Health and Social Care Act 2012

2012 CHAPTER 7

PART 1

THE HEALTH SERVICE IN ENGLAND

Further provision about clinical commissioning groups

25 Clinical commissioning groups: establishment etc.

(1) After Chapter A1 of Part 2 of the National Health Service Act 2006 insert—

"**CHAPTER A2**

CLINICAL COMMISSIONING GROUPS

Establishment of clinical commissioning groups

14A General duties of Board in relation to clinical commissioning groups

(1) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day specified by order of the Secretary of State for the purposes of this section each provider of primary medical services is a member of a clinical commissioning group.

(2) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day so specified the areas specified in the constitutions of clinical commissioning groups—

(a) together cover the whole of England, and

(b) do not coincide or overlap.

(3) For the purposes of this Chapter, "provider of primary medical services" means a person who is a party to an arrangement mentioned in subsection (4).

(4) The arrangements mentioned in this subsection are—
   (a) a general medical services contract to provide primary medical services of a prescribed description,
   (b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description,
   (c) section 92 arrangements for the provision of primary medical services of a prescribed description.

(5) Where a person who is a provider of primary medical services is a party to more than one arrangement mentioned in subsection (4), the person is to be treated for the purposes of this Chapter as a separate provider of primary medical services in respect of each of those arrangements.

(6) Where two or more individuals practising in partnership are parties to an arrangement mentioned in subsection (4), the partnership is to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

(7) Where two or more individuals are parties to an arrangement mentioned in subsection (4) but are not practising in partnership, those persons collectively are to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

14B Applications for the establishment of clinical commissioning groups

(1) An application for the establishment of a clinical commissioning group may be made to the Board.

(2) The application may be made by any two or more persons each of whom—
   (a) is or wishes to be a provider of primary medical services, and
   (b) wishes to be a member of the clinical commissioning group.

(3) The application must be accompanied by—
   (a) a copy of the proposed constitution of the clinical commissioning group,
   (b) the name of the person whom the group wishes the Board to appoint as its accountable officer (as to which see paragraph 12 of Schedule 1A), and
   (c) such other information as the Board may specify in a document published for the purposes of this section.

(4) At any time before the Board determines the application—
   (a) a person who is or wishes to be a provider of primary medical services (and wishes to be a member of the clinical commissioning group) may become a party to the application, with the agreement of the Board and the existing applicants;
   (b) any of the applicants may withdraw.

(5) At any time before the Board determines the application, the applicants may modify the proposed constitution with the agreement of the Board.

(6) Part 1 of Schedule 1A makes provision about the constitution of a clinical commissioning group.

14C Determination of applications

(1) The Board must grant an application under section 14B if it is satisfied as to the following matters.

(2) Those matters are—
- (a) that the constitution complies with the requirements of Part 1 of Schedule 1A and is otherwise appropriate,
- (b) that each of the members specified in the constitution will be a provider of primary medical services on the date the clinical commissioning group is established,
- (c) that the area specified in the constitution is appropriate,
- (d) that it would be appropriate for the Board to appoint, as the accountable officer of the group, the person named by the group under section 14B(3)(b),
- (e) that the applicants have made appropriate arrangements to ensure that the clinical commissioning group will be able to discharge its functions,
- (f) that the applicants have made appropriate arrangements to ensure that the group will have a governing body which satisfies any requirements imposed by or under this Act and is otherwise appropriate, and
- (g) such other matters as may be prescribed.

(3) Regulations may make provision—
- (a) as to factors which the Board must or may take into account in deciding whether it is satisfied as to the matters mentioned in subsection (2);
- (b) as to the procedure for the making and determination of applications under section 14B.

14D Effect of grant of application

(1) If the Board grants an application under section 14B—
- (a) a clinical commissioning group is established, and
- (b) the proposed constitution has effect as the clinical commissioning group's constitution.

(2) Part 2 of Schedule 1A makes further provision about clinical commissioning groups.

Variation of constitution

14E Applications for variation of constitution

(1) A clinical commissioning group may apply to the Board to vary its constitution (including doing so by varying its area or its list of members).

(2) If the Board grants the application, the constitution of the clinical commissioning group has effect subject to the variation.

(3) Regulations may make provision—
- (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
- (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
- (c) as to the procedure for the making and determination of such applications.

14F Variation of constitution otherwise than on application

(1) The Board may vary the area specified in the constitution of a clinical commissioning group.

(2) The Board may—
- (a) add any person who is a provider of primary medical services to the list of members specified in the constitution of a clinical commissioning group;
- (b) remove any person from such a list.

(3) The power conferred by subsection (1) or (2) is exercisable if—
- (a) the clinical commissioning group consents to the variation, or
- (b) the Board considers that the variation is necessary for the purpose of discharging any of its duties under section 14A.

(4) Before varying the constitution of a clinical commissioning group under subsection (1) or (2), the Board must consult—
- (a) that group, and
- (b) any other clinical commissioning group that the Board thinks might be affected by the variation.

(5) Regulations may—
- (a) confer powers on the Board to vary the constitution of a clinical commissioning group;
- (b) make provision as to the circumstances in which those powers are exercisable and the procedure to be followed before they are exercised.

Mergers, dissolution etc.

14G Mergers

(1) Two or more clinical commissioning groups may apply to the Board for—
- (a) those groups to be dissolved, and
- (b) another clinical commissioning group to be established under this section.

