

## EXPLANATORY MEMORANDUM TO

### THE NATIONAL HEALTH SERVICE (JOINT WORKING AND DELEGATION ARRANGEMENTS) (ENGLAND) REGULATIONS 2022

2022 No. 642

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (“DHSC”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 The purpose of this instrument is to specify circumstances where the power for NHS bodies to enter into joint working arrangements or delegate functions does not apply.

#### 3. Matters of special interest to Parliament

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

- 3.1 DHSC relies on section 13 of the Interpretation Act 1978 in relation to section 71 of the Health and Care Act 2022 (“the 2022 Act”). Section 71 of the 2022 Act will insert a new section 65Z5 into the 2006 Act, that gives the power to make this instrument.
- 3.2 DHSC considers that it is expedient to rely on section 13 of the Interpretation Act 1978 in relation to section 71 of the 2022 Act (to the extent set out above) because it considers it desirable for reasons of clarity and certainty that the whole of the new regime comes into force at the same time. DHSC intends to commence section 71 of the 2022 Act to coincide with the coming into force of this instrument.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England only.

#### 5. European Convention on Human Rights

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

#### 6. Legislative Context

- 6.1 Section 71 of the Health and Care Act 2022 amends the National Health Service Act 2006 by inserting a new Section 65Z5 on “Joint working and delegation arrangements”. This provides a power for “relevant bodies” to enter into joint working arrangements with or delegate their functions to other relevant bodies, local authorities or combined authorities. A ‘relevant body’ is defined in the primary legislation as: NHS England; and integrated care board; an NHS Trust; and NHS Foundation Trust; or such other body that may be prescribed.

6.2 Section 71 of the Health and Social Care Act 2022 also provides the Secretary of State with powers to make regulations specifying where the power to enter into joint working arrangements and delegate functions does not apply, or applies only to a prescribed extent, and to impose conditions on the exercise of power.

## **7. Policy background**

### *What is being done and why?*

7.1 The 2022 Act puts in place reforms to the NHS and its structures. This includes the way in which, and by whom, NHS services are to be commissioned and seeks to put on a statutory footing more integrated ways in which commissioners and providers of NHS services are able to work together in order to improve the quality and outcomes for patients of healthcare provided by the NHS in England.

7.2 NHS bodies (Integrated Care Boards, NHS Trusts and NHS Foundation Trusts) have the power to jointly exercise their functions with or delegate their functions to other NHS bodies or local authorities or combined authorities in England. These arrangements facilitate partnership working and joint decision-making at place and system level. This flexibility enables collaboration and supports integration of the delivery of health and social care for patients in England.

7.3 Whilst providing flexibility for NHS bodies to jointly exercise and delegate functions, it is also paramount to ensure that appropriate accountability is retained. The regulations prescribe functions that may not be delegated and that the organisation holding the function remains responsible for the accountability and discharge of these functions. Whilst the regulations do not impose conditions on functions that are delegable, the statutory guidance issued under section 65Z5 will set out conditions for functions that may be delegated.

7.4 These regulations specify a list of exclusions to where the power to jointly exercise and delegate functions does not apply. These exclusions broadly fit within three circumstances:

- Regulatory, oversight and national coordination functions where it would contradict the intended use of the function to delegate it or jointly exercise it with the organisation that is regulated.
- Inherent conflicts of interest that cannot be managed and/or are likely to compromise decisions that should be made in the interests of patients.
- Functions central to the corporate governance of individual organisations, which must be retained if the organisation is to operate effectively.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

9.1 These regulations do not consolidate any existing legislation.

## **10. Consultation outcome**

10.1 There was no formal consultation on these regulations. However, NHS England were informally consulted.

## **11. Guidance**

- 11.1 NHS England will publish statutory guidance on joint working and delegation under section 65Z5 of the NHS Act 2006 (inserted by section 71 of the Health and Care Act 2022). This will set out the delegation and joint working arrangements permitted by legislation and the use of these delegation and joint working functions. NHS England will also set out a list of restrictions on functions that may be delegated and conditions relating to the delegation of such functions.
- 11.2 NHS England will publish statutory guidance on joint working and delegation on <https://www.england.nhs.uk/publication/integrated-care-systems-guidance/> by 1st July 2022 which is aligned with the commencement date of these regulations.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector as we are facilitating joint working amongst NHS bodies but also ensuring certain functions of regulatory, oversight and national coordination are to be delegated and retained only to be carried out by NHS England.
- 12.3 A full Impact Assessment has been produced in relation to the provisions of the Health and Care Act 2022 and a copy is available at: <https://www.gov.uk/government/publications/health-and-care-bill-combined-impact-assessments>.
- 12.4 No separate impact assessment has been prepared in respect of this instrument as it will have no impact on the private sector or civil society organisations.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 No specific monitoring or review will be undertaken, beyond that which is already undertaken as part of the Department's routine data collection.
- 14.2 The instrument does not include a statutory review clause because this instrument only abolishes CCGs however all of CCGs commissioning responsibilities are transferred to existing and newly created statutory bodies.

## **15. Contact**

- 15.1 Naveed Khan at the Department of Health and Social Care (telephone: 01132546104; email: [Naveed.khan@dhsc.gov.uk](mailto:Naveed.khan@dhsc.gov.uk)) can be contacted with any queries regarding this instrument.
- 15.2 Philippa Baker, Deputy Director, Legislation Programme Team, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets this required standard.
- 15.3 Edward Argar MP, the Minister of State for Health at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.