

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Further provision about clinical commissioning groups

Schedule 2 – Clinical commissioning groups

New Schedule 1A, Part 2

296. New Schedule 1A Part 2 makes further provision about CCGs. Each CCG is to be a body corporate (paragraph 10) which may appoint employees on such terms and conditions as it determines, with such remuneration and other allowances in accordance with determinations made by its governing body (paragraph 11).
297. CCGs are to be granted the status of ‘Employing Authorities’ by amending the NHS Pension Scheme Regulations (after the passage of the Act). This means that (like other NHS bodies such as foundation trusts) CCGs would then be required to offer the NHS pension scheme to their employees, and would have to enrol their employees automatically in that scheme unless they opted out. Should any employees opt out, CCGs would have the power under paragraph 11(3) to (5) to offer alternative pension arrangements or schemes should they wish. Foundation trusts already have this power.
298. [Paragraph 12](#) provides that each CCG must have an accountable officer, who may be either a member of the CCG or an employee. The accountable officer is appointed by the NHS Commissioning Board. They may be the accountable officer for more than one CCG. If the accountable officer is not an employee of a CCG, the CCG may remunerate and pay other allowances to the accountable officer in accordance with determinations made by its governing body.
299. The CCG may make arrangements to provide pensions, allowances and gratuities to its accountable officer, including by way of compensation in respect of loss of office or loss or reduction of total remuneration access to any pension scheme the CCG establishes (under paragraph 11(4) of Schedule 1A) – note that this would be an alternative to the NHS Pension Scheme.
300. The accountable officer is responsible for ensuring the CCG complies with its financial obligations (under new sections 223H to 223J of the NHS Act), its requirements for keeping proper accounts (under paragraph 17 of this schedule), its requirements for providing financial information to the NHS Commissioning Board (under paragraph 18) and its duty to provide information required by the Secretary of State (under paragraph 19). The accountable officer is also responsible for ensuring that the CCG fulfils its duties to exercise its functions effectively, efficiently and economically under new section 14Q, and its duties under new section 14R in relation to improvement in the quality of services. Furthermore, the accountable officer must ensure that the CCG exercises its functions in a way which provides good value for money. Other

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obligations under the NHS Act may be specified in a document published by the NHS Commissioning Board for these purposes.

301. [Paragraph 13](#) allows for payment to be made to members of the governing body of remuneration, travelling or other allowances and gratuities, as well as for provision of pensions. These arrangements may include the establishment and administration of pension schemes, or access to any pension scheme the CCG establishes (under paragraph 11(4) of Schedule 1A) and arrangements for the provision of pensions, allowances or gratuities by way of compensation for loss or reduction of total remuneration. However, the arrangements for providing pensions, allowances or gratuities do not apply to members of the governing body who are members or employees of the CCG, or members or employees of a practice which is a member of the CCG.
302. [Paragraph 14](#) permits a CCG to pay such travel and other allowances as it considers appropriate to members of the group who are individuals (as opposed to practices), individuals authorised to act on behalf of a member of the group in its dealings with the group, and any members of committees or sub-committees of the group or its governing body. This is intended to ensure that, where persons who are not employees undertake work on behalf of the group, they can receive expenses.
303. CCGs may hold property on trust and paragraph 15 confers a power on the Secretary of State to make an order appointing trustees to oversee the management of any property held on trust. The order may make provision for naming the trustees, the number of trustees, their term of office and any conditions of appointment. Where an order has been made, the Secretary of State may transfer property from the CCG to the trustees.
304. [Paragraph 15](#) enables a CCG to enter into externally financed development agreements. Such an agreement is certified by the Secretary of State, who may issue a certificate where he considers that the purpose or main purpose of the agreement is the provision of services or facilities in connection with the CCG's discharge of its functions; and a person proposes to make a loan or other form of finance for another party in connection with that agreement.
305. Under paragraph 17 a CCG must keep proper accounts and records, and prepare annual accounts for each financial year. The NHS Commissioning Board may direct a CCG, with the approval of the Secretary of State, to prepare a set of accounts in respect of a "particular" period or periods of time. Powers are conferred on the NHS Commissioning Board to direct CCGs, with the approval of the Secretary of State as to the form and content of accounts, the methods and principles by which they are prepared, and the timescales for submitting audited annual accounts and any other accounts including unaudited annual accounts. Annual accounts must be audited in line with extant legislation. The Comptroller and Auditor General may examine a CCG's annual accounts and any related records, and any report on those accounts produced by an auditor or auditors. Section 306(7)(a) will ensure that the Secretary of State may, in a commencement order under section 306(4), provide that the duties to keep proper accounts and records, and to prepare annual accounts for each financial year, do not apply in relation to the whole or part of the "initial period" (the period between the coming into force of the provisions for the establishment of CCGs and the date specified by the Secretary of State by which every provider of primary medical services in England is to be a member of a CCG, proposed to be 1 April 2013). The power may be exercised in relation to all CCGs or only groups meeting certain conditions (e.g. those groups which were receiving income or incurring expenditure).
306. [Paragraph 18](#) enables the NHS Commissioning Board to direct a CCG to supply it with information relating to its accounts, income or expenditure or its use of resources, within a specified period. The required information may include estimates of future CCG income, expenditure or use of resources.

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307. [Paragraph 19](#) requires disclosure by all CCGs to the NHS Commissioning Board of such information, in such form, and at such time or within such period, as the Secretary of State may require if the Secretary of State considers that information is necessary for the purposes of the Secretary of State's functions in relation to the health service.
308. The NHS Commissioning Board can also be required to provide, to the Secretary of State, any information obtained from CCGs.
309. Just as with the NHS Commissioning Board, CCGs sit within the Department of Health accounting and budgeting boundaries. The Department require information to effectively and efficiently manage its financial position against, for instance, Departmental Expenditure Limits. In addition, the Department has a responsibility to provide information on those bodies for which it is accountable in order to meet requirements that may be set by HM Treasury and others on both financial and non-financial matters. Under this paragraph, it would not be possible for Secretary of State to request information from a single CCG or a "particular" group of CCGs. The Secretary of State must exercise the power in the same way in relation to all CCGs, for example by making the same request for information to all CCGs.
310. [Paragraph 20](#) clarifies that CCGs under section 2 of the NHS Act have the power to acquire and dispose of property, enter into agreements including contracts, or accept gifts of property. Property in this sense means any possession, it is not limited to buildings or land.
311. [Paragraph 21](#) gives CCGs the ability to execute a deed, for example, where passing a legal title, interest or right in relation to a transfer of land, under seal. It allows a CCG to authorise an individual or individuals, whose signature would authenticate use of a seal, so it would be taken as evidence that this was on behalf of the CCG. As an alternative, the CCG may authorise an individual to execute a document by signature, and this too must be taken as evidence that this was on behalf of the CCG.