to the NHS Commissioning Board on those matters under section 223E(1) or 223E(2) of the NHS Act (inserted by section 24 of the Act).. Similarly, it may not give specify a limit the use of revenue resources for matters relating to administration, unless the Secretary of State has given a direction to the NHS Commissioning Board in relation to those matters under section 223E(3)(a) of the NHS Act.

378. *Payments in respect of quality*. New section 223K gives the NHS Commissioning Board the power to make a payment to a CCG after the end of the financial year.

379. In determining whether to make a payment and, if so, the amount, the NHS Commissioning Board must assess at least one of the following:

- quality of relevant services provided during the financial year;
- improvement in quality of relevant services provided during the financial year compared to previous financial years;
- the outcomes identified during the financial year as having been achieved from the provision at any time of relevant services; and
- improvements in outcomes, identified during the financial year as having been achieved from the provision at any time of relevant services when compared to outcomes identified in previous financial years.

380. In this way, it can both reward the performance delivered by a CCG and any improvements in performance. The NHS Commissioning Board may also take into account any relevant inequalities identified during that year and any reduction in inequalities identified during that year in comparison with relevant inequalities identified over previous financial years. Regulations may specify principles or other matters that the NHS Commissioning Board must or may take into account in assessing these factors. Further regulations may prescribe the circumstances in which the NHS Commissioning Board may decide to reduce a payment or not to make one.

381. Regulations may also prescribe how any payment made to a CCG in respect of quality may be spent, including its distribution amongst the CCG's members.

382. Each CCG must publish an explanation of how it has spent any payment made under this section.

Section 28 - Requirement for primary medical services provider to belong to clinical commissioning group

383. This section inserts new provisions into section 89 and section 94 of the NHS Act. *Subsection (1)* inserts new subsections (1A) to (1E) into section 89 of the NHS Act (General Medical Services (GMS) contracts: other required terms) which enable regulations made under subsection (1) of that section, which prescribe matters that may

be included as required terms of a GMS contract, to include a number of further specific matters that relate to the relationship between the GMS contract holder and the relevant CCG. These matters include a requirement to be a member of a CCG and to nominate an individual to act on behalf of the contract holder in its dealings with the CCG. *Subsection (2)* makes similar changes to section 94 of the NHS Act by inserting new subsections (3A) to (3E) into that section (Regulations about section 92 arrangements).