
STATUTORY INSTRUMENTS

2012 No. 1631

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Clinical
Commissioning Groups) Regulations 2012**

Made - - - - 21st June 2012

Laid before Parliament 26th June 2012

Coming into force in accordance with regulation 1(1)

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 14A(4), 14C(3), 14E(3), 14G(4), 14H(2), 14L(6), 14N and 272(7) and (8) of, and paragraph 2(2) of Schedule 1A to, the National Health Service Act 2006⁽¹⁾, and section 304(9) and (10) of, and paragraph 8 of Schedule 6 to, the Health and Social Care Act 2012⁽²⁾.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Clinical Commissioning Groups) Regulations 2012, and come into force immediately after the commencement of section 25 of the Health and Social Care Act 2012.

(2) In these Regulations—

“the 2006 Act” means the National Health Service Act 2006,

“the Board” means the National Health Service Commissioning Board⁽³⁾,

“CCG” means clinical commissioning group⁽⁴⁾, or (in relation to an application for the establishment of a clinical commissioning group) means the proposed clinical commissioning group,

(1) [2006 c. 41](#). Sections 14A to 14O of the 2006 Act are inserted by section 25(1) of the Health and Social Care Act [2012 \(c. 7\)](#); Schedule 1A is inserted by section 25(2) of, and Schedule 2 to, that Act. By virtue of section 271(1) of the National Health Service Act 2006, the powers in that Act exercised in making these Regulations are exercisable by the Secretary of State only in relation to England. *See* section 275(1) of the National Health Service Act 2006 for the definitions of “prescribed” and “regulations”. In footnotes below, the National Health Service Act 2006 is referred to as “the 2006 Act”, and the Health and Social Care Act 2012 as “the 2012 Act”.

(2) [2012 c. 7](#). Schedule 6 to the 2012 Act relates only to England. *See* section 304(1) of that Act for the power to make regulations.

(3) The National Health Service Commissioning Board is established by section 1H of the 2006 Act. Section 1H is inserted by section 9(1) of the 2012 Act.

(4) A clinical commissioning group is a body established under section 14D of the 2006 Act. Section 14D is inserted by section 25(1) of the 2012 Act. *See also* section 1I of the 2006 Act, inserted by section 10 of the 2012 Act.

“financial year”, in relation to a CCG, includes the period which begins on the day a CCG is established and ends on the following 31st March⁽⁵⁾.

CCG membership requirement

2.—(1) For the purposes of section 14A(3) and (4) of the 2006 Act⁽⁶⁾ (meaning of “provider of primary medical services”) the prescribed description of primary medical services is: essential primary medical services to registered patients during core hours.

(2) In paragraph (1)—

“core hours” means—

- (a) the period beginning at 8 a.m. and ending at 6.30 p.m. on any day from Monday to Friday except Good Friday, Christmas Day or any day specified or proclaimed as a bank holiday in England and Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971⁽⁷⁾, or
- (b) (in the case of primary medical services arrangements) the period defined as core hours in those arrangements;

“essential primary medical services” means the services described in regulation 15(3), (5), (6) and (8) of the National Health Service (General Medical Services Contracts) Regulations 2004⁽⁸⁾ (essential services);

“registered patient” means—

- (a) a person who is recorded by the Board as being on the provider’s list of patients, or
- (b) a person whom the provider has accepted for inclusion on its list of patients (whether or not notification of that acceptance has been received by the Board) and who has not been the subject of a notification by the Board to the provider as having ceased to be on that list.

(3) In paragraph (b) of the definition of “core hours” in paragraph (2), “primary medical services arrangements” means—

- (a) until the date on which section 34 of the Health and Social Care Act 2012⁽⁹⁾ (which abolishes Primary Care Trusts) comes into force, arrangements made by a Primary Care Trust under section 83(2)(b) of the 2006 Act (primary medical services),
- (b) on and after that date, arrangements previously made under section 83(2)(b) of the 2006 Act which continue to have effect, and arrangements made by the Board under section 83(2) of the 2006 Act.

(4) In the definition of “registered patient” in paragraph (2), until the date on which section 34 of the Health and Social Care Act 2012 comes into force, references to “the Board” are to be construed as references to “a Primary Care Trust”.

Basic requirements as to CCG names

3.—(1) The name of a CCG must include each of the elements specified in regulations 4, 5 and 6.

(2) The name must not include anything else.

⁽⁵⁾ This extends the definition of “financial year” in section 275(1) of the 2006 Act.

⁽⁶⁾ Section 14A(3) of the 2006 Act provides that for the purposes of Chapter A2 of the 2006 Act, a “provider of primary medical services” is a person who is a party to an arrangement mentioned in paragraph (a), (b) or (c) of section 14A(4) of that Act to provide, or for the provision of, primary medical services of a prescribed description. Chapter A2, including section 14A, is inserted by section 25(1) of the 2012 Act.

⁽⁷⁾ 1971 c. 80.

⁽⁸⁾ S.I. 2004/291, to which there are amendments not relevant to these Regulations.

⁽⁹⁾ Paragraph 30(2) of Schedule 4 to the 2012 Act substitutes subsections (1) and (2) of section 83 of the 2006 Act in consequence of the abolition of Primary Care Trusts.

(3) Where the CCG is not yet established, the proposed name must not be so similar to that of an established CCG that the two could be confused.

(4) Where the CCG is already established, but wishes to change its name, the proposed name must not be so similar to that of another established CCG that the two could be confused.

The NHS element of a CCG name

4. The name must begin with “NHS” in capital letters.

The geographical reference element of a CCG name

- 5.—(1) The name must include a geographical reference.

