

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH AND CARE ACT 2022 (FURTHER CONSEQUENTIAL**  
**AMENDMENTS) (NO. 2) REGULATIONS 2023**

**2023 No. 1071**

**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 His Majesty.

**2. Purpose of the instrument**

2.1 The purpose of this instrument is to make certain amendments to various secondary legislation to give effect to the Health and Care Act 2022 (“the 2022 Act”). Under section 1 of the 2022 Act, the National Health Service Commissioning Board is renamed to NHS England. This instrument makes consequential amendments to several statutory instruments to change references to the National Health Service Commissioning Board with references to NHS England, to reflect this name change.

2.2 Section 19 of the 2022 Act made amendments to the National Health Service Act 2006 (“the 2006 Act”), abolishing clinical commissioning groups (“CCGs”) to be replaced with new statutory bodies called integrated care boards (“ICBs”). This instrument will make consequential changes to secondary legislation implementing these changes.

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

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

3.1 None.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

**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 1 of the 2022 Act renames the National Health Service Commissioning Board to NHS England. Section 19 of the 2022 Act makes certain amendments to the 2006 Act. Under the new section 14Z27 of the 2006 Act, CCGs were abolished. These were replaced by ICBs which have been established under section 14Z25 of the 2006 Act.

6.2 Section 182 of the 2022 Act allows the Secretary of State to make provision consequential on that Act. Section 183 provides powers to make consequential, supplementary, incidental, transitional or saving provisions and different provisions

for different purposes. This instrument makes consequential amendments to a number of statutory instruments to reflect these changes made by the 2022 Act.

## **7. Policy background**

*What is being done and why?*

### Renaming of the National Health Service Commissioning Board to NHS England

- 7.1 Section 1H of the 2006 Act established the National Health Service Commissioning Board which has a duty, concurrently with the Secretary of State, to promote a comprehensive health service. It has a number of functions including the function of arranging the provision of NHS services.
- 7.2 Section 1 of the 2022 Act has renamed the National Health Service Commissioning Board to NHS England. The National Health Service Commissioning Board was already widely known as NHS England, and so the 2022 Act changed the name in law to reflect how the body was already known in practice. This instrument makes consequential amendments to several statutory instruments to implement this name change.

### Establishment of integrated care boards and the abolition of clinical commissioning groups

- 7.3 Furthermore, the 2022 Act created new statutory bodies known as ICBs to replace CCGs. CCGs' main functions related to the commissioning of NHS secondary care services. ICBs have replaced CCGs as the main commissioners of secondary care, as well as commissioning other healthcare services. The responsibilities, property, rights and/or liabilities of former CCGs have transferred to their successor ICBs. Therefore, amendments to secondary legislation will be made by this instrument to reflect the abolition of CCGs and the fact that NHS England will have some oversight over ICBs.
- 7.4 It will remove a definition of "clinical commissioning group" from the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018, which is no longer required as it is an abolished body.
- 7.5 It will amend the Public Interest Disclosure (Prescribed Persons) Order 2014 to include matters relating to NHS England's oversight and support of ICBs (pursuant to its functions under the 2006 Act) as matters that can be disclosed to NHS England as a "qualifying disclosure" under the Employment Rights Act 1996.

## **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 This instrument does not consolidate any instruments.

## **10. Consultation outcome**

- 10.1 There is no specific duty to consult on the amendments made by this instrument.

## **11. Guidance**

- 11.1 Guidance has not been produced for this instrument as this instrument makes consequential amendments to secondary legislation to give full effect to the 2022 Act.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There will be some impact on the public sector as we are seeking to introduce consequential amendments to existing UK Government and Devolved legislation relating to several public sector bodies.
- 12.3 A full Impact Assessment has not been prepared for this instrument because this instrument only introduces amendments that are consequential on the 2022 Act. Therefore, DHSC relies on the impact assessment produced for the 2022 Act.
- 12.4 A full Impact Assessment has been produced in relation to the provisions of the 2022 Act and a copy is available at: <https://www.gov.uk/government/publications/health-and-care-act-2022-combined-impact-assessments>

## **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 DHSC's routine data collection.
- 14.2 The instrument does not include a statutory review clause because this instrument only introduces amendments that are consequential on the 2022 Act.

## **15. Contact**

- 15.1 Naveed Khan at the Department of Health and Social Care (email: [Naveed.khan@dhsc.gov.uk](mailto:Naveed.khan@dhsc.gov.uk)) can be contacted with any queries regarding the instrument.
- 15.2 Samantha Boyd, Deputy Director for Systems, Integration and Reform, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Helen Whately at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.