



Health and Social Care Act 2012

2012 CHAPTER 7

PART 1

THE HEALTH SERVICE IN ENGLAND

Further provision about clinical commissioning groups

25 Clinical commissioning groups: establishment etc.

(1) After Chapter A1 of Part 2 of the National Health Service Act 2006 insert—

“CHAPTER A2

CLINICAL COMMISSIONING GROUPS

Establishment of clinical commissioning groups

14A General duties of Board in relation to clinical commissioning groups

- (1) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day specified by order of the Secretary of State for the purposes of this section each provider of primary medical services is a member of a clinical commissioning group.
- (2) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day so specified the areas specified in the constitutions of clinical commissioning groups—
 - (a) together cover the whole of England, and
 - (b) do not coincide or overlap.
- (3) For the purposes of this Chapter, “provider of primary medical services” means a person who is a party to an arrangement mentioned in subsection (4).

Status: This is the original version (as it was originally enacted).

- (4) The arrangements mentioned in this subsection are—
- (a) a general medical services contract to provide primary medical services of a prescribed description,
 - (b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description,
 - (c) section 92 arrangements for the provision of primary medical services of a prescribed description.
- (5) Where a person who is a provider of primary medical services is a party to more than one arrangement mentioned in subsection (4), the person is to be treated for the purposes of this Chapter as a separate provider of primary medical services in respect of each of those arrangements.
- (6) Where two or more individuals practising in partnership are parties to an arrangement mentioned in subsection (4), the partnership is to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).
- (7) Where two or more individuals are parties to an arrangement mentioned in subsection (4) but are not practising in partnership, those persons collectively are to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

14B Applications for the establishment of clinical commissioning groups

- (1) An application for the establishment of a clinical commissioning group may be made to the Board.
- (2) The application may be made by any two or more persons each of whom—
- (a) is or wishes to be a provider of primary medical services, and
 - (b) wishes to be a member of the clinical commissioning group.
- (3) The application must be accompanied by—
- (a) a copy of the proposed constitution of the clinical commissioning group,
 - (b) the name of the person whom the group wishes the Board to appoint as its accountable officer (as to which see paragraph 12 of Schedule 1A), and
 - (c) such other information as the Board may specify in a document published for the purposes of this section.
- (4) At any time before the Board determines the application—
- (a) a person who is or wishes to be a provider of primary medical services (and wishes to be a member of the clinical commissioning group) may become a party to the application, with the agreement of the Board and the existing applicants;
 - (b) any of the applicants may withdraw.
- (5) At any time before the Board determines the application, the applicants may modify the proposed constitution with the agreement of the Board.
- (6) Part 1 of Schedule 1A makes provision about the constitution of a clinical commissioning group.

Status: This is the original version (as it was originally enacted).

14C Determination of applications

- (1) The Board must grant an application under section 14B if it is satisfied as to the following matters.
- (2) Those matters are—
 - (a) that the constitution complies with the requirements of Part 1 of Schedule 1A and is otherwise appropriate,
 - (b) that each of the members specified in the constitution will be a provider of primary medical services on the date the clinical commissioning group is established,
 - (c) that the area specified in the constitution is appropriate,
 - (d) that it would be appropriate for the Board to appoint, as the accountable officer of the group, the person named by the group under section 14B(3)(b),
 - (e) that the applicants have made appropriate arrangements to ensure that the clinical commissioning group will be able to discharge its functions,
 - (f) that the applicants have made appropriate arrangements to ensure that the group will have a governing body which satisfies any requirements imposed by or under this Act and is otherwise appropriate, and
 - (g) such other matters as may be prescribed.
- (3) Regulations may make provision—
 - (a) as to factors which the Board must or may take into account in deciding whether it is satisfied as to the matters mentioned in subsection (2);
 - (b) as to the procedure for the making and determination of applications under section 14B.

14D Effect of grant of application

- (1) If the Board grants an application under section 14B—
 - (a) a clinical commissioning group is established, and
 - (b) the proposed constitution has effect as the clinical commissioning group's constitution.
- (2) Part 2 of Schedule 1A makes further provision about clinical commissioning groups.

Variation of constitution

14E Applications for variation of constitution

- (1) A clinical commissioning group may apply to the Board to vary its constitution (including doing so by varying its area or its list of members).
- (2) If the Board grants the application, the constitution of the clinical commissioning group has effect subject to the variation.