(2) This must appear immediately after the NHS element specified in regulation 4.

(3) The geographical reference must fairly and accurately represent the area specified in the CCG’s constitution.

(4) The geographical reference must be to either or both of the following (and in the case of each sub-paragraph may be to more than one of the things mentioned)—

- (a) a place, geographical feature or area which is named on a map in general circulation, or which has a name in common usage in the area specified in the CCG’s constitution;
- (b) a centre of population (such as a village, town or city), an administrative area (such as a county or other local authority area) or an electoral district (whether Parliamentary or local authority).

(5) If more than one reference is chosen from paragraph (4), they may be linked as appropriate by a word such as “and” or “with”.

(6) The geographical reference may also incorporate—

- (a) compass references mentioned in paragraph (7),
- (b) other descriptive or qualifying terms supplementing or refining the reference (or references) chosen from paragraph (4), and
- (c) any necessary punctuation.

(7) The compass references referred to in paragraph (6)(a) are: North, East, South, West, North-East, North-West, South-East and South-West, or any of those in the “Northern” (etc.) form.

The Clinical Commissioning Group element of a CCG name

6. The name must end with the words “Clinical Commissioning Group”.

Factors relating to the granting of applications for establishment or merger of CCGs

7.—(1) This regulation applies in relation to—

- (a) an application under section 14B of the 2006 Act for the establishment of a CCG, and
- (b) an application under section 14G of the 2006 Act for the dissolution of two or more CCGs and for the establishment of another one.

(2) Schedule 1 sets out, in paragraph 2, factors to be taken into account by the Board when deciding whether it is satisfied as to the matters mentioned in subsection (2) of section 14C of the 2006 Act, including that subsection as applied by section 14G(4) (which relate to the determination of applications for the establishment of a CCG or the merger of two or more of them).

(3) Each factor refers at the end to one or more paragraphs of section 14C(2), and the Board must take the factor into account in relation to each of those paragraphs.

(4) Nothing prevents the Board from—

- (a) taking a factor into account, if relevant, in relation to other paragraphs of section 14C(2), or
- (b) taking into account anything else which is relevant.

Conditional establishment of CCG

8.—(1) This regulation applies where the Board is not satisfied as to the matters mentioned in section 14C(2) of the 2006 Act in relation to a particular initial application⁽¹⁰⁾.

(2) The Board may nevertheless grant the initial application.

(3) The Board may impose conditions on the grant of the application.

(4) The conditions must be designed to address the respects in which the Board was not satisfied as to the matters mentioned in section 14C(2) of the 2006 Act.

(5) The Board may—

- (a) direct the CCG established under section 14D of the 2006 Act on the grant of an initial application not to exercise any functions specified in the direction;
- (b) give directions to the CCG about the exercise of any of its functions.

(6) The Board must keep under review any conditions imposed and any directions given by virtue of this regulation.

(7) The Board may—

- (a) vary or remove any conditions imposed;
- (b) vary or revoke any directions given.

(8) If the Board gives a direction by virtue of paragraph (5)(a), the Board may—

- (a) exercise any functions specified in the direction on behalf of the CCG;
- (b) arrange for another CCG to exercise those functions on behalf of the CCG.

(9) Before deciding whether to pursue either of the two alternatives set out in paragraph (8), or which one of them to pursue, the Board must take into account the following factors—

- (a) whether the exercise by the Board itself of the functions in question would be the most effective way for the functions to be exercised;
- (b) the capability and capacity of any other CCG with which arrangements might be made by virtue of paragraph (8)(b);
- (c) the willingness of the other CCG to exercise the functions in question.

(10) If the CCG is failing, or has failed, to comply with any conditions imposed by virtue of this regulation, the Board may dissolve the CCG under section 14Z21(7) of the 2006 Act⁽¹¹⁾.

Variation of CCG constitution and dissolution of CCG: factors etc.

9.—(1) This regulation applies if a CCG applies to the Board—

- (a) under section 14E of the 2006 Act, to vary its constitution, or
- (b) under section 14H of the 2006 Act, for the group to be dissolved.

(2) Schedule 2 sets out factors which the Board must take into account when determining whether to grant an application under section 14E.

⁽¹⁰⁾ “Initial application” is defined in paragraph 1(3) of Schedule 6 to the 2012 Act.

⁽¹¹⁾ Section 14Z21 is inserted into the 2006 Act by section 26 of the 2012 Act.

(3) Schedule 3 sets out factors which the Board must take into account when determining whether to grant an application under section 14H.

(4) Nothing prevents the Board from taking into account anything else which is relevant.

(5) The Board may refuse an application under section 14H if it is not satisfied as to the matters mentioned in section 14C(2) of the 2006 Act in relation to any related application under section 14B or 14E(12).

Procedure

10.—(1) The procedure adopted by the Board for dealing with applications under sections 14B, 14E, 14G and 14H of the 2006 Act must be such as to allow for communication between the Board and the applicant or applicants at all stages before the Board's determination, with a view to making it possible—

- (a) for clarifications to be provided either to the Board or to the applicant or applicants on any matter related to the application, and
- (b) where appropriate, for the applicant or applicants to adjust the application in the light of communications with the Board.

(2) The Board must publish the procedure that it adopts for dealing with such applications.

(3) The procedure need not be the same for all the types of application.

(4) An application must include the reasons for making it.

(5) The Board must acknowledge an application within the period of two weeks beginning with the date on which the Board receives it.

(6) The Board must notify the applicant or applicants of its determination in writing and must give reasons for it.

