EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (INTEGRATED CARE BOARDS: DESCRIPTION OF NHS PRIMARY MEDICAL SERVICES) REGULATIONS 2022

2022 No. 636

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 Her Majesty.

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to prescribe the description of primary medical services for the purposes of the definition of "NHS primary medical services" in section 14Z31[1] of the National Health Service Act 2006 ("the 2006 Act"). This description is relevant in determining the groups of people for whom integrated care boards ("ICBs") will have core responsibility, namely responsibility for making arrangements for the provision of secondary care services for people in such groups (see sections 6 and 7 below for details on ICBs and core responsibility).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 DHSC relies on section 13 of the Interpretation Act 1978 in relation to section 20 of the Health and Care Act 2022 ("the 2022 Act"). As discussed in more detail below, section 20 of the 2022 Act will insert a new section 14Z31 into the 2006 Act, and sub-section (5) of section 14Z31 gives the power to make this instrument.

3.2 Other amendments made by section 20 of the 2022 Act will set out, in conjunction with the provision made by this instrument, the complete legislative framework relating to the commissioning responsibilities of ICBs in England to arrange for the provision of certain health care services and facilities to persons for whom they are responsible for. DHSC considers that it is expedient to rely on section 13 of the Interpretation Act 1978 in relation to section 20 of the 2022 Act because it considers it desirable for reasons of clarity and certainty that the whole regime comes into force at the same time. As further explained below, this instrument seeks to align ICBs' commissioning responsibilities with its predecessor clinical commissioning groups ("CCGs"). DHSC intends to commence section 20 of the 2022 Act to coincide with the coming into force of this instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

[1] Section 14Z31 is inserted into the National Health Service Act 2006 by section 20 of the Health and Care Act 2022.

5. European Convention on Human Rights

5.1 As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument sets out the description of primary medical services for the purposes of the definition of "NHS primary medical services" in section 14Z31 of the 2006 Act 2006 which has been inserted by section 20 of the Health and Care Act 2022 ("the 2022 Act"). This definition is relevant for determining persons for whom an ICB is to have core responsibility for arranging certain secondary care services. ICBs are new statutory bodies established under section 14Z25[2] of the 2006 Act. ICBs replace CCGs which were the bodies previously responsible for commissioning secondary care services in England. CCGs will be abolished on the date this instrument comes into force.

6.2 Section 14Z31(1) requires NHS England to publish rules for determining the groups of people for whom each ICB is to have core responsibility, namely responsibility for arranging certain secondary care services and facilities. This includes responsibility for arranging hospital accommodation and dental, ophthalmic, ambulance and nursing services.

6.3 Section 14Z31(2) states that NHS England's rules on core responsibility must ensure that every person who is provided with NHS primary medical services and any other person who is not being provided with such services but who is usually resident in England, is a person for whom ICBs have core responsibility. Exceptions to this may only be made by regulations under section 14Z31(3) of the 2006 Act.

6.4 Section 14Z31(5) of the 2006 Act requires regulations to specify the description of the primary medical services that fall within the meaning of "NHS primary medical services" in section 14Z31. This instrument prescribes the description of primary medical services which consists of the essential primary medical services provided by GPs during what are referred to as "core hours" during which GPs are required, under NHS contracts for such services, to provide such services. This is usually between 8 a.m. to 6.30 p.m. from Monday to Friday (but may be different under certain circumstances).

7. Policy background

What is being done and why?

7.1 The 2022 Act puts in place some reforms to the NHS and its structures. This includes the way in which, and by whom, NHS services are to be commissioned and seeks to put on a statutory footing more integrated ways in which commissioners and providers of NHS services are able to work together in order to improve the quality and outcomes for patients of healthcare provided by the NHS in England.

7.2 One of the key changes under the 2022 Act is the creation of new statutory bodies known as ICBs which are to replace CCGs as the main commissioners of secondary care services. CCGs will be abolished on the date these regulations come into force.

[2] Section 14Z25 is inserted into the National Health Service Act 2006 by section 19 of the Health and Care Act 2022.

7.3 The creation of ICBs entails considerable amendments to the 2006 Act and secondary legislation made under it. New secondary legislation, including this instrument, has also been made to reflect the replacement of CCGs by ICBs and to provide some continuity in terms of the ongoing arrangements for commissioning NHS services in England.

7.4 This instrument is required for the purposes of determining persons within an ICB's area for whom the ICB will have core responsibility. ICBs must or, in some instances, may arrange the provision of NHS secondary care services for those for whom they have such core responsibility.

7.5 CCGs were formerly responsible for providing certain secondary care services to persons who are provided with primary medical services by a member of the CCG, and persons who usually reside in the CCG's area and are not otherwise provided with primary medical services by a member of a CCG. Membership of CCGs were restricted to GP practices who provided primary medical services as described in regulations made under section 14A(4) of the 2006 Act[3] which is set out in regulation 2 of the National Health Service (Clinical Commissioning Groups) Regulations 2012/1631. This regulation prescribed the description of primary medical services as essential primary medical services to registered patients during core hours. This instrument seeks to align the definition of "NHS primary medical services" with the prescribed description of "primary medical services" for CCG membership, to ensure that NHS England's rules on the core responsibility of ICBs must cover the same group of people as were covered by the previous regulations describing the people for whom CCGs were to be responsible (see paragraph 6.4 above).

7.6 As with CCGs, ICBs will also have additional responsibilities placed on them (namely responsibility for arranging NHS services for certain people for whom an ICB does not have core responsibility) which are set out in the National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022 which are also to come into force on the same date as this instrument.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not amend or consolidate any other instruments.

10. Consultation outcome

10.1 There is no duty to consult on the policy underpinning this instrument and no consultation has been carried as the instrument mirrors the former position with CCGs in relation to how commissioning responsibility for ICBs is determined.

11. Guidance

11.1 NHS England will publish an updated "Who Pays?" document (which should be available at the time this instrument comes into force) which will serve a number of functions; it will provide guidance on the position under the 2022 Act on the

[3]Section 14A(4) has been omitted from the National Health Service Act 2006 by paragraph 100 Schedule 4 of the Health and Care Act 2022.

responsibilities for commissioning and for paying for NHS services, it will specify situations where responsibility for payment differs from that for commissioning and it will set the rules for determining the group of people for whom each ICB has core responsibility.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector as we are seeking to bring ICBs' commissioning responsibilities in line with the commissioning responsibilities of their predecessor CCGs for persons who are provided with NHS primary medical services in their area or for persons not provided with NHS primary medical services in their area but is usually resident there.

12.3 A full Impact Assessment has not been prepared for this instrument because this instrument reflects the commissioning responsibilities of CCGs which will, from the date this instrument comes into force, be core responsibilities of the newly created ICBs.

12.4 A full Impact Assessment has been produced in relation to the provisions of the Health and Care Act 2022 and a copy is available at: https://www.gov.uk/government/publications/health-and-care-bill-combined-impact-assessments

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 No specific monitoring or review will be undertaken, beyond that which is already undertaken as part of DHSC's routine data collection.

14.2 The instrument does not include a statutory review clause because this instrument brings ICBs' commissioning responsibilities in line with the position of their predecessor CCGs in relation to how commissioning responsibility for ICBs is determined.

15. Contact

15.1 Tarlochan Grewal at the Department of Health and Social Care (telephone: 02079721542; email: tarlochan.grewal@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Naveed Khan at the Department of Health and Social Care (telephone: 01132546104; email: Naveed.khan@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.3 Philippa Baker, Deputy Director, Legislation Programme Team, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.4 Edward Argar MP, the Minister of State for Health at the Department of Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.