Status: This is the original version (as it was originally enacted).

- (3) Regulations may make provision—
- (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
 - (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
 - (c) as to the procedure for the making and determination of such applications.

14F Variation of constitution otherwise than on application

- (1) The Board may vary the area specified in the constitution of a clinical commissioning group.
- (2) The Board may—
- (a) add any person who is a provider of primary medical services to the list of members specified in the constitution of a clinical commissioning group;
 - (b) remove any person from such a list.
- (3) The power conferred by subsection (1) or (2) is exercisable if—
- (a) the clinical commissioning group consents to the variation, or
 - (b) the Board considers that the variation is necessary for the purpose of discharging any of its duties under section 14A.
- (4) Before varying the constitution of a clinical commissioning group under subsection (1) or (2), the Board must consult—
- (a) that group, and
 - (b) any other clinical commissioning group that the Board thinks might be affected by the variation.
- (5) Regulations may—
- (a) confer powers on the Board to vary the constitution of a clinical commissioning group;
 - (b) make provision as to the circumstances in which those powers are exercisable and the procedure to be followed before they are exercised.

Mergers, dissolution etc.

14G Mergers

- (1) Two or more clinical commissioning groups may apply to the Board for—
- (a) those groups to be dissolved, and
 - (b) another clinical commissioning group to be established under this section.
- (2) An application under this section must be accompanied by—
- (a) a copy of the proposed constitution of the clinical commissioning group,

Status: This is the original version (as it was originally enacted).

- (b) the name of the person whom the group wishes the Board to appoint as its accountable officer, and
 - (c) such other information as the Board may specify in a document published for the purposes of this section.
- (3) The applicants may, with the agreement of the Board, modify the application or the proposed constitution at any time before the Board determines the application.
- (4) Sections 14C and 14D(1) apply in relation to an application under this section as they apply in relation to an application under section 14B.

14H Dissolution

- (1) A clinical commissioning group may apply to the Board for the group to be dissolved.
- (2) Regulations may make provision—
- (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
 - (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
 - (c) as to the procedure for the making and determination of such applications.

Supplemental provision about applications, variation, mergers etc.

14I Transfers in connection with variation, merger, dissolution etc.

- (1) The Board may make a property transfer scheme or a staff transfer scheme in connection with—
- (a) the variation of the constitution of a clinical commissioning group under section 14E or 14F, or
 - (b) the dissolution of a clinical commissioning group under section 14G or 14H.
- (2) A property transfer scheme is a scheme for the transfer from the clinical commissioning group of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to the Board or another clinical commissioning group.
- (3) A staff transfer scheme is a scheme for the transfer from the clinical commissioning group of any rights or liabilities under or in connection with a contract of employment to the Board or another clinical commissioning group.
- (4) Part 3 of Schedule 1A makes further provision about property transfer schemes and staff transfer schemes.

14J Publication of constitution of clinical commissioning groups

- (1) A clinical commissioning group must publish its constitution.

Status: This is the original version (as it was originally enacted).

- (2) If the constitution of a clinical commissioning group is varied under section 14E or 14F, the group must publish the constitution as so varied.

14K Guidance about the establishment of clinical commissioning groups etc.

The Board may publish guidance as to—

- (a) the making of applications under section 14B for the establishment of a clinical commissioning group, including guidance on the form, content or publication of the proposed constitution;
- (b) the making of applications under section 14E, 14G or 14H;
- (c) the publication of the constitutions of clinical commissioning groups under section 14J.

Governing bodies of clinical commissioning groups

14L Governing bodies of clinical commissioning groups

- (1) A clinical commissioning group must have a governing body.
- (2) The main function of the governing body is to ensure that the group has made appropriate arrangements for ensuring that it complies with—
 - (a) its obligations under section 14Q, and
 - (b) such generally accepted principles of good governance as are relevant to it.
- (3) The governing body also has—
 - (a) the function of determining the remuneration, fees and allowances payable to the employees of the clinical commissioning group or to other persons providing services to it,
 - (b) the function of determining the allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A, and
 - (c) such other functions connected with the exercise of its main function as may be specified in the group’s constitution or by regulations.
- (4) Only the following may be members of the governing body—
 - (a) a member of the group who is an individual;
 - (b) an individual appointed by virtue of regulations under section 14N(2);
 - (c) an individual of a description specified in the constitution of the group.
- (5) Regulations may make provision requiring a clinical commissioning group to obtain the approval of its governing body before exercising any functions specified in the regulations.
- (6) Regulations may make provision requiring governing bodies of clinical commissioning groups to publish, in accordance with the regulations, prescribed information relating to determinations made under subsection (3) (a) or (b).