(7) The notification must include a statement that the Board will not review the determination and that neither the 2006 Act nor the Health and Social Care Act 2012 provides for any appeal against it.

(8) If (under regulation 8(3)) the Board decides to impose conditions on the grant of an initial application under section 14B of the 2006 Act, it must also—

- (a) notify the CCG in writing how the conditions relate to the matters mentioned in section 14C(2),
- (b) notify the CCG in writing how the Board proposes to support the CCG in addressing the respects in which the Board was not satisfied as to those matters, and
- (c) publish the conditions and a statement of how they relate to the matters mentioned in section 14C(2).

(9) Paragraph (10) applies if the Board receives an application under section 14E, 14G or 14H of the 2006 Act and thinks that granting it would have a significant effect on the amounts allotted or to be allotted under section 223G of that Act (expenditure of CCGs to be met out of public funds) to the CCG, or to any other CCG which would be affected by granting the application.

(10) If the Board thinks that its duties under sections 1H and 14A(1) and (2) of the 2006 Act make it preferable to defer determination of the application, the Board may defer determination of the application until not later than the end of the financial year in which it was received, or the end of the period of six months beginning on the date it was received, whichever is later.

(11) Paragraph (12) applies if the Board receives an application under section 14E or 14H of the 2006 Act (the “main application”), but is aware that any other CCG is to make a related application under section 14B or 14E (the “related application”).

(12) See regulation 10(11) and (12) for provision about the procedure where there are related applications.

(12) If the Board thinks that its duties under sections 1H and 14A(1) and (2) of the 2006 Act make it preferable to determine the related application (or applications) together with the main application, the Board may defer determination of the main application until the Board has received all the related applications.

Membership of CCG governing body

11.—(1) A CCG’s governing body must have at least six members (including its chair and deputy chair⁽¹³⁾).

(2) The CCG’s accountable officer is to be a member of its governing body.

(3) The membership of the governing body must also include, at least, one each of the following—

- (a) an employee of the CCG who has a professional qualification in accountancy and the expertise or experience to lead the financial management of the CCG,
- (b) a registered nurse, other than one who falls within regulation 12(1),
- (c) an individual who is a secondary care specialist, other than one who falls within regulation 12(1),
- (d) a lay person⁽¹⁴⁾ who is qualified for membership by virtue of regulation 12(3),
- (e) another lay person who is qualified for membership by virtue of regulation 12(4).

(4) Each member of the governing body (other than the accountable officer) is to be appointed by the CCG for a term to be determined by the CCG⁽¹⁵⁾.

(5) The individual described at paragraph (3)(a) is to be known as the CCG’s Chief Finance Officer; if the governing body’s membership includes two or more individuals of that description, the CCG must designate one of them as the Chief Finance Officer.

(6) In paragraph (3)(c) (and in regulation 12(1)), “secondary care specialist” means a registered medical practitioner who is, or has been at any time in the period of 10 years ending with the date of the individual’s appointment to the governing body, an individual who fulfils (or fulfilled) all the following conditions—

- (a) the individual’s name is included in the Specialist Register kept by the General Medical Council under section 34D of the Medical Act 1983⁽¹⁶⁾, or the individual is eligible to be included in that Register by virtue of the scheme referred to in subsection (2)(b) of that section;
- (b) the individual holds a post as an NHS consultant or in a medical specialty in the armed forces;
- (c) the individual’s name is not included in the General Practitioner Register kept by the General Medical Council under section 34C of the Medical Act 1983⁽¹⁷⁾.

(7) In paragraph (6)(b)—

“armed forces” means the naval, military or air forces of the Crown, and includes the reserve forces within the meaning of section 1(2) of the Reserve Forces Act 1996⁽¹⁸⁾ (power to maintain reserve forces);

“NHS consultant” has the meaning given by section 55(1) of the Medical Act 1983⁽¹⁹⁾.

⁽¹³⁾ See regulation 13.

⁽¹⁴⁾ “Lay person” is defined in section 14N(6) of the 2006 Act.

⁽¹⁵⁾ A CCG’s accountable officer is appointed by the National Health Service Commissioning Board under paragraph 12(2) of Schedule 1A to the 2006 Act. Schedule 1A is inserted by section 25(2) of, and Schedule 2 to, the 2012 Act.

⁽¹⁶⁾ 1983 c. 54. Section 34D was inserted by S.I. 2010/234.

⁽¹⁷⁾ Section 34C was inserted by S.I. 2010/234.

⁽¹⁸⁾ 1996 c. 14.

⁽¹⁹⁾ Section 55(1) was so re-numbered by S.I. 1996/1591, and the definition of “NHS consultant” was inserted by S.I. 2010/234.

Membership: supplementary

12.—(1) A registered nurse or a secondary care specialist falls within this paragraph if such a person is an employee or member (including shareholder) of, or a partner in, any of the following—

- (a) a person who is a provider of primary medical services for the purposes of Chapter A2 of the 2006 Act⁽²⁰⁾,
- (b) a body which provides any relevant service to a person for whom the CCG has responsibility⁽²¹⁾.

(2) In paragraph (1)(b), “relevant service” means a service provided as part of the health service pursuant to arrangements made by the CCG in the exercise of its functions, other than either of the following—

- (a) a service provided as a result of arrangements made pursuant to the person’s exercise of a choice about where to receive the service;
- (b) a specialist service provided pursuant to a special arrangement made by the CCG in the person’s particular case.

(3) The lay person mentioned in regulation 11(3)(d) must have qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters.