(2) An application under this section must be accompanied by—
- (a) a copy of the proposed constitution of the clinical commissioning group,

(b) the name of the person whom the group wishes the Board to appoint as its accountable officer, and

(c) such other information as the Board may specify in a document published for the purposes of this section.

(3) The applicants may, with the agreement of the Board, modify the application or the proposed constitution at any time before the Board determines the application.

(4) Sections 14C and 14D(1) apply in relation to an application under this section as they apply in relation to an application under section 14B.

14H Dissolution

(1) A clinical commissioning group may apply to the Board for the group to be dissolved.

(2) Regulations may make provision—

(a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;

(b) as to factors which the Board must or may take into account in determining whether to grant such applications;

(c) as to the procedure for the making and determination of such applications.

Supplemental provision about applications, variation, mergers etc.

14I Transfers in connection with variation, merger, dissolution etc.

(1) The Board may make a property transfer scheme or a staff transfer scheme in connection with—

(a) the variation of the constitution of a clinical commissioning group under section 14E or 14F, or

(b) the dissolution of a clinical commissioning group under section 14G or 14H.

(2) A property transfer scheme is a scheme for the transfer from the clinical commissioning group of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to the Board or another clinical commissioning group.

(3) A staff transfer scheme is a scheme for the transfer from the clinical commissioning group of any rights or liabilities under or in connection with a contract of employment to the Board or another clinical commissioning group.

(4) Part 3 of Schedule 1A makes further provision about property transfer schemes and staff transfer schemes.

14J Publication of constitution of clinical commissioning groups

(1) A clinical commissioning group must publish its constitution.

Status: *This is the original version (as it was originally enacted).*

(2) If the constitution of a clinical commissioning group is varied under section 14E or 14F, the group must publish the constitution as so varied.

14K Guidance about the establishment of clinical commissioning groups etc.

The Board may publish guidance as to—

(a) the making of applications under section 14B for the establishment of a clinical commissioning group, including guidance on the form, content or publication of the proposed constitution;

(b) the making of applications under section 14E, 14G or 14H;

(c) the publication of the constitutions of clinical commissioning groups under section 14J.

Governing bodies of clinical commissioning groups

14L Governing bodies of clinical commissioning groups

(1) A clinical commissioning group must have a governing body.

(2) The main function of the governing body is to ensure that the group has made appropriate arrangements for ensuring that it complies with—

(a) its obligations under section 14Q, and

(b) such generally accepted principles of good governance as are relevant to it.

(3) The governing body also has—

(a) the function of determining the remuneration, fees and allowances payable to the employees of the clinical commissioning group or to other persons providing services to it,

(b) the function of determining the allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A, and

(c) such other functions connected with the exercise of its main function as may be specified in the group's constitution or by regulations.

(4) Only the following may be members of the governing body—

(a) a member of the group who is an individual;

(b) an individual appointed by virtue of regulations under section 14N(2);

(c) an individual of a description specified in the constitution of the group.

(5) Regulations may make provision requiring a clinical commissioning group to obtain the approval of its governing body before exercising any functions specified in the regulations.

(6) Regulations may make provision requiring governing bodies of clinical commissioning groups to publish, in accordance with the regulations, prescribed information relating to determinations made under subsection (3)(a) or (b).

(7) The Board may publish guidance for governing bodies on the exercise of their functions under subsection (3)(a) or (b).

14M Audit and remuneration committees of governing bodies

(1) The governing body of a clinical commissioning group must have an audit committee and a remuneration committee.

(2) The audit committee has—

(a) such functions in relation to the financial duties of the clinical commissioning group as the governing body considers appropriate for the purpose of assisting it in discharging its function under section 14L(2), and

(b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

(3) The remuneration committee has—

(a) the function of making recommendations to the governing body as to the discharge of its functions under section 14L(3)(a) and (b), and

(b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

14N Regulations as to governing bodies of clinical commissioning groups

(1) Regulations may make provision specifying the minimum number of members of governing bodies of clinical commissioning groups.

(2) Regulations may—

(a) provide that the members of governing bodies must include the accountable officer of the clinical commissioning group;

(b) provide that the members of governing bodies, or their audit or remuneration committees, must include—

(i) individuals who are health care professionals of a prescribed description;

(ii) individuals who are lay persons;

(iii) individuals of any other description which is prescribed;

(c) in relation to any description of individuals mentioned in regulations by virtue of paragraph (b), specify—

(i) the minimum number of individuals of that description who must be appointed;

(ii) the maximum number of such individuals who may be appointed;

(d) provide that the descriptions specified for the purposes of section 14L(4)(c) may not include prescribed descriptions.

(3) Regulations may make provision as to—

(a) qualification and disqualification for membership of governing bodies or their audit or remuneration committees;

(b) how members are to be appointed;

(c) the tenure of members (including the circumstances in which a member ceases to hold office or may be removed or suspended from office);

(d) eligibility for re-appointment.

(4) Regulations may make provision for the appointment of chairs and deputy chairs of governing bodies or their audit or remuneration committees, including provision as to—

(a) qualification and disqualification for appointment;

(b) tenure of office (including the circumstances in which the chair or deputy chair ceases to hold office or may be removed or suspended from office);

(c) eligibility for re-appointment.

