NHS England

Procedures for clinical commissioning groups to apply for constitution change, merger or dissolution

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1 Introduction

1. This document supersedes *Procedures for clinical commissioning group constitution change, merger or dissolution* published in October 2015, and should be used by Clinical Commissioning Groups (CCGs) and NHS England in the circumstances of a CCG wishing to apply to NHS England to make changes to its constitution or to dissolve two or more CCGs wishing to apply to merge.

2. The procedures in this guidance set out the application processes to be followed by CCGs and NHS England in considering the request.

3. This guidance sets out NHS England's procedure and how it is underpinned by the requirements of the National Health Service Act 2006 (as amended) ("the NHS Act 2006") and by relevant regulations.

4. Under the NHS Act 2006, NHS England has powers to make transfers of property and staff in connection with variation, merger, or dissolution. The use of these powers is included in the scope of these procedures.

5. NHS England has separate powers which allow it to vary a CCG's area or membership without an application from the CCG. The application of this power is out of scope of the procedures outlined in this guidance. In all cases CCGs considering changes to constitutions under these procedures are advised to discuss their applications with NHS England at an early stage.

2 Equality statement

6. NHS England has a duty to have regard to the need to reduce health inequalities in access to health services and health outcomes achieved as enshrined in the NHS Act 2006. NHS England is committed to ensuring equality of access and non-discrimination, irrespective of age, gender, disability (including learning disability), gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation.

7. In carrying out its functions, NHS England will have due regard to the different needs of protected equality groups, in line with the Equality Act 2010. This document is compliant with the NHS Constitution and the Human Rights Act 1998. This applies to all activities for which they are responsible, including policy development, review and implementation.

3 Procedure to agree a change to a CCG constitution

3.1 Background

8. Every CCG must have a constitution. This is a key document for each CCG that sets out various matters including the arrangements that it has made to discharge its functions and those of its governing body; its key processes for decision

making, (including arrangements for ensuring openness and transparency in the decision making of the CCG and its governing body) and arrangements for managing conflicts of interest.

9. NHS England must be satisfied that the constitution complies with the particular requirements of the NHS Act 2006 and is otherwise appropriate.

10. Section 14D of the NHS Act 2006 provides that where NHS England grants an application for establishment, a CCG is established and the proposed constitution approved under the application process has effect as the CCG's constitution. This means that it is the constitution assessed as part of CCG authorisation that is the constitution on which establishment is based. Any change to the constitution used at authorisation needs to be agreed with NHS England.

11. Section 14E of the NHS Act 2006 provides for applications for variation of constitutions. Under section 14E, a CCG may apply to NHS England to vary its constitution (including doing so by varying its area or its list of members). If NHS England grants the application, the variation to the constitution will come into effect.

12. Under section 14J, a CCG must publish its constitution. If the constitution is varied, whether on the request of the CCG or under the powers of NHS England, the CCG must publish the revised constitution. This should be done as soon as is reasonably practical after the CCG receives the relevant approval or decision from NHS England. No requested changes to the constitution can be acted upon until formal approval has been received.

13. NHS England regional teams should be notified of any significant changes, for example, to the leadership of a governing body. Where CCGs are wishing to make significant changes, such as a replacement of the chair of the governing body, any new member, should be subject to a selection process of equivalent rigor as the original member. This will ensure that the new member has the capability to fulfil the role.

14. Section 14A(1) of the NHS Act 2006 requires each provider of primary medical services to be a member of a CCG. As new models of care are developed CCGs should therefore ensure that their membership reflects this and that any amendments this requires to their constitution are made.

15. Proposals for joint and delegated commissioning arrangements will require an amendment to a CCG's constitution. The document 'Next steps towards primary care co-commissioning' provides a suggested form of words for joint commissioning constitutional amendments at Annex C,[1] which can be tailored to individual circumstances. CCGs taking on delegated commissioning will need to establish a committee to manage the delegated functions and to exercise the delegated powers.[2]

[1] http://www.england.nhs.uk/commissioning/pc-co-comms/resources/
[2] In the CCG Model Constitution, amendments are required to sections 6.4.1.a. and 6.6.3.c.