(4) The lay person mentioned in regulation 11(3)(e) must be a person who has knowledge about the area specified in the CCG’s constitution such as to enable the person to express informed views about the discharge of the CCG’s functions.

(5) Individuals of the descriptions set out in Schedule 4 are not to be lay persons for the purposes of section 14N of the 2006 Act.

(6) Individuals of the descriptions set out in Schedule 5 are disqualified from membership of a CCG’s governing body.

Chair and deputy chair of governing body

13.—(1) A CCG’s governing body must have a chair and a deputy chair, to be appointed by the CCG for a term to be determined by the CCG.

(2) The following are disqualified from being chair—

- (a) the CCG’s accountable officer,
- (b) any person of a description set out in regulation 11(3)(a), (b), (c) or (d) as read with regulation 12(1), (2) and (3).

(3) If the chair is a health care professional within the meaning of section 14N of the 2006 Act, all members of the governing body other than lay persons are disqualified from being deputy chair.

(4) Subject to paragraph (3), nothing prevents—

- (a) the re-appointment of a chair or a deputy chair whose term of office has come to an end, or
- (b) a person’s appointment as either chair or deputy chair following a term of office as the other.

⁽²⁰⁾ Chapter A2 is inserted by section 25(1) of the 2012 Act. The definition of “provider of primary medical services” is in section 14A(3) and (4) of the 2006 Act and regulation 2 of these Regulations.

⁽²¹⁾ Subsection (1A), and regulations made under subsections (1B) and (1D), of section 3 of the 2006 Act provide for the persons for whom a CCG has responsibility. Those subsections of section 3 are inserted by section 13(3) of the 2012 Act.

Audit committee

14.—(1) The audit committee of a CCG’s governing body must have a chair, to be appointed by the CCG for a term to be determined by the CCG.

(2) The chair must be a lay person who has qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters.

(3) The following are disqualified from membership of a CCG’s audit committee—

- (a) the chair of the CCG’s governing body,
- (b) the CCG’s Chief Finance Officer.

Remuneration committee

15.—(1) The remuneration committee of a CCG’s governing body must have a chair, to be appointed by the CCG for a term to be determined by the CCG.

(2) All members of the governing body other than lay persons are disqualified from being chair.

Transparency

16.—(1) A CCG’s governing body must publish papers considered at meetings of its governing body, except where the governing body considers that it would not be in the public interest to do so in relation to a particular paper or part of a paper.

(2) Subject to paragraphs (3) and (4), a CCG’s governing body must publish the following information relating to determinations made under subsection (3)(a) and (b) of section 14L of the 2006 Act (which relates to remuneration, fees and allowances, including allowances payable under certain pension schemes)—

- (a) in relation to each senior employee of the CCG, any determination of the employee’s salary or of any travelling and other allowances payable to the employee, including any allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A to the 2006 Act;
- (b) any recommendation of the remuneration committee in relation to any such determination.

(3) Information as to the determination of a senior employee’s salary need specify only a band of £5,000 into which the salary determined falls.

(4) The governing body must not publish any information referred to in paragraph (2) if the governing body considers that it would not be in the public interest to publish it.

(5) In paragraph (2)(a), “senior employee” means an employee who has authority over or responsibility for directing or controlling the exercise of the CCG’s functions.

Signed by authority of the Secretary of State for Health.

21st June 2012

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health

SCHEDULE 1

Regulation 7(2)

Factors relating to applications for CCG establishment or merger

Interpretation

1.—(1) In this Schedule—

- (a) references to “the CCG” (and to its members) are to the CCG which would be established if an application for its establishment were granted (and to those who would be its members); and
- (b) references to an application are to such an application (and references to applicants are to be construed accordingly).

(2) In sub-paragraphs (d) and (e) of paragraph 2—

- (a) “unitary local authority” means—
 - (i) the council of a county for which there are no district councils,
 - (ii) the council of a district in an area for which there is no county council,
 - (iii) a London borough council,
 - (iv) the Common Council of the City of London,
 - (v) the Council of the Isles of Scilly,
 - (vi) a county borough council;
- (b) “upper-tier county council” means a county council for each part of whose area there is a district council.

Factors

2. The following are the factors referred to in regulation 7(2)—

- (a) Whether the application demonstrates that the CCG has made arrangements to ensure the effective participation of each member in the exercise of the CCG’s functions. (Paragraphs (a) and (e))
- (b) Whether the application demonstrates that the CCG’s proposed financial arrangements and controls will be appropriate to secure proper stewardship of and accountability for public money. (Paragraphs (a), (d), (e) and (f))
- (c) Whether most of the persons who are to be provided with primary medical services by a member of the CCG usually reside in the area specified in the CCG’s constitution. (Paragraphs (c) and (e))
- (d) Whether the area specified in the CCG’s constitution crosses the boundary of a unitary local authority or an upper-tier county council; and, if it does, the extent to which the application demonstrates that the proposed arrangements would be in the best interests of the persons for whom the CCG would have responsibility. (Paragraphs (c) and (e))
- (e) Whether any unitary local authority or upper-tier county council whose area coincides with, or includes the whole or any part of, the area specified in the CCG’s constitution considers that the arrangements made by the applicants to ensure that the CCG will be able to discharge its functions are appropriate. (Paragraphs (c) and (e))

When considering this factor, the Board must also take into account any observations by the applicants on the views expressed by the local authority.

