

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Emergency powers

Schedule 6 – Part 1: transitional provision

607. This Schedule is concerned with the transitional arrangements for the establishment of CCGs, the exercise of functions by CCGs during the ‘initial period’ and for arrangements prior to the abolition of SHAs and PCTs. The initial period is defined in paragraph 1(2) as the period beginning with the commencement of section 25 and ending on a day specified by the Secretary of State for the purposes of new section 14A (the date from which the NHS Commissioning Board must ensure every provider of primary medical services is a member of a CCG and that the areas specified in the constitutions of CCGs cover the whole of England and do not coincide or overlap). It is envisaged that this ‘initial period’ will run from 1 October 2012 (at the latest) to 31 March 2013. Initial applications are applications made during the initial period. It is proposed that SHAs and PCTs will be abolished at the end of the initial period.
608. [Paragraph 2](#) of Schedule 6 allows the Secretary of State to consult a Special Health Authority on proposals for the annual mandate for the Board under new section 13A of the NHS Act and on regulations requiring the NHS Commissioning Board to commission services under section 3B of the NHS Act, before the NHS Commissioning Board is established. A Special Health Authority known as the NHS Commissioning Board Authority was established on 31 October 2011 to make preparations for the establishment and operation of the NHS Commissioning Board
609. [Paragraphs 3](#) and [4](#) of Schedule 6 make provision so that the directions given to SHAs and PCTs under section 7 of the NHS Act continue to have effect, and the Secretary of State can issue new directions to those bodies under that section, until those bodies are abolished.
610. [Paragraph 5](#) of Schedule 6 allows existing directions from the Secretary of State to Special Health Authorities to continue once section 21 has been commenced. This means that for existing Special Health Authorities - NHS Blood and Transplant, NHS Business Services Authority and the NHS Litigation Authority - there would be no need to re-issue the current directions specifying their functions and they would continue in force as if given under the new power.
611. [Paragraph 7](#) provides that, during the initial period, the Secretary of State may direct the Board to exercise any of the functions of the Secretary of State that relate to SHAs or PCTs, but not including the Secretary of State’s powers or duties to make orders or regulations. This will, for instance, enable the Secretary of State to arrange for the Board to hold PCTs to account for their performance during 2012/13.

612. [Paragraph 8](#) of the Schedule makes provision for the conditional establishment of CCGs during the initial period in any cases where the Board is not fully satisfied as to the matters, as to which it would have to satisfy itself before granting an application for establishment, set out in new section 14C. Regulations may be made authorising the NHS Commissioning Board in these circumstances to grant initial applications, but allowing the NHS Commissioning Board to impose conditions or to give a direction that the CCG exercise some of its functions in a certain way or not to exercise specified functions. If the regulations authorise the NHS Commissioning Board to give such a direction, they may also authorise or require the NHS Commissioning Board to exercise any functions specified on behalf of the CCG, or arrange for another CCG to exercise those functions. Regulations may also make provision requiring the NHS Commissioning Board to keep any conditions or directions under review and make provision about how the NHS Commissioning Board varies or removes any conditions or directions imposed.
613. [Paragraph 8\(6\)](#) enables regulations to be made making modifications to the NHS Act as far as it applies to CCGs established on the grant of an initial application. These regulations may provide that the Board's power to dissolve a CCG (in new section 14Z21) applies where a CCG established with conditions fails to comply with those conditions. The regulations may also make provision about the factors that the Board must or may take into account when exercising these powers, and the procedures to be followed. [Paragraph 5\(12\)](#) provides that, where a conditionally established CCG ceases to be subject to any conditions or directions, it is deemed to have been established on an application granted under new section 14C.
614. [Paragraph 9](#) of the Schedule provides that, where an application for the establishment of a CCG is granted under section 14C during the initial period, the Board may direct it to exercise only some of its functions during this initial period. This power of direction is necessary to avoid CCGs having concurrent statutory responsibility for commissioning functions that remain with PCTs during the initial period. It is intended that PCTs will retain legal responsibility for commissioning until 1st April 2013. This means that, where CCGs commission services for patients during the initial period, they will be doing so on behalf of PCTs (see [paragraph 11](#) of the Schedule) rather than through exercising the CCG's own statutory functions
615. [Paragraph 10](#) of the Schedule provides that a CCG may, in the initial period, while it is carrying out limited functions, undertake preparatory work to help it prepare to exercise its functions after the end of the initial period (even if that CCG has had conditions imposed on it by a direction from the NHS Commissioning Board).
616. [Paragraph 11](#) provides that, during the initial period, a PCT can make arrangements with a CCG under which the CCG carries out functions of the PCT on the PCT's behalf. This will allow CCGs to carry out, on behalf of PCTs, commissioning functions very similar to those for which they are proposed to be responsible for in their own right from April 2013 onwards. These arrangements are intended to support a smooth transition from PCT commissioning to CCGs commissioning. However the legal responsibility for the commissioning will remain with the PCT.
617. [Paragraph 11\(2\)](#) ensures that references in the listed provisions of the NHS Act to the functions of a CCG include any function of a PCT the group is exercising on the PCT's behalf, under arrangements made under [paragraph 11\(1\)](#) during the initial period.
618. [Paragraph 12](#) enables the Secretary of State to make payments to the NHS Commissioning Board towards meeting the expenditure that the NHS Commissioning Board incurs in exercising its functions during the initial period. Such payments may be made at such times and on such terms and conditions that the Secretary of State considers appropriate.
619. [Paragraph 13](#) confers powers on PCTs to provide assistance or support to a CCG during the initial period, including financial assistance, or make available the employees or

*These notes refer to the Health and Social Care Act 2012
(c.7) which received Royal Assent on 27 March 2012*

other resources of the PCT, to such a group. The support may be provided on such terms and conditions, including restrictions on the use of financial support, as the PCT considers appropriate