(5) Regulations may—

(a) make provision as to the matters which must be included in the constitutions of clinical commissioning groups under paragraph 8 of Schedule 1A;

(b) make such other provision about the procedure of governing bodies or their audit or remuneration committees as the Secretary of State considers appropriate, including provision about the frequency of meetings.

(6) In this section—

"health care professional" means an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;

"lay person" means an individual who is not—

(a) a member of the clinical commissioning group,

(b) a health care professional, or

(c) an individual of a prescribed description.

Conflicts of interest

14O Registers of interests and management of conflicts of interest

(1) Each clinical commissioning group must maintain one or more registers of the interests of—

(a) the members of the group,

(b) the members of its governing body,

(c) the members of its committees or sub-committees or of committees or sub-committees of its governing body, and

(d) its employees.

(2) Each clinical commissioning group must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.

(3) Each clinical commissioning group must make arrangements to ensure—

(a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the group,

(b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days, and

(c) that any such declaration is included in the registers maintained under subsection (1).

(4) Each clinical commissioning group must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making processes.

(5) The Board must publish guidance for clinical commissioning groups on the discharge of their functions under this section.

(6) Each clinical commissioning group must have regard to guidance published under subsection (5).

(7) For the purposes of this section, the commissioning functions of a clinical commissioning group are the functions of the group in arranging for the provision of services as part of the health service."

(2) After Schedule 1 to the National Health Service Act 2006 insert the Schedule set out in Schedule 2 to this Act.

26 Clinical commissioning groups: general duties etc.

After section 14O of the National Health Service Act 2006 insert—

"General duties of clinical commissioning groups

14P Duty to promote NHS Constitution

(1) Each clinical commissioning group must, in the exercise of its functions—

(a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and

(b) promote awareness of the NHS Constitution among patients, staff and members of the public.

(2) In this section, "patients" and "staff" have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

14Q Duty as to effectiveness, efficiency etc.

Each clinical commissioning group must exercise its functions effectively, efficiently and economically.

14R Duty as to improvement in quality of services

(1) Each clinical commissioning group must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness.

(2) In discharging its duty under subsection (1), a clinical commissioning group must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

(3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
- (a) the effectiveness of the services,
- (b) the safety of the services, and
- (c) the quality of the experience undergone by patients.

(4) In discharging its duty under subsection (1), a clinical commissioning group must have regard to any guidance published under section 14Z8.

14S Duty in relation to quality of primary medical services

Each clinical commissioning group must assist and support the Board in discharging its duty under section 13E so far as relating to securing continuous improvement in the quality of primary medical services.

14T Duties as to reducing inequalities

Each clinical commissioning group must, in the exercise of its functions, have regard to the need to—
- (a) reduce inequalities between patients with respect to their ability to access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

14U Duty to promote involvement of each patient

(1) Each clinical commissioning group must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—
- (a) the prevention or diagnosis of illness in the patients, or
- (b) their care or treatment.

(2) The Board must publish guidance for clinical commissioning groups on the discharge of their duties under this section.

(3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

14V Duty as to patient choice

Each clinical commissioning group must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

14W Duty to obtain appropriate advice

(1) Each clinical commissioning group must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—
- (a) the prevention, diagnosis or treatment of illness, and
- (b) the protection or improvement of public health.

(2) The Board may publish guidance for clinical commissioning groups on the discharge of their duties under subsection (1).

(3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

14X Duty to promote innovation

Each clinical commissioning group must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

14Y Duty in respect of research

Each clinical commissioning group must, in the exercise of its functions, promote—
- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

14Z Duty as to promoting education and training

Each clinical commissioning group must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

14Z1 Duty as to promoting integration

(1) Each clinical commissioning group must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
- (a) improve the quality of those services (including the outcomes that are achieved from their provision),
- (b) reduce inequalities between persons with respect to their ability to access those services, or

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(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(2) Each clinical commissioning group must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—

(a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),

(b) reduce inequalities between persons with respect to their ability to access those services, or

(c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

(3) In this section—

"health-related services" means services that may have an effect on the health of individuals but are not health services or social care services;

"social care services" means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

Public involvement

14Z2 Public involvement and consultation by clinical commissioning groups

(1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a clinical commissioning group in the exercise of its functions ("commissioning arrangements").

(2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

(a) in the planning of the commissioning arrangements by the group,

(b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and

(c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.

(3) The clinical commissioning group must include in its constitution—

(a) a description of the arrangements made by it under subsection (2), and

(b) a statement of the principles which it will follow in implementing those arrangements.

(4) The Board may publish guidance for clinical commissioning groups on the discharge of their functions under this section.

(5) A clinical commissioning group must have regard to any guidance published by the Board under subsection (4).

(6) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

Arrangements with others

14Z3 Arrangements by clinical commissioning groups in respect of the exercise of functions

(1) Any two or more clinical commissioning groups may make arrangements under this section.

(2) The arrangements may provide for—
  (a) one of the clinical commissioning groups to exercise any of the commissioning functions of another on its behalf, or
  (b) all the clinical commissioning groups to exercise any of their commissioning functions jointly.

(3) For the purposes of the arrangements a clinical commissioning group may—
  (a) make payments to another clinical commissioning group, or
  (b) make the services of its employees or any other resources available to another clinical commissioning group.