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- (f) Whether the application demonstrates that any arrangements proposed by the CCG for working with local authorities⁽²²⁾ whose area coincides with, or includes the whole or any part of, the area specified in the CCG's constitution are appropriate. (Paragraphs (c) and (e))
- (g) Whether the application demonstrates that any arrangements proposed by the CCG under section 14Z3 of the 2006 Act (which provides for a CCG to make arrangements with one or more other CCGs in relation to the exercise of their commissioning functions) are appropriate. (Paragraph (e))
- (h) Whether the application demonstrates that any services or facilities provided to the CCG in order to support it in discharging its commissioning functions will be of an appropriate nature and quality. (Paragraph (e))

For the purposes of this sub-paragraph, a CCG's commissioning functions are the functions of the group in arranging for the provision of services as part of the health service.
- (i) Whether the application demonstrates how the CCG will be able to draw on the expertise and knowledge of its members. (Paragraph (e))
- (j) Whether the application demonstrates that appropriate arrangements have been made for recruiting, training and otherwise supporting employees of the CCG. (Paragraph (e))
- (k) Whether the application demonstrates that those who would assume leadership roles in the CCG have appropriate aptitudes, qualifications and experience. (Paragraphs (e) and (f))
- (l) Whether the application demonstrates that appropriate arrangements have been made to secure that the CCG will continue to have in its leadership roles persons with appropriate aptitudes, qualifications and experience. (Paragraphs (e) and (f))

SCHEDULE 2

Regulation 9(2)

Factors relating to applications to vary CCG constitution

The following are the factors referred to in regulation 9(2)—

- (a) Whether the Board would be satisfied as to all the matters mentioned in section 14C(2) of the 2006 Act if the CCG's constitution were varied as requested.
- (b) The likely impact of the requested variation on the persons for whom the CCG has responsibility.
- (c) The likely impact of the requested variation on the amounts allotted or to be allotted to the CCG, and to any other CCG which would be affected by the variation, under section 223G of the 2006 Act (expenditure of CCGs to be met out of public funds), in respect of the financial year in which the variation to the CCG's constitution would take effect.
- (d) The likely impact of the requested variation on the Board's functions.
- (e) The extent to which the CCG has sought the views of the following, what those views are, and how the CCG has taken them into account—
 - (i) unitary local authorities and upper-tier county councils (within the meaning of paragraph 1(2) of Schedule 1) whose area coincides with, or includes the whole or any part of, the area specified in the CCG's constitution (as it would be varied),
 - (ii) any other CCG which in the CCG's view would be affected by the variation requested,

⁽²²⁾ "Local authority" is defined in section 275(1) of the 2006 Act.

- (iii) any other person or body which in the CCG's view might be affected by the variation requested.
 - (f) The extent to which the CCG has sought the views of individuals to whom any relevant health services are being or may be provided, what those views are, and how the CCG has taken them into account.
- “Relevant health services” means any services which are provided as part of the health service pursuant to arrangements made by the CCG in the exercise of its functions.
- (g) How often the CCG has applied for variations of the kind requested.

SCHEDULE 3

Regulation 9(3)

Factors relating to applications for CCG dissolution

The following are the factors referred to in regulation 9(3)—

- (a) The likely impact of the dissolution on the persons for whom the CCG to be dissolved has responsibility.
- (b) The likely impact of the dissolution on the amounts allotted or to be allotted under section 223G of the 2006 Act (expenditure of CCGs to be met out of public funds) to any CCG which would be affected by the dissolution, in respect of the financial year in which the dissolution would take effect.
- (c) The likely impact of the dissolution on the Board's functions.
- (d) The extent to which the CCG to be dissolved has sought the views of the following, what those views are, and how the CCG has taken them into account—
 - (i) unitary local authorities and upper-tier county councils (within the meaning of paragraph 1(2) of Schedule 1) whose area coincides with, or includes the whole or any part of, the area specified in the CCG's constitution,
 - (ii) any other CCG which in the CCG's view would be affected by the dissolution,
 - (iii) any other person or body which in the CCG's view might be affected by the dissolution.
- (e) The extent to which the CCG to be dissolved has sought the views of individuals to whom any relevant health services are being or may be provided, what those views are, and how the CCG has taken them into account.

“Relevant health services” means any services which are provided as part of the health service pursuant to arrangements made by the CCG in the exercise of its functions.

SCHEDULE 4

Regulation 12(5)

Individuals excluded from being lay members of CCG governing bodies

1. An employee of a local authority in England and Wales or of any equivalent body in Scotland or Northern Ireland.
2. An officer or employee of the Department of Health.

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3. A chairman, director, member or employee of an NHS body(23), other than a CCG, an NHS foundation trust(24) or a Primary Care Trust(25).

4. A chairman, director, governor, member or employee of an NHS foundation trust.

5. An employee of a Primary Care Trust.

6. A member or employee of the Care Quality Commission.

7. A member or employee of Monitor(26).

8. An individual who provides any services as part of the health service pursuant to arrangements made by the CCG in the exercise of its commissioning functions, or an employee or member (including shareholder) of, or a partner in, a body which does so.

For the purposes of this paragraph, a CCG's commissioning functions are the functions of the group in arranging for the provision of services as part of the health service.

9. An individual who provides any services as part of the health service pursuant to arrangements made by the Board in the exercise of its commissioning functions, or an employee or member (including shareholder) of, or a partner in, a body which does so.

10. For the purposes of this paragraph, the Board's commissioning functions are the functions of the Board in arranging for the provision of services as part of the health service.

11. A person who contracts with a local authority to provide services in pursuance of the social services functions of the authority within the meaning of the Local Authority Social Services Act 1970(27), or an employee of such a person.

