

**EXPLANATORY MEMORANDUM TO  
THE NATIONAL HEALTH SERVICE (CLINICAL COMMISSIONING  
GROUPS) REGULATIONS 2012**

**2012 No. 1631**

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 From 1 April 2013, clinical commissioning groups (CCGs) will be responsible for the commissioning of most NHS services. The NHS Commissioning Board (the Board) will be responsible for establishing CCGs from 1<sup>st</sup> October 2012 and must ensure there is an effective and comprehensive system of CCGs from 1<sup>st</sup> April 2013. This instrument makes provision for establishment of CCGs and for requirements relating to the membership, names and governance of CCGs. It also sets out the factors that the Board must consider in connection with an application to establish a CCG, or when an established CCG seeks to vary its constitution, to be dissolved or to merge with another CCG, and the procedure that should apply to such applications.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 The Health and Social Care Act 2012 (“the 2012 Act”) amends the NHS Act 2006 (“the 2006 Act”) to provide for the establishment of the Board and CCGs. CCGs will have the function of arranging for the provision of services for the purposes of the health service in England (section 11 of the 2006 Act inserted by section 10 of the 2012 Act), and will in practice be responsible for commissioning the majority of secondary care services.

4.2 Chapter A1 of Part 2 of the 2006 Act inserted by section 25(1) of the 2012 Act makes provision for the establishment of CCGs. Applications for establishment are to be made to the Board (sections 14A and 14B of the 2006 Act). An application may be made by two or more persons who wish to be a member of a CCG and are, or wish to be, providers of primary medical services. A provider of primary medical services is defined by a combination of section 14A(4) of the 2006 Act and regulation 2 of this instrument. A CCG is obliged to have a constitution (paragraph 1 of Schedule 1A to the 2006 Act inserted by section 25(2) of the 2012 Act). The constitution of a CCG has to specify its name (paragraph 2(1)(a) of Schedule 1A of the 2006 Act), and that name must comply with the requirements prescribed in regulations 3 to 6 of this instrument (Schedule 1A, paragraph 2(2) of the 2006 Act).

4.3 The Board must grant an application for establishment if it is satisfied of the matters listed in section 14C(2) of the 2006 Act. Paragraph 8 of Schedule 6 to the 2012 Act makes provision for the Board to establish a CCG with conditions where it is not satisfied of these matters. Section 14E makes provision for a CCG to apply to the Board to vary its constitution. Sections 14G and 14H of the 2006 Act make provision respectively for a CCG to apply to the Board to be merged with another group or groups or for a CCG to apply to be dissolved. Regulations 7 to 10 and Schedules 1 to 3 of this instrument make provision in relation to these matters.

4.4 Section 14L(1) of the 2006 Act requires each CCG to have a governing body and makes provision in relation to the functions of the governing body. Section 14M(1) of the 2006 Act requires each governing body of a CCG to have an audit committee and a remuneration committee. Section 14N makes provision for regulations as to governing bodies. Regulations 11 to 16 and Schedules 4 and 5 of this instrument make provision in relation to these matters.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England only.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- ***What is being done and why***

7.1 *Equity and Excellence: Liberating the NHS* set out the Government's intention to change how NHS care is commissioned: CCGs will be responsible for commissioning most NHS services, to be supported by and accountable to a new non-departmental public body, the NHS Commissioning Board, which in turn will be accountable to the Secretary of State. This approach builds on the key role that GP practices play in coordinating patient care and acting as patient advocates, allowing them to play the lead role in deciding what wider health care services to commission on their patients' behalf.

7.2 The Secretary of State will continue to be under a duty to promote a comprehensive health service, and will be held accountable for the system through a duty to keep under review the effective exercise of functions by national bodies, including the Board, and a duty to report annually on the performance of the health service.

7.3 The Board will have a duty to ensure that a comprehensive system of CCGs is in place from 1<sup>st</sup> April 2013. All providers of primary medical services will be required to be a member of a CCG from April 2013. The

Board will also have to ensure that the areas for which CCGs are established together cover the whole of England and do not coincide or overlap.