(4) For the purposes of the arrangements, all the clinical commissioning groups may establish and maintain a pooled fund.

(5) A pooled fund is a fund—
  (a) which is made up of contributions by all the groups, and
  (b) out of which payments may be made towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.

(6) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

(7) In this section, "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (including the function of making a request to the Board for the purposes of section 14Z9).

14Z4 Joint exercise of functions with Local Health Boards

(1) Regulations may provide for any prescribed functions of a clinical commissioning group to be exercised jointly with a Local Health Board.

(2) Regulations may provide for any functions that are (by virtue of subsection (1)) exercisable jointly by a clinical commissioning group and a Local Health Board to be exercised by a joint committee of the group and the Local Health Board.

(3) Arrangements made by virtue of this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

Status: *This is the original version (as it was originally enacted).*

Additional powers of clinical commissioning groups

14Z5 Raising additional income

(1) A clinical commissioning group has power to do anything specified in section 7(2)(a), (b) and (e) to (h) of the Health and Medicines Act 1988 (provision of goods etc.) for the purpose of making additional income available for improving the health service.

(2) A clinical commissioning group may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the group of its functions.

14Z6 Power to make grants

(1) A clinical commissioning group may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the group has functions.

(2) The payments may be made subject to such terms and conditions as the group considers appropriate.

Board's functions in relation to clinical commissioning groups

14Z7 Responsibility for payments to providers

(1) The Board may publish a document specifying—

(a) circumstances in which a clinical commissioning group is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another clinical commissioning group in the discharge of its commissioning functions, and

(b) how the amount of any such payment is to be determined.

(2) A clinical commissioning group is required to make payments in accordance with any document published under subsection (1).

(3) Where a clinical commissioning group is required to make a payment by virtue of subsection (2), no other clinical commissioning group is liable to make it.

(4) Accordingly, any obligation of another clinical commissioning group to make the payment ceases to have effect.

(5) Any sums payable by virtue of subsection (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).

(6) The Board may publish guidance for clinical commissioning groups for the purpose of assisting them in understanding and applying any document published under subsection (1).

(7) In this section and section 14Z8, "commissioning functions" means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service.

14Z8 Guidance on commissioning by the Board

(1) The Board must publish guidance for clinical commissioning groups on the discharge of their commissioning functions.

(2) Each clinical commissioning group must have regard to guidance under this section.

(3) The Board must consult the Healthwatch England committee of the Care Quality Commission—
    (a) before it first publishes guidance under this section, and
    (b) before it publishes any revised guidance containing changes that are, in the opinion of the Board, significant.

14Z9 Exercise of functions by the Board

(1) The Board may, at the request of a clinical commissioning group, exercise on behalf of the group—
    (a) any of its functions under section 3 or 3A which are specified in the request, and
    (b) any other functions of the group which are related to the exercise of those functions.

(2) Regulations may provide that the power in subsection (1) does not apply in relation to functions of a prescribed description.

(3) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the clinical commissioning group.

(4) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

14Z10 Power of Board to provide assistance or support

(1) The Board may provide assistance or support to a clinical commissioning group.

(2) The assistance that may be provided includes—
    (a) financial assistance, and
    (b) making the services of the Board's employees or any other resources of the Board available to the clinical commissioning group.

(3) Assistance or support provided under this section may be provided on such terms and conditions, including terms as to payment, as the Board considers appropriate.

(4) The Board may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this section.

(5) A clinical commissioning group must comply with any restrictions imposed under subsection (4).

Commissioning plans and reports

14Z11 Commissioning plan

(1) Before the start of each relevant period, a clinical commissioning group must prepare a plan setting out how it proposes to exercise its functions in that period.

(2) In subsection (1), “relevant period”, in relation to a clinical commissioning group, means—
   (a) the period which —
      (i) begins on such day during the first financial year of the group as the Board may direct, and
      (ii) ends at the end of that financial year, and
   (b) each subsequent financial year.

(3) The plan must, in particular, explain how the group proposes to discharge its duties under—
   (a) sections 14R, 14T and 14Z2, and
   (b) sections 223H to 223J.

(4) The clinical commissioning group must publish the plan.

(5) The clinical commissioning group must give a copy of the plan to the Board before the date specified by the Board in a direction.

(6) The clinical commissioning group must give a copy of the plan to each relevant Health and Wellbeing Board.

(7) The Board may publish guidance for clinical commissioning groups on the discharge of their functions by virtue of this section and sections 14Z12 and 14Z13.

(8) A clinical commissioning group must have regard to any guidance published by the Board under subsection (7).

(9) In this Chapter, “relevant Health and Wellbeing Board”, in relation to a clinical commissioning group, means a Health and Wellbeing Board established by a local authority whose area coincides with, or includes the whole or any part of, the area of the group.

14Z12 Revision of commissioning plans

(1) A clinical commissioning group may revise a plan published by it under section 14Z11.

(2) If the clinical commissioning group revises the plan in a way which it considers to be significant—
   (a) the group must publish the revised plan, and
   (b) subsections (5) and (6) of section 14Z11 apply in relation to the revised plan as they apply in relation to the original plan.

(3) If the clinical commissioning group revises the plan in any other way, the group must—
   (a) publish a document setting out the changes it has made to the plan, and
   (b) give a copy of the document to the Board and each relevant Health and Wellbeing Board.