12. An employee of a party to arrangements to perform dental services pursuant to arrangements made under section 25 of the National Health Service (Scotland) Act 1978(28) or section 57 of the National Health Service (Wales) Act 2006(29), where the employee is employed for purposes connected with the provision of those services.

13. An employee of a party to arrangements to perform ophthalmic services pursuant to arrangements made under section 26 of the National Health Service (Scotland) Act 1978(30) or section 71 of the National Health Service (Wales) Act 2006, where the employee is employed for purposes connected with the provision of those services.

14. An employee of a party to arrangements to provide pharmaceutical services under section 27 or 27A of the National Health Service (Scotland) Act 1978(31) or section 80 or 81 of the National Health Service (Wales) Act 2006, or provide local pharmaceutical services under section 92 of, or Schedule 7 to, the National Health Service (Wales) Act 2006, where the employee is employed for purposes connected with the provision of those services.

(23) "NHS body" is defined in section 275(1) of the 2006 Act. The definition is inserted by paragraph 138(2)(c) of Schedule 4 to the 2012 Act, and is to be read with paragraph 138(4) and (5) of that Schedule.

(24) NHS foundation trusts are provided for by section 30 of, and Schedule 7 to, the 2006 Act, and by Part 4 of the 2012 Act.

(25) Primary Care Trusts are to be abolished when section 34 of the 2012 Act comes into force.

(26) "Monitor" is the new name given to the Independent Regulator of NHS Foundation Trusts by section 61(1)(b) of the 2012 Act.

(27) 1970 c. 42. The definition is in section 1A, inserted by section 102(3) of the Local Government Act 2000 (c. 22).

(28) 1978 c. 29. Relevant amendments were made by section 15 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

(29) 2006 c. 42.

(30) Relevant amendments to section 26 of the National Health Service (Scotland) Act 1978 were made by the Health and Social Security Adjudication Act 1984 (c. 48), Schedule 1, Part 2, paragraph 1 and by section 13(2) of the Smoking, Health and Social Care (Scotland) Act 2005.

(31) Relevant amendments to section 27 of the National Health Service (Scotland) Act 1978 were made by the Health Services Act 1980 (c. 53), section 20(2), by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 19(7), by the Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), section 3, and by the Health and Social Care Act 2001 (c. 15), section 44(2). Section 27A was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 27(2).

(1) For the purposes of this paragraph a person included in a pharmaceutical list is a party to arrangements to provide pharmaceutical services.

15. An employee of a party to arrangements to perform primary medical services under section 17C of the National Health Service (Scotland) Act 1978⁽³²⁾ or section 41 of the National Health Service (Wales) Act 2006, where the employee is employed for purposes connected with the provision of those services.

SCHEDULE 5

Regulation 12(6)

Individuals disqualified from membership of CCG governing bodies

1. A Member of Parliament, Member of the European Parliament or member of the London Assembly.

2. A member of a local authority in England and Wales or of an equivalent body in Scotland or Northern Ireland.

3.—(1) An individual who, by arrangement with the CCG, provides it with any service or facility in order to support the CCG in discharging its commissioning functions, or an employee or member (including shareholder) of, or a partner in, a body which does so.

(2) The services and facilities mentioned in sub-paragraph (1) do not include services commissioned by the CCG in the exercise of its commissioning functions.

(3) In this paragraph, the “commissioning functions” of a CCG are the functions of the group in arranging for the provision of services as part of the health service.

4. A person who, within the period of five years immediately preceding the date of the proposed appointment, has been convicted—

(a) in the United Kingdom of any offence, or

(b) outside the United Kingdom of an offence which, if committed in any part of the United Kingdom, would constitute a criminal offence in that part,

and, in either case, the final outcome of the proceedings was a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.

5. A person who is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986⁽³³⁾, sections 56A to 56K of the Bankruptcy (Scotland) Act 1985⁽³⁴⁾ or Schedule 2A to the Insolvency (Northern Ireland) Order 1989⁽³⁵⁾ (which relate to bankruptcy restrictions orders and undertakings).

6.—(1) A person who, has been dismissed within the period of five years immediately preceding the date of the proposed appointment, otherwise than because of redundancy, from paid employment by any of the following⁽³⁶⁾—

⁽³²⁾ Section 17C was inserted into the National Health Service (Scotland) Act 1978 by section 21(2) of the National Health Service (Primary Care) Act 1997. Relevant amendments were made to section 17C by section 2 of the Primary Medical Services (Scotland) Act 2004 ([asp 1](#)).

⁽³³⁾ 1986 c. 45. Schedule 4A was inserted by the Enterprise Act 2002 ([c. 40](#)), Schedule 20.

⁽³⁴⁾ 1985 c. 66. Sections 56A to 56K were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 ([asp 3](#)), section 2(1).

⁽³⁵⁾ S.I. 1989/2405 (N.I. 19). Schedule 2A was inserted by S.I. 2005/1455 (N.I. 10).