Status: This is the original version (as it was originally enacted).

- (7) The Board may publish guidance for governing bodies on the exercise of their functions under subsection (3)(a) or (b).

14M Audit and remuneration committees of governing bodies

- (1) The governing body of a clinical commissioning group must have an audit committee and a remuneration committee.
- (2) The audit committee has—
- (a) such functions in relation to the financial duties of the clinical commissioning group as the governing body considers appropriate for the purpose of assisting it in discharging its function under section 14L(2), and
 - (b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.
- (3) The remuneration committee has—
- (a) the function of making recommendations to the governing body as to the discharge of its functions under section 14L(3)(a) and (b), and
 - (b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

14N Regulations as to governing bodies of clinical commissioning groups

- (1) Regulations may make provision specifying the minimum number of members of governing bodies of clinical commissioning groups.
- (2) Regulations may—
- (a) provide that the members of governing bodies must include the accountable officer of the clinical commissioning group;
 - (b) provide that the members of governing bodies, or their audit or remuneration committees, must include—
 - (i) individuals who are health care professionals of a prescribed description;
 - (ii) individuals who are lay persons;
 - (iii) individuals of any other description which is prescribed;
 - (c) in relation to any description of individuals mentioned in regulations by virtue of paragraph (b), specify—
 - (i) the minimum number of individuals of that description who must be appointed;
 - (ii) the maximum number of such individuals who may be appointed;
 - (d) provide that the descriptions specified for the purposes of section 14L(4)(c) may not include prescribed descriptions.
- (3) Regulations may make provision as to—
- (a) qualification and disqualification for membership of governing bodies or their audit or remuneration committees;
 - (b) how members are to be appointed;

Status: This is the original version (as it was originally enacted).

- (c) the tenure of members (including the circumstances in which a member ceases to hold office or may be removed or suspended from office);
 - (d) eligibility for re-appointment.
- (4) Regulations may make provision for the appointment of chairs and deputy chairs of governing bodies or their audit or remuneration committees, including provision as to—
- (a) qualification and disqualification for appointment;
 - (b) tenure of office (including the circumstances in which the chair or deputy chair ceases to hold office or may be removed or suspended from office);
 - (c) eligibility for re-appointment.
- (5) Regulations may—
- (a) make provision as to the matters which must be included in the constitutions of clinical commissioning groups under paragraph 8 of Schedule 1A;
 - (b) make such other provision about the procedure of governing bodies or their audit or remuneration committees as the Secretary of State considers appropriate, including provision about the frequency of meetings.
- (6) In this section—
- “health care professional” means an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;
- “lay person” means an individual who is not—
- (a) a member of the clinical commissioning group,
 - (b) a health care professional, or
 - (c) an individual of a prescribed description.

Conflicts of interest

140 Registers of interests and management of conflicts of interest

- (1) Each clinical commissioning group must maintain one or more registers of the interests of—
- (a) the members of the group,
 - (b) the members of its governing body,
 - (c) the members of its committees or sub-committees or of committees or sub-committees of its governing body, and
 - (d) its employees.
- (2) Each clinical commissioning group must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.
- (3) Each clinical commissioning group must make arrangements to ensure—

Status: This is the original version (as it was originally enacted).

- (a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the group,
 - (b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days, and
 - (c) that any such declaration is included in the registers maintained under subsection (1).
 - (4) Each clinical commissioning group must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making processes.
 - (5) The Board must publish guidance for clinical commissioning groups on the discharge of their functions under this section.
 - (6) Each clinical commissioning group must have regard to guidance published under subsection (5).
 - (7) For the purposes of this section, the commissioning functions of a clinical commissioning group are the functions of the group in arranging for the provision of services as part of the health service."
- (2) After Schedule 1 to the National Health Service Act 2006 insert the Schedule set out in Schedule 2 to this Act.