14Z13 Consultation about commissioning plans

(1) This section applies where a clinical commissioning group is—
   (a) preparing a plan under section 14Z11, or
   (b) revising a plan under section 14Z12 in a way which it considers to be significant.

(2) The clinical commissioning group must consult individuals for whom it has responsibility for the purposes of section 3.

(3) The clinical commissioning group must involve each relevant Health and Wellbeing Board in preparing or revising the plan.

(4) The clinical commissioning group must, in particular—
   (a) give each relevant Health and Wellbeing Board a draft of the plan or (as the case may be) the plan as revised, and
   (b) consult each such Board on whether the draft takes proper account of each joint health and wellbeing strategy published by it which relates to the period (or any part of the period) to which the plan relates.

(5) Where a Health and Wellbeing Board is consulted under subsection (4)(b), the Health and Wellbeing Board must give the clinical commissioning group its opinion on the matter mentioned in that subsection.

(6) Where a Health and Wellbeing Board is consulted under subsection (4)(b)—
   (a) it may also give the Board its opinion on the matter mentioned in that subsection, and
   (b) if it does so, it must give the clinical commissioning group a copy of its opinion.

(7) If a clinical commissioning group revises or further revises a draft after it has been given to each relevant Health and Wellbeing Board under subsection (4), subsections (4) to (6) apply in relation to the revised draft as they apply in relation to the original draft.

(8) A clinical commissioning group must include in a plan published under section 14Z11(4) or 14Z12(2)—
   (a) a summary of the views expressed by individuals consulted under subsection (2),
   (b) an explanation of how the group took account of those views, and
   (c) a statement of the final opinion of each relevant Health and Wellbeing Board consulted in relation to the plan under subsection (4).

(9) In this section, "joint health and wellbeing strategy" means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007 which is prepared and published by a Health and Wellbeing Board by virtue of section 196 of the Health and Social Care Act 2012.

14Z14 Opinion of Health and Wellbeing Boards on commissioning plans

(1) A relevant Health and Wellbeing Board—

(a) may give the Board its opinion on whether a plan published by a clinical commissioning group under section 14Z11(4) or 14Z12(2) takes proper account of each joint health and wellbeing strategy published by the Health and Wellbeing Board which relates to the period (or any part of the period) to which the plan relates, and

(b) if it does so, must give the clinical commissioning group a copy of its opinion.

(2) In this section, "joint health and wellbeing strategy" has the same meaning as in section 14Z13.

14Z15 Reports by clinical commissioning groups

(1) In each financial year other than its first financial year, a clinical commissioning group must prepare a report (an "annual report") on how it has discharged its functions in the previous financial year.

(2) An annual report must, in particular—

(a) explain how the clinical commissioning group has discharged its duties under sections 14R, 14T and 14Z2, and

(b) review the extent to which the group has contributed to the delivery of any joint health and wellbeing strategy to which it was required to have regard under section 116B(1)(b) of the Local Government and Public Involvement in Health Act 2007.

(3) In preparing the review required by subsection (2)(b), the clinical commissioning group must consult each relevant Health and Wellbeing Board.

(4) The Board may give directions to clinical commissioning groups as to the form and content of an annual report.

(5) A clinical commissioning group must give a copy of its annual report to the Board before the date specified by the Board in a direction.

(6) A clinical commissioning group must—

(a) publish its annual report, and

(b) hold a meeting for the purpose of presenting the report to members of the public.

Performance assessment of clinical commissioning groups

14Z16 Performance assessment of clinical commissioning groups

(1) The Board must conduct a performance assessment of each clinical commissioning group in respect of each financial year.

(2) A performance assessment is an assessment of how well the clinical commissioning group has discharged its functions during that year.

(3) The assessment must, in particular, include an assessment of how well the group has discharged its duties under—
- (a) sections 14R, 14T, 14W and 14Z2,
- (b) sections 223H to 223J, and
- (c) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).

(4) In conducting a performance assessment, the Board must consult each relevant Health and Wellbeing Board as to its views on the clinical commissioning group's contribution to the delivery of any joint health and wellbeing strategy to which the group was required to have regard under section 116B(1)(b) of that Act of 2007.

(5) The Board must, in particular, have regard to—
- (a) any document published by the Secretary of State for the purposes of this section, and
- (b) any guidance published under section 14Z8.

(6) The Board must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by the Board in respect of that year.

Powers to require information etc.

14Z17 Circumstances in which powers in sections 14Z18 and 14Z19 apply

(1) Sections 14Z18 and 14Z19 apply where the Board has reason to believe—
- (a) that the area of a clinical commissioning group is no longer appropriate, or
- (b) that a clinical commissioning group might have failed, might be failing or might fail to discharge any of its functions.

(2) For the purposes of this section—
- (a) a failure to discharge a function includes a failure to discharge it properly, and
- (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

14Z18 Power to require documents and information etc.

(1) Where this section applies, the Board may require a person mentioned in subsection (2) to provide to the Board any information, documents, records or other items that the Board considers it necessary or expedient to have for the purposes of any of its functions in relation to the clinical commissioning group.

(2) The persons mentioned in this subsection are—
- (a) the clinical commissioning group if it has possession or control of the item in question;
- (b) any member or employee of the group who has possession or control of the item in question.