⁽³⁶⁾ The list that follows contains the names of certain bodies currently included in the definition of “health service body” in section 9(4) of the 2006 Act, the names of certain bodies which will become included in that list by virtue of amendments made by the 2012 Act, and certain other bodies. The bodies listed in paragraphs (a), (b), and (q) of this sub-paragraph will be added to the list in section 9(4) by the 2012 Act, which will also remove from that list the bodies listed in paragraphs (c),

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- (a) the Board,
- (b) a CCG,
- (c) a Strategic Health Authority⁽³⁷⁾,
- (d) a Primary Care Trust⁽³⁸⁾,
- (e) an NHS trust⁽³⁹⁾,
- (f) an NHS foundation trust,
- (g) a Special Health Authority⁽⁴⁰⁾,
- (h) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006,
- (i) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978⁽⁴¹⁾,
- (j) a Scottish NHS trust established under section 12A of the National Health Service (Scotland) Act 1978⁽⁴²⁾,
- (k) a Health and Social Services Board constituted under the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁴³⁾,
- (l) the Care Quality Commission established by section 1 of the Health and Social Care Act 2008⁽⁴⁴⁾,
- (m) the Health Protection Agency established by section 1 of the Health Protection Agency Act 2004⁽⁴⁵⁾,
- (n) Monitor⁽⁴⁶⁾,
- (o) the Wales Centre for Health established by section 2 of the Health (Wales) Act 2003⁽⁴⁷⁾,
- (p) the Common Services Agency for the Scottish Health Service constituted by section 10 of the National Health Service (Scotland) Act 1978⁽⁴⁸⁾,

(d) and (m) of this sub-paragraph. See the following provisions of the 2012 Act: paragraph 6(2) of Schedule 4, paragraph 18 of Schedule 7, and paragraph 6 of Schedule 21.

- (37) Strategic Health Authorities are continued in existence or established under section 13 of the 2006 Act. They are abolished by section 33 of the 2012 Act.
- (38) Primary Care Trusts are continued in existence or established under section 18 of the 2006 Act. They are abolished by section 34 of the 2012 Act.
- (39) NHS trusts are established under section 25 of the 2006 Act or section 18 of the National Health Service (Wales) Act 2006 (c. 42). NHS Trusts in England are abolished by section 179 of the 2012 Act.
- (40) Special Health Authorities are established under section 28 of the 2006 Act or section 22 of the National Health Service (Wales) Act 2006.
- (41) Section 2 was amended by paragraph 1 of Schedule 7 to the Health and Social Services Adjudications Act 1983 (c. 41), section 28 of, and paragraph 19(1) of Schedule 9 and paragraph 1 of Schedule 10 to, the National Health Service and Community Care Act 1990 (c. 19), paragraph 1(2) of Schedule 1 to the National Health Services Reform (Scotland) Act 2004 (asp 7), paragraph 2(2) of Schedule 2 to the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) and section 2(1) of the Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5).
- (42) Section 12A was inserted by section 31 of the National Health Service and Community Care Act 1990 and amended by paragraph 34 of Schedule 2 to the National Health Service (Primary Care) Act 1997 (c. 46) and sections 46(1) and 48 of, and paragraph 45 of Schedule 4 to, the 1999 Act.
- (43) S.I. 1972/1265 (N.I. 14). Health and Social Services Boards were dissolved by section 1(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.
- (44) 2008 c. 14.
- (45) 2004 c. 17. The Health Protection Agency is abolished by section 56 of the 2012 Act.
- (46) “Monitor” is the new name given to the Independent Regulator of NHS Foundation Trusts: see section 61 of the 2012 Act, and generally, Chapter 1 of Part 3 of that Act.
- (47) 2003 c. 4. The Wales Centre for Health is abolished under S.I. 2009/2653 (W215).
- (48) Section 10 was amended by paragraph 2 of Schedule 6 to the Health Services Act 1980 (c. 53), paragraph 1 of Schedule 10 to the National Health Service and Community Care Act 1990, paragraph 44 of Schedule 8 to, the Health Act 1999 (c. 8) and paragraph 2(4) of Schedule 2 to the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

- (q) Healthcare Improvement Scotland, established by section 10A of the National Health Service (Scotland) Act 1978⁽⁴⁹⁾,
 - (r) the Scottish Dental Practice Board constituted under section 4 of the National Health Service (Scotland) Act 1978⁽⁵⁰⁾,
 - (s) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁵¹⁾,
 - (t) the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽⁵²⁾,
 - (u) the Regional Agency for Public Health and Wellbeing established under section 12 of the Health and Social Care (Reform) Act (Northern Ireland) 2009,
 - (v) the Regional Business Services Organisation established under section 14 of the Health and Social Care (Reform) Act (Northern Ireland) 2009,
 - (w) Health and Social Care trusts (formerly known as Health and Social Services trusts), established under the Health and Personal Social Services (Northern Ireland) Order 1991⁽⁵³⁾,
 - (x) Special health and social care agencies (formerly known as Special health and social services agencies), established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990⁽⁵⁴⁾;
 - (y) The Patient and Client Council established under section 16 of the Health and Social Care (Reform) Act (Northern Ireland) 2009; and
 - (z) The Health and Social Care Regulation and Quality Improvement Authority (formerly known as The Northern Ireland Health and Personal Social Services Regulation and Improvement Authority), established under the Health and Personal Social Services (Quality Improvement and Regulation) (Northern Ireland) Order 2003⁽⁵⁵⁾.
- (2) For the purposes of sub-paragraph (1), a person is not to be treated as having been in paid employment merely because of being—
- (a) in the case of a body listed in sub-paragraph (1) which is not an NHS trust or an NHS foundation trust, its chairman, or one of its members whom it does not employ;
 - (b) in the case of an NHS trust, its chairman or one of its non-executive directors;
 - (c) in the case of an NHS foundation trust, its chairman or one of its governors or non-executive directors.