7.4 As set out in the legislative context section, this instrument complements the provisions in the Act and sets out further requirements on CCGs in terms of their establishment and governance, and on the Board in terms of the initial procedure for establishing CCGs and any changes to CCG membership and geographic area thereafter. It is the first set of regulations that will cover CCGs. Further regulations will make provision about the groups of patients for which CCGs are responsible, financial rewards for CCGs, and the process that the Board should follow before exercising its powers to require documents, information or explanations from CCGs and before exercising any of its intervention powers if it believes that a CCG is failing, has failed or is at significant risk of failing to discharge its functions.

- ***Consolidation***

7.5 These regulations do not consolidate any previous legislation.

## **8. Consultation outcome**

8.1 The provisions of the 2012 Act are based on a policy tested through a series of consultations; the White Paper, *Equity and Excellence: Liberating the NHS*, and the listening exercise led by the NHS Future Forum particularly informed the development of commissioning policy, aspects of which this SI supports.

8.2 The proposed frameworks for the establishment, governance and authorisation of CCGs were tested with a wide range of stakeholders including:

- emerging CCGs
- SHAs and PCTs
- national primary care organisations and GP representatives

8.3 This has improved the policy in a number of ways, for example by: developing the criteria for authorisation; assuring the relevance of evidence sources; clarifying job descriptions and requirements for the key members of a CCG governing body; and making the language used accessible.

## **9. Guidance**

9.1 The Board, once established, will have powers (and in some cases will be required) to issue guidance to CCGs. As part of its function to prepare for its role in establishing CCGs, the NHS Commissioning Board Authority, the precursor to the Board, has published draft guidance on establishment, governance and authorisation. This includes:

- (a) *Towards establishment: creating responsive and accountable clinical commissioning groups*<sup>1</sup> (February 2012)

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<sup>1</sup> Published at [http://www.commissioningboard.nhs.uk/files/2012/01/THE\\_BOARD-02-2012-6-Guidance-Towards-establishment-Final.pdf](http://www.commissioningboard.nhs.uk/files/2012/01/THE_BOARD-02-2012-6-Guidance-Towards-establishment-Final.pdf)

(b) *Clinical commissioning group authorisation: Draft guide for applicants*<sup>2</sup> (April 2012)

9.2 The Board Authority may also publish draft guidance for CCGs on the arrangements for varying constitutions, merging or dissolving.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on public sector costs.

10.3 An Impact Assessment has not been prepared for this instrument, as its provisions are derived from the 2012 Act, an impact assessment for which summarises the costs and cost-savings of the changes outlined within *Equity and Excellence: Liberating the NHS* that was legislated for within the Health and Social Care Bill. These costs and cost-savings are not easily attributable to any one particular piece of secondary legislation.

10.4 The establishment of CCGs and the Board is estimated to cost between £1,061m and £1,181m and contribute to total annual savings of £1,068m to the costs of commissioning from 2014/15. This monetised benefit is from the reduction in the costs of commissioning, as outlined in the Commissioning for Patients Impact Assessment (see pages 3 – 29, Annex A).<sup>3</sup> This is based on savings estimated in the Coordinating Document for the Health and Social Care Bill Impact Assessments (see section 4, paragraphs 49 – 79).<sup>4</sup>

## **11. Regulating small business**

11.1 The legislation does not apply to small businesses.

## **12. Monitoring & review**

12.1 The establishment of CCGs will be subject to independent evaluation, to be commissioned by the Department of Health.

## **13. Contact**

Claire Aldiss at the Department of Health, Tel: 0113 254 5619 or email: [claire.aldiss@dh.gsi.gov.uk](mailto:claire.aldiss@dh.gsi.gov.uk), can answer any queries regarding the instrument.

Alternatively, Helen Dixon at the Department of Health, Tel: 020 7210 5719 or email: [helen.dixon@dh.gsi.gov.uk](mailto:helen.dixon@dh.gsi.gov.uk), can be contacted.

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<sup>2</sup> Published at <http://www.commissioningboard.nhs.uk/files/2012/04/ccg-auth-app-guide.pdf>

<sup>3</sup> to be found at

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_129917.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_129917.pdf)

<sup>4</sup> to be found at

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_129916.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_129916.pdf)