(3) A person must comply with a requirement imposed under subsection (1).

(4) The power conferred by subsection (1) includes power to require that any information, documents or records kept by means of a computer be provided in legible form.

(5) The power conferred by subsection (1) does not include power to require the provision of personal records.

(6) In subsection (5), "personal records" has the meaning given by section 12 of the Police and Criminal Evidence Act 1984.

14Z19 Power to require explanation

(1) Where this section applies, the Board may require the clinical commissioning group to provide it with an explanation of any matter which relates to the exercise by the group of any of its functions, including an explanation of how the group is proposing to exercise any of its functions.

(2) The Board may require the explanation to be given—

(a) orally at such time and place as the Board may specify, or

(b) in writing.

(3) The clinical commissioning group must comply with a requirement imposed under subsection (1).

14Z20 Use of information

Any information, documents, records or other items that are obtained by the Board in pursuance of section 14Z18 or 14Z19 may be used by the Board in connection with any of its functions in relation to clinical commissioning groups.

Intervention powers

14Z21 Power to give directions, dissolve clinical commissioning groups etc.

(1) This section applies if the Board is satisfied that—

(a) a clinical commissioning group is failing or has failed to discharge any of its functions, or

(b) there is a significant risk that a clinical commissioning group will fail to do so.

(2) The Board may direct the clinical commissioning group to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.

(3) The Board may direct—

(a) the clinical commissioning group, or

(b) the accountable officer of the group,

to cease to perform any functions for such period or periods as may be specified in the direction.

(4) The Board may—
   (a) terminate the appointment of the clinical commissioning group's accountable officer, and
   (b) appoint another person to be its accountable officer.

(5) Paragraph 12(4) of Schedule 1A does not apply to an appointment under subsection (4)(b).

(6) The Board may vary the constitution of the clinical commissioning group, including doing so by—
   (a) varying its area,
   (b) adding any person who is a provider of primary medical services to the list of members, or
   (c) removing any person from that list.

(7) The Board may dissolve the clinical commissioning group.

(8) Where a direction is given under subsection (3) the Board may—
   (a) exercise any of the functions that are the subject of the direction on behalf of the clinical commissioning group or (as the case may be) the accountable officer;
   (b) direct another clinical commissioning group or (as the case may be) the accountable officer of another clinical commissioning group to perform any of those functions on behalf of the group or (as the case may be) the accountable officer, in such manner and within such period or periods as may be specified in the directions.

(9) A clinical commissioning group to which a direction is given under subsection (3) must—
   (a) where the Board exercises a function of the group under subsection (8)(a), co-operate with the Board, and
   (b) where a direction is given under subsection (8)(b) to another clinical commissioning group or to the accountable officer of another clinical commissioning group, co-operate with the other group or (as the case may be) the accountable officer.

(10) Before exercising the power conferred by subsection (8)(b) the Board must consult the clinical commissioning group to which it is proposing to give the direction.

(11) Where the Board exercises a power conferred by subsection (6) or (7), the Board may make a property transfer scheme or a staff transfer scheme.

(12) In subsection (11), "property transfer scheme" and "staff transfer scheme" have the same meaning as in section 14I.

(13) Part 3 of Schedule 1A applies in relation to a property transfer scheme or a staff transfer scheme under subsection (11) as it applies in relation to a property transfer scheme or (as the case may be) a staff transfer scheme under section 14I(1).

(14) For the purposes of this section—
   (a) a failure to discharge a function includes a failure to discharge it properly, and

(b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

Procedural requirements in connection with certain powers

14Z22 Procedural requirements in connection with certain powers

(1) Before exercising the power to dissolve a clinical commissioning group under section 14Z21(7) the Board must consult the following persons—
  (a) the clinical commissioning group,
  (b) relevant local authorities, and
  (c) any other persons the Board considers it appropriate to consult.

(2) For that purpose, the Board must provide those persons with a statement—
  (a) explaining that it is proposing to exercise the power, and
  (b) giving its reasons for doing so.

(3) After consulting those persons (and before exercising the power), the Board must publish a report containing its response to the consultation.

(4) If the Board decides to exercise the power, the report must, in particular, explain its reasons for doing so.

(5) Regulations may make provision as to the procedure to be followed by the Board before the exercise of the powers conferred by sections 14Z18, 14Z19 and 14Z21.

(6) The Board must publish guidance as to how it proposes to exercise the powers conferred by those sections.

(7) For the purposes of subsection (1) a local authority is a relevant local authority if its area coincides with, or includes the whole or any part of, the area of the clinical commissioning group.

Disclosure of information

14Z23 Permitted disclosures of information

(1) A clinical commissioning group may disclose information obtained by it in the exercise of its functions if—
  (a) the information has previously been lawfully disclosed to the public,
  (b) the disclosure is 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),
  (c) the disclosure is made in accordance with any enactment or court order,
  (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
  (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,

(f) the disclosure is made for the purpose of facilitating the exercise of any of the clinical commissioning group's functions,

(g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or

(h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).

(2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

Interpretation

14Z24 Interpretation

(1) In this Chapter—

"financial year", in relation to a clinical commissioning group, includes the period which begins on the day the group is established and ends on the following 31 March;

"the health service" means the health service in England;

"health services" means services provided as part of the health service and, in section 14Z2, also includes services that are to be provided as part of the health service;

"relevant Health and Wellbeing Board", in relation to a clinical commissioning group, has the meaning given by section 14Z11(9).