7. A health care professional (within the meaning of section 14N of the 2006 Act)⁽⁵⁶⁾ or other professional person who has at any time been subject to an investigation or proceedings, by any body which regulates or licenses the profession concerned (“the regulatory body”), in connection with the person’s fitness to practise or any alleged fraud, the final outcome of which was—

⁽⁴⁹⁾ Section 10A was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).
⁽⁵⁰⁾ Section 4 was amended by section 12(3) of, and Schedule 3 to, the Health and Medicines Act 1988 (c. 49) and paragraph 2(3) of Schedule 2 to the Smoking, Health and Social Care (Scotland) Act 2005.
⁽⁵¹⁾ The Northern Ireland Central Services Agency for the Health and Social Services was dissolved by section 1(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.
⁽⁵²⁾ 2009 c. 1 (N.I.).
⁽⁵³⁾ S.I. 1991/194 (N.I. 1). Health and social services trusts established under Article 10 of S.I. 1991/194 (N.I.) were renamed Health and social care trusts under section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.
⁽⁵⁴⁾ S.I. 1990/247 (N.I. 3). Special health and social services agencies established under Article 10 of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 were renamed Special health and social care agencies under section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.
⁽⁵⁵⁾ S.I. 2003/431 (N.I.9). The Northern Ireland Health and Personal Social Services Regulation and Improvement Authority established under Article 10 of S.I. 2003/431 (N.I.9) was renamed The Health and Social Care Regulation and Quality Improvement Authority under section 1(2) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.
⁽⁵⁶⁾ “Health care professional” is defined for the purposes of section 1 of the 2006 Act in subsection (6) of that section.

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- (a) the person's suspension from a register held by the regulatory body, where that suspension has not been terminated,
 - (b) the person's erasure from such a register, where the person has not been restored to the register,
 - (c) a decision by the regulatory body which had the effect of preventing the person from practising the profession in question, where that decision has not been superseded, or
 - (d) a decision by the regulatory body which had the effect of imposing conditions on the person's practice of the profession in question, where those conditions have not been lifted.
8. A person who is subject to—
- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(57) or the Company Directors Disqualification (Northern Ireland) Order 2002(58), or
 - (b) an order made under section 429(2) of the Insolvency Act 1986(59) (disabilities on revocation of administration order against an individual).
9. A person who has at any time been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners for England and Wales(60), the Charity Commission, the Charity Commission for Northern Ireland or the High Court, on the grounds of misconduct or mismanagement in the administration of the charity for which the person was responsible, to which the person was privy, or which the person by their conduct contributed to or facilitated.
10. A person who has at any time been removed, or is suspended, from the management or control of any body under—
- (a) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(61) (powers of the Court of Session to deal with the management of charities), or
 - (b) section 34(5)(e) or (ea) of the Charities and Trustee Investment (Scotland) Act 2005(62) (powers of the Court of Session to deal with the management of charities).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the membership, name, establishment and governance of a Clinical Commissioning Group (“CCG”), and also for the variation of a CCG’s constitution, and for the merger and dissolution of CCGs.

(57) 1986 c. 46.

(58) S.I. 2002/3150 (N.I. 4).

(59) 1986 c. 45. The original subsections (1) and (2) were substituted by paragraph 3(2) of Schedule 16 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), and subsection (2) was amended by paragraph 15 of Schedule 23 to the Enterprise Act 2002 (c. 40).

(60) The Charity Commissioners for England and Wales were replaced by the Charity Commission: section 6 of the Charities Act 2006 (c. 50).

(61) 1990 c. 40. Section 7 was repealed by paragraph 7(b) of Schedule 4 to the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

(62) 2005 (asp 10). Section 34 was amended by section 122 of the Public Services Reform (Scotland) Act 2010 (asp 8).

Under section 14A of the National Health Service Act 2006 (“the 2006 Act”), inserted by section 25(1) of the Health and Social Care Act 2012 (“the 2012 Act”), each “provider of primary medical services” must be a member of a CCG, and the areas of all CCGs must cover the whole of England but must not coincide or overlap with each other. A “provider of primary medical services” for this purpose is confined to GPs and others who provide essential primary medical services to registered patients of theirs during core hours (regulation 2).

The name of a CCG must begin with “NHS” and end with “Clinical Commissioning Group”, and must also include a geographical reference which fairly and accurately represents the CCG’s area (regulations 3 to 6).

Schedules 1 to 3 set out various factors which the National Health Service Commissioning Board will consider in connection with an application to establish a CCG, or when an established one seeks to vary its constitution, to be dissolved, or to merge with another CCG (regulations 7 and 9). The Board may choose in certain circumstances to grant an application for establishment only conditionally: regulation 8. The procedure to be followed by the Board in considering such applications must be published, and comply with the requirements of regulation 10.

Regulations 11 to 16 set out various requirements relating to the governance of a CCG. Regulations 11 and 12 provide for each CCG to have a governing body with at least six members including the CCG’s accounting officer, a professionally qualified accountant, a registered nurse, an NHS consultant (or retired consultant) and two lay persons, one of whom must have knowledge of financial management and audit, and the other knowledge of the local area. Certain descriptions of individual are not to count as lay persons, but may otherwise be members of a CCG’s governing body: these are listed in Schedule 4; and certain descriptions of individual are disqualified from membership of the governing body: these are listed in Schedule 5. The chair and deputy chair of the governing body are to be appointed by the CCG as a whole: regulation 13, and provision is made in regulations 14 and 15 for the chair and membership of the CCG’s audit and remuneration committees. Regulation 16 requires the CCG’s governing body to publish the papers which it considers at meetings of that body, and also certain information about the remuneration of senior employees, unless the governing body considers publication not to be in the public interest in any particular case.

An impact assessment has not been produced for this instrument as the instrument itself has no impact on the private sector or civil society organisations. A full impact assessment has been produced in relation to the provisions of the 2012 Act and a copy is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583.