EXPLANATORY MEMORANDUM TO

THE HEALTH AND CARE ACT 2022 (FURTHER CONSEQUENTIAL AMENDMENTS) REGULATIONS 2024

2024 No. 1205

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Minister Karin Smyth at DHSC confirms that this Explanatory Memorandum meets the required standard.

2.2 Samantha Boyd, Deputy Director for Systems, Integration and Reform, at DHSC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Naveed Khan at DHSC (email: naveed.khan@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and Context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Statutory Instrument (SI) amends various legislation as a consequence of the Health and Care Act 2022 ("the 2022 Act") relating to:

- Disqualification of certain individuals from holding certain health service body roles;
- Further establishment order amendments;
- Transitional provisions relating to independent audit panel appointment; and
- Parity between NHS trusts and foundation trusts in the requirement to hold a licence.

4.2 With the exception of regulation 25, the regulations contain amendments to reflect the abolition of clinical commissioning groups (CCGs) and the establishment of integrated care boards (ICBs). Regulation 25 makes an amendment consequential to the requirement for NHS trusts to hold a licence.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Northern Ireland.

5. Policy Context

What is being done and why?

Provisions consequential on the establishment of integrated care boards and the abolition of clinical commissioning groups

5.1 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. Amendments to secondary legislation will be made by this instrument to reflect the abolition of CCGs and establishment of ICBs.

5.2 Previous instruments have treated CCGs separately from the general treatment of a "health service body" due to their unique membership and configuration. CCGs were formed of a wider membership than ICBs and had a separate governing body. The amendments therefore do not simply substitute CCGs for ICBs. Where reference to CCGs is retained, they remain relevant either for a finite or indefinite period.

Provisions relating to disqualification of certain individuals from certain health service body roles

5.3 Regulations 2, 4-18 and 20-24 amend disqualification provisions to confirm that certain persons who have previously been removed from either CCG or ICB employment cannot be appointed to certain health service body roles.

Provisions updating the Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015

5.4 The instrument includes transitional provisions relating to the continuing relevance of former CCG roles to the meaning of "independent" for the purposes of auditor panel appointment. In deciding whether a prospective member would qualify as independent, the governing board must consider the person's current and previous relationship with the ICB, and its predecessor CCG, over a prescribed period.

Amendment of the National Health Service (Licence Exemptions, etc.) Regulations 2013

5.5 Section 51(1) of the 2022 Act omitted regulation 4 of the National Health Service (Licence Exemptions, etc.) Regulations 2013 ("the 2013 regulations"), removing the NHS trust licence exemption. Regulation 3 of the 2013 regulations provides that, insofar as they could apply, none of the exemptions provided for in the regulations applies to NHS foundation trusts. This instrument amends regulation 3 to clarify that, insofar as they could apply, the exemptions in the regulations also do not apply to NHS trusts, consequential on the amendment in section 51(1).

What was the previous policy, how is this different?

5.6 CCGs were GP-led commissioning groups and were responsible for commissioning services for a smaller geographical footprint and population. ICBs replaced CCGs to promote integration of services and bring stakeholders from primary care, NHS trusts/ NHS foundation trusts and local authorities together to jointly commission health services to meet the need of their population on a much bigger geographical footprint compared to CCGs.

5.7 Most of the secondary legislation amended by this instrument predates the establishment of ICBs and therefore did not refer to them. This instrument updates the legislation to incorporate the new ICB structure while retaining reference to CCGs where necessary. The instrument also includes a consequential amendment to clarify the parity between NHS foundation trusts and NHS trusts in relation to the requirement to hold a licence, which has been in place since section 51(1) of the 2022 Act came into force.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 19 of the 2022 Act amended the National Health Service Act 2006 ("the 2006 Act"). Under new section 14Z26 of the 2006 Act, CCGs responsible for commissioning some of the health services in England were abolished. These were replaced by ICBs which have been established under section 14Z25 of the 2006 Act.

6.2 Section 182(1) of the 2022 Act allows the Secretary of State to make provision by regulations consequential on that Act. Section 183(1)(a) provides that these regulations may include transitional provisions.

Why was this approach taken to change the law?

6.3 It has been necessary to amend secondary legislation to give effect to the 2022 Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 DHSC consulted NHS England and devolved administrations in Wales and Northern Ireland about implementing the changes made by the 2022 Act. This instrument incorporates their feedback.

8. Applicable Guidance

8.1 There is no requirement to provide guidance on the implementation of these legislative changes.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it introduces amendments consequential on the 2022 Act. Therefore, DHSC relies on the impact assessment produced for the 2022 Act, which is available at:

https://www.gov.uk/government/publications/health-and-care-act-2022-combined-impact-assessments.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument only makes consequential and transitional amendments that arose as a consequence of the 2022 Act.

9.3 The legislation does not impact small or micro businesses.

9.4 There will be some impact on the public sector because this instrument introduces amendments that are consequential on the 2022 Act. DHSC relies on the impact assessment produced for the 2022 Act referenced at 9.1 above.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 No specific monitoring or review will be mandated.

10.2 The instrument does not include a statutory review clause because this instrument introduces amendments that are consequential on the 2022 Act and does not apply to activities undertaken by small businesses. In the circumstances, it is not appropriate to make provision for review under section 28 of the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The free issue procedure applies because The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I .2022/634) removed reference to CCGs from the Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015. However, prospective audit panel member involvement with CCGs remains relevant to the independence of an audit panel on a transitional basis. This instrument rectifies this error. The Statutory Instrument Registrar has been informed and the publishing contractor will automatically distribute print copies of the new statutory instrument to those customers who previously purchased S.I. 2022/634. Seven free copies will be issued in total.

12. European Convention on Human Rights

12.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, a statement is not required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 and does not interact with any of the above stated legislation.