(2) Any reference (however expressed) in the following provisions of this Act to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),
section 14C(2)(e),
section 14P,
section 14Q,
section 14T,
section 14U(1),
section 14V,
section 14W(1),
section 14X,
section 14Y,
section 14Z,
section 14Z1(1) and (2),
section 14Z2(1),
section 14Z4(1),
section 14Z5(2),
section 14Z6(1),
section 14Z7(7),
section 14Z11(1),
section 14Z15(1),

section 14Z16(2),
sections 14Z17(1), 14Z19(1) and 14Z21(1) and (3),
section 14Z23(1),
section 72(1),
section 75(1)(a) and (2),
section 77(1)(b),
section 82,
section 89(1A)(d),
section 94(3A)(d),
section 223C(2)(b),
section 223H(1),
in Schedule 1A, paragraphs 3(1) and (3), 6, 12(9)(b) and 16(3).

(3) Any reference (however expressed) in the following provisions of other Acts to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),

section 199(4) of the Health and Social Care Act 2012 (supply of information to Health and Wellbeing Boards),

section 291(2)(d) of that Act (breaches of duties to co-operate),

in Schedule 6 to that Act, paragraph 8(4).

(4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).”

27 Financial arrangements for clinical commissioning groups

After section 223F of the National Health Service Act 2006 insert—

“Clinical commissioning groups

223G Means of meeting expenditure of clinical commissioning groups out of public funds

(1) The Board must pay in respect of each financial year to each clinical commissioning group sums not exceeding the amount allotted for that year by the Board to the group towards meeting the expenditure of the group which is attributable to the performance by it of its functions in that year.

(2) In determining the amount to be allotted to a clinical commissioning group for any year, the Board may take into account—

(a) the expenditure of the clinical commissioning group during any previous financial year, and

(b) the amount that it proposes to hold, during the year to which the allotment relates, in any contingency fund established under section 223F.

(3) An amount is allotted to a clinical commissioning group for a year under this section when the group is notified in writing by the Board that the amount is allotted to it for that year.

(4) The Board may make a new allotment under this section increasing or reducing an allotment previously so made.

(5) Where the Board allots an amount to a clinical commissioning group or makes a new allotment under subsection (4), it must notify the Secretary of State.

(6) The Board may give directions to a clinical commissioning group with respect to—

(a) the application of sums paid to it by virtue of a new allotment increasing an allotment previously so made, and

(b) the payment of sums by it to the Board in respect of charges or other sums referable to the valuation or disposal of assets.

(7) Sums falling to be paid to clinical commissioning groups under this section are payable subject to such conditions as to records, certificates or otherwise as the Board may determine.

(8) In this section and sections 223H to 223K "financial year" includes the period which begins on the day the clinical commissioning group is established and ends on the following 31 March.

223H Financial duties of clinical commissioning groups: expenditure

(1) Each clinical commissioning group must, in respect of each financial year, perform its functions so as to ensure that its expenditure which is attributable to the performance by it of its functions in that year does not exceed the aggregate of—

(a) the amount allotted to it for that year under section 223G,

(b) any sums received by it in that year under any provision of this Act (other than sums received by it under section 223G), and

(c) any sums received by it in that year otherwise than under this Act for the purpose of enabling it to defray such expenditure.

(2) The Board may by directions determine—

(a) whether specified sums must, or must not, be treated for the purposes of this section as received by a specified clinical commissioning group,

(b) whether specified expenditure must, or must not, be treated for those purposes as expenditure within subsection (1) of a specified clinical commissioning group, or

(c) the extent to which, and the circumstances in which, sums received by a clinical commissioning group under section 223G but not yet spent must be treated for the purposes of this section as part of the expenditure of the group, and to which financial year's expenditure they must be attributed.

(3) The Secretary of State may by directions require a clinical commissioning group to use specified banking facilities for any specified purposes.

(4) In this section, "specified" means specified in the directions.

223I Financial duties of clinical commissioning groups: use of resources

(1) For the purposes of this section and section 223J—

(a) a clinical commissioning group's capital resource use, in relation to a financial year, means the group's use of capital resources in that year, and

(b) a clinical commissioning group's revenue resource use, in relation to a financial year, means the group's use of revenue resources in that year.

(2) A clinical commissioning group must ensure that its capital resource use in a financial year does not exceed the amount specified by direction of the Board.

(3) A clinical commissioning group must ensure that its revenue resource use in a financial year does not exceed the amount specified by direction of the Board.

(4) Any directions given in relation to a financial year under subsection (6) of section 223D apply (in relation to that year) for the purposes of this section as they apply for the purposes of that section.

(5) The Board may by directions make provision for determining to which clinical commissioning group a use of capital resources or revenue resources is to be attributed for the purposes of this section or section 223J.

(6) Where the Board gives a direction under subsection (2) or (3), it must notify the Secretary of State.

223J Financial duties of clinical commissioning groups: additional controls on resource use

(1) The Board may direct a clinical commissioning group to ensure that its capital resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(2) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to matters specified in the direction does not exceed an amount so specified.

(3) The Board may direct a clinical commissioning group to ensure that its revenue resource use in a financial year which is attributable to prescribed matters relating to administration does not exceed an amount specified in the direction.

