STATUTORY INSTRUMENTS

2022 No. 591

NATIONAL HEALTH SERVICE, ENGLAND

The Integrated Care Boards (Nomination of Ordinary Members) Regulations 2022

Made - - - -	*26th May 2022*
Laid before Parliament	*27th May 2022*
Coming into force - -	*1st July 2022*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 272(7) and (8) of, and paragraph 8(2)(a)(ii) and (b)(ii) of Schedule 1B to, the National Health Service Act 2006(**a**).

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Integrated Care Boards (Nomination of Ordinary Members) Regulations 2022.

(2) These Regulations come into force on 1st July 2022.

(3) These Regulations extend to England and Wales, but apply only in relation to England.

Interpretation

2.—(1) In these Regulations—

"the NHS Act 2006" means the National Health Service Act 2006;

"ICB" means integrated care board(**b**);

"initial area" has the meaning given by section 14Z26 of the NHS Act 2006 (process for establishing initial integrated care boards);

"initial ICB" means the first ICB to be established for an initial area;

"relevant trust" means an NHS trust or NHS foundation trust.

(2) For the purposes of these Regulations, an ICB's "patient group" is the group of people for whom the ICB has responsibility for the purposes of section 3 or 3A (or both) of the NHS Act 2006(**c**).

(**a**) 2006 c. 41. There are amendments to section 272 which are not relevant to these Regulations. Schedule 1B was inserted by Schedule 2 to the Health and Care Act 2022 (c. 31) ("the 2022 Act"). For the definition of "prescribed" see section 275 of the National Health Service Act 2006 ("the NHS Act 2006").

(**b**) Integrated care boards are to be established by NHS England, by order, under section 14Z25 of the NHS Act 2006. That section, together with the remaining provisions of Chapter A3 (integrated care boards) of Part 2 of the NHS Act 2006, was inserted by section 19(2) of the 2022 Act.

(**c**) Sections 3 and 3A were substituted by section 21 of the 2022 Act.

NHS trusts and NHS foundation trusts that may nominate ordinary members of an integrated care board

3.—(1) A relevant trust is of a description prescribed for the purposes of paragraph 8(2)(a)(ii) of Schedule 1B to the NHS Act 2006 in relation to an ICB if the relevant trust—

(a) meets the forward plan condition (see paragraph (2)), or

(b) if it does not meet that condition, meets the level of services provided condition (see paragraph (6)).

The forward plan condition

(2) A relevant trust meets the forward plan condition if the ICB is satisfied that the provision of services to the ICB's patient group by, or pursuant to arrangements made by, the trust is essential for the purposes of enabling the ICB to exercise its functions in the next five years, including in particular the discharge of the ICB's functions under any or all of the following provisions of the NHS Act 2006(**a**)—

(a) section 14Z34 (duty as to improvement in quality of services);

(b) section 14Z35 (duties as to reducing inequalities);

(c) section 14Z39 (duty to promote innovation);

(d) section 14Z40 (duty in respect of research);

(e) section 14Z41 (duty to promote education and training);

(f) section 14Z42 (duty to promote integration);

(g) section 14Z43 (duty to have regard to wider effect of decisions);

(h) section 14Z44 (duties as to climate change etc.);

(i) sections 223GB to 223N (financial duties).

(3) In making a decision for the purposes of paragraph (2), the ICB must, in particular, have regard to—

(a) the nature of the services provided by, or pursuant to arrangements made by, the relevant trust to the ICB's patient group,

(b) the volume of services provided by, or pursuant to arrangements made by, the relevant trust to the ICB's patient group, including whether the relevant trust is the sole, or main provider, of those services to the ICB's patient group, and

(c) the nature of any hospitals, establishments or facilities of, or managed pursuant to arrangements made by, the relevant trust at which services are provided to the ICB's patient group.

(4) For the purposes of any nominations to be made under paragraph 8(2)(a) of Schedule 1B to the NHS Act 2006 for an initial ICB—

(a) the requirement in paragraph (2) for the ICB to be satisfied of the matters described in that paragraph is to be read as a requirement for the relevant persons to be so satisfied;

(b) in paragraph (3) in the words before sub-paragraph (a), the reference to the ICB is to be read as a reference to the relevant persons.

(5) For the purposes of paragraph (4) "the relevant persons" means the following persons acting jointly—

(a) the relevant clinical commissioning group or groups (within the meaning of section 14Z26 of the NHS Act 2006) for the initial area,

(b) the person ("the chair designate") who NHS England intends to appoint, subject to approval by the Secretary of State, as chair of the initial ICB, and

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(**a**) Sections 14Z34 to 14Z44 were inserted by section 25(2) of the 2022 Act. Sections 223GB to 223GD were inserted by section 29(3) of the 2022 Act. Sections 223L to 223N were inserted by section 29(4) of the 2022 Act.