(4) The Board may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which must, or must not, be taken into account for the purposes of subsection (1) or (as the case may be) subsection (2) or (3).

(5) The Board may not exercise the power conferred by subsection (1) or (2) in relation to particular matters unless the Secretary of State has given a direction in relation to those matters under subsection (1) of section 223E or (as the case may be) subsection (2) of that section.

(6) The Board may not exercise the power conferred by subsection (3) in relation to prescribed matters relating to administration unless the Secretary of State

has given a direction in relation to those matters under subsection (3)(a) of section 223E.

223K Payments in respect of quality

(1) The Board may, after the end of a financial year, make a payment to a clinical commissioning group.

(2) For the purpose of determining whether to make a payment under subsection (1) and (if so) the amount of the payment, the Board must take into account at least one of the following factors—
  (a) the quality of relevant services provided during the financial year;
  (b) any improvement in the quality of relevant services provided during that year (in comparison to the quality of relevant services provided during previous financial years);
  (c) the outcomes identified during the financial year as having been achieved from the provision at any time of relevant services;
  (d) any improvement in the outcomes identified during that financial year as having been so achieved (in comparison to the outcomes identified during previous financial years as having been so achieved).

(3) For that purpose, the Board may also take into account either or both of the following factors—
  (a) relevant inequalities identified during that year;
  (b) any reduction in relevant inequalities identified during that year (in comparison to relevant inequalities identified during previous financial years).

(4) Regulations may make provision as to the principles or other matters that the Board must or may take into account in assessing any factor mentioned in subsection (2) or (3).

(5) Regulations may provide that, in prescribed circumstances, the Board may, if it considers it appropriate to do so—
  (a) not make a payment that would otherwise be made to a clinical commissioning group under subsection (1), or
  (b) reduce the amount of such a payment.

(6) Regulations may make provision as to how payments under subsection (1) may be spent (which may include provision as to circumstances in which the whole or part of any such payments may be distributed to members of the clinical commissioning group).

(7) A clinical commissioning group must publish an explanation of how the group has spent any payment made to it under subsection (1).

(8) In this section—

"relevant services" means services provided in pursuance of arrangements made by the clinical commissioning group—
  (a) under section 3 or 3A or Schedule 1, or
  (b) by virtue of section 7A;

"relevant inequalities" means inequalities between the persons for whose benefit relevant services are at any time provided with respect to—

(a) their ability to access the services, or

(b) the outcomes achieved for them by their provision."

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

(1) In section 89 of the National Health Service Act 2006 (general medical services contracts: required terms), after subsection (1) insert—

"(1A) Regulations under subsection (1) may, in particular, make provision—

(a) for requiring a contractor who provides services of a prescribed description (a "relevant contractor") to be a member of a clinical commissioning group;

(b) as to arrangements for securing that a relevant contractor appoints one individual to act on its behalf in the dealings between it and the clinical commissioning group to which it belongs;

(c) for imposing requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);

(d) for requiring a relevant contractor, in doing anything pursuant to the contract, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).

(1B) Provision by virtue of subsection (1A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.

(1C) In the case of a contract entered into by two or more individuals practising in partnership—

(a) regulations making provision under subsection (1A)(a) may make provision for requiring each partner to secure that the partnership is a member of the clinical commissioning group;

(b) regulations making provision under subsection (1A)(b) may make provision as to arrangements for securing that the partners make the appointment;

(c) regulations making provision under subsection (1A)(d) may make provision for requiring each partner to act as mentioned there.

(1D) Regulations making provision under subsection (1A) for the case of a contract entered into by two or more individuals practising in partnership may make provision as to the effect of a change in the membership of the partnership.

(1E) The regulations may require an individual appointed for the purposes of subsection (1A)(b)—

(a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and

(b) to meet such other conditions as may be prescribed."

(2) In section 94 of that Act (regulations about arrangements under section 92 of that Act for provision of primary medical services), after subsection (3) insert—

"(3A) Regulations under subsection (3)(d) may—

(a) require a person who provides services of a prescribed description in accordance with section 92 arrangements (a "relevant provider") to be a member of a clinical commissioning group;

(b) make provision as to arrangements for securing that a relevant provider appoints one individual to act on its behalf in dealings between it and the clinical commissioning group to which it belongs;

(c) impose requirements with respect to those dealings on the individual appointed for the purposes of paragraph (b);

(d) require a relevant provider, in doing anything pursuant to section 92 arrangements, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).

(3B) Provision by virtue of subsection (3A)(a) may, in particular, describe services by reference to the manner or circumstances in which they are performed.

(3C) In the case of an agreement made with two or more persons—

(a) regulations making provision under subsection (3A)(a) may require each person to secure that the persons collectively are a member of the clinical commissioning group;

(b) regulations making provision under subsection (3A)(b) may make provision as to arrangements for securing that the persons collectively make the appointment;

(c) regulations making provision under subsection (3A)(d) may require each person to act as mentioned there.

(3D) Regulations making provision under subsection (3A) for the case of an agreement made with two or more persons may make provision as to the effect of a change in the composition of the group of persons involved.

(3E) The regulations may require an individual appointed for the purposes of subsection (3A)(b)—

(a) to be a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, and

(b) to meet such other conditions as may be prescribed."