(c) the person who the chair designate intends to appoint, subject to approval by NHS England, as chief executive of the initial ICB.

The level of services provided condition

(6) A relevant trust meets the level of services provided condition if the trust's in-scope income in the relevant financial year from the provision of local services to the ICB's patient group exceeds the trust's in-scope income in that financial year from the provision of local services to the patient group of any other ICB.

(7) For the purposes of paragraph (6)—

(a) "local services" means services for the purposes of the health service which are, or were, provided under, or for the purposes of, arrangements made with an NHS trust or an NHS foundation trust—

(i) before 1st July 2022, by a clinical commissioning group in exercise of its functions under section 3 or 3A of the NHS Act 2006, or

(ii) on or after that date, by an ICB in exercise of its functions under section 3 or 3A of that Act;

(b) a relevant trust's in-scope income in a relevant financial year from the provision of local services to an ICB's patient group is G – E where—

(i) "G" is the trust's gross income for that financial year from the provision of local services to that patient group, and

(ii) "E" is the total expenditure (if any) by the trust on the provision, in respect of that financial year, of local services to that patient group on behalf of the trust by any other NHS trust or NHS foundation trust;

(c) the relevant financial year is the financial year immediately preceding the financial year in which the nomination of an ordinary member is made.

(8) For the purposes of any nomination to be made under paragraph 8(2)(a) of Schedule 1B to the NHS Act 2006 in a financial year(**a**) beginning before 1st April 2024, any reference in paragraphs (6) and (7) to an ICB's patient group is to be read as a reference to the people in respect of whom the relevant clinical commissioning group or groups (within the meaning given in section 14Z26 of the NHS Act 2006) for the initial area had responsibility for the purposes of section 3 or 3A (or both) of the NHS Act 2006, as those sections had effect immediately before 1st July 2022.

(9) For the purposes of any nomination to be made under paragraph 8(2)(a) of Schedule 1B to the NHS Act 2006 for an initial ICB, the relevant financial year for the purposes of paragraph (6) is the financial year which ended immediately before 1st April 2021.

Providers of primary medical services who may nominate ordinary members of an ICB

4. A person ("P") who provides primary medical services for the purposes of the health service within an ICB's area is of a description prescribed for the purposes of paragraph 8(2)(b)(ii) of Schedule 1B to the NHS Act 2006 in relation to that ICB if P—

(a) is a person other than an NHS Trust or NHS foundation trust, and

(b) provides any NHS primary medical services (within the meaning of section 14Z31(5) of the NHS Act 2006 (people for whom integrated care board has core responsibility)(**b**)) to the group of people for whom the ICB has core responsibility.

Edward Argar
Minister of State,
Department of Health and Social Care

26th May 2022

(**a**) "Financial year" is defined in section 275 of the NHS Act 2006.
(**b**) Section 14Z31 was inserted by section 20(2) of the 2022 Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The National Health Service Act 2006 ("the NHS Act 2006"), provides for the establishment of integrated care boards ("ICBs") to take over the commissioning functions of clinical commissioning groups.

Schedule 1B to the NHS Act 2006 (which was inserted by the Health and Care Act 2022 (c. 31)) makes provision for the constitution of ICBs, including the persons who may nominate the ordinary members of the ICBs. The persons who may nominate such ordinary members include NHS trusts and NHS foundation trusts that provide services for the purposes of the health service within the area of an integrated care board ("relevant trusts") and which are of a prescribed description, and providers of primary medical services who provide such services for the purposes of the health service within that area ("relevant providers") and who are of a prescribed description.

These Regulations set out the prescribed descriptions of NHS trusts, NHS foundation trusts and providers of primary medical services.

A relevant trust is of a prescribed description in relation to an ICB if—

(a) the relevant ICB considers that the trust is essential to the forward planning of the provision of services for the purposes of the health service to the group of people for whom the ICB has responsibility under section 3 or 3A (or both) of the NHS Act 2006, or

(b) if the relevant trust does not meet that condition, the trust mostly, by reference to its income, provides services for the purposes of the health service to that group of people.

Transitional provision is made in respect of the nominations to be made for the first ICBs to be established and the calculation of income for the purposes of the condition mentioned above.

A relevant provider is of a prescribed description in relation to an ICB if any of the services which the provider provides within the ICB's area are NHS primary medical services and provided to the group of people for whom the ICB has core responsibility for the purposes of the NHS Act 2006 (see section 14Z31(5) of that Act which defines "NHS primary medical services" as primary medical services of a prescribed description provided pursuant to a general medical services contract or arrangements made under section 83 or 92 of that Act).

An impact assessment has been prepared in relation to the Health and Care Act 2022. A copy of the impact assessment is available on https://www.gov.uk/government/publications/health-and-care-bill-combined-impact-assessments. A hard copy can be obtained by writing to the Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU.

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