3.2 Application process to be adopted

16. Other than in the circumstances set out in section 15 below, NHS England will consider applications for the variation of constitutions throughout the year. Submissions should be discussed with relevant regional leads, usually the Director of Commissioning Operations (DCO), in advance of submission. The DCO will advise the correct route for submissions in that region.

17. Any application for variation which will change a CCG's boundary or its list of members must be made by 30 June so that the change can be reflected in the allocations for the following financial year. Any boundary change will take effect from 1st April of the following year.

18. Applications requiring boundary changes should list the Lower Super Output Areas (LSOA) codes, and for any proposed practice moves the application should include relevant practice codes. In addition applications should also provide the regional team with a map of proposed changes to ensure that the area remains appropriate.

19. The application should come from the CCG and changes to the constitution made in tracked changes for ease of review by local teams. The application should already have been discussed and agreed with CCG member practices and stakeholders should have already been consulted at the point of submission of the application.

20. The application should consist of:
    - the reason why a variation is being sought;
    - the proposed varied constitution with the amended clauses clearly signposted;
    - assurance that member practices have agreed to the proposed change(s);
    - assurance that stakeholders have been consulted if required;
    - a self-certification by the Chair or Accountable Officer, on behalf of the CCG, that the revised constitution continues to meet the requirements of the NHS Act 2006;
    - assurance that the CCG has considered the need for legal advice on the implications of the proposed changes, including whether advice has been sought; and
    - a complete impact assessment of the changes, which should cover as a minimum the factors required to be considered by NHS England set out below.

21. A checklist of requirements for constitution changes can be found at Annex 1. A list of legal requirements for a CCG constitution can be found at Annex 2.

22. NHS England may seek clarification or additional information during the period when it is considering applications.

3.3 Consideration by NHS England of the proposed variation

23. The NHS Act 2006 and the National Health Service (Clinical Commissioning Groups) Regulations 2012 (the Regulations)[3] set out the factors which NHS England must consider when considering an application under this procedure. They are:
    - that the constitution meets the requirements of legislation and is otherwise appropriate;
    - that each of the members of the CCG is a provider of primary medical services;
    - that the area is appropriate (i.e. that there are no overlapping CCGs and no gaps);
    - that the proposed Accountable Officer is appropriate;
    - that the CCG has made appropriate arrangements to ensure it is able to discharge its functions;
    - that it has made arrangements to ensure that its governing body is correctly constituted and otherwise appropriate;
    - the likely impact of the requested variation on the persons for whom the CCG has responsibility – so the registered and resident population of the CCG;
    - the likely impact on financial allocations of the CCG and any other CCG affected for the financial year in which the variation would take effect;
    - the likely impact on NHS England's functions;
    - the extent to which the CCG has sought the views of the following, what those views are, and how the CCG has taken them into account:
        - any unitary local authority and/or upper tier county council whose area covers the whole or any part of the CCG's area;
        - any other CCG which would be affected; and
        - any other person or body which in the CCG's view might be affected by the variation requested.
    - the extent to which the CCG has sought the views of patients and the public; what those views are; and how the CCG has taken them into account; and
    - how often the CCG has applied for variations of the kind requested.

24. In addition to these factors, NHS England will also consider the fit with CCG Sustainability and Transformational Plans (STPs), and performance against the domains within the CCG Improvement and Assessment Framework (CCGIAF).

25. It is for the CCG to determine what information, in addition to the requirements set out in the previous section, should be submitted to help NHS England make a decision. NHS England is able to ask for clarification or additional information it may require at any stage. Additionally NHS England is able to consider any other material in making its decision which it considers relevant, not just the material submitted by the CCG. At all stages the procedure will involve communication between NHS England and the CCG.

[3] http://www.legislation.gov.uk/uksi/2012/1631/contents/made

26. NHS England will acknowledge all applications for variations within two weeks of receipt and will notify the CCG in writing of the outcome of its decision within eight weeks.

27. If NHS England thinks that its statutory duties in relation to CCGs make it preferable for it to do so, it may:
    - where granting the application would have a significant impact on allotments to the CCG in question or other CCGs, defer determination of the application until the later of the end of the financial year in which it was received and the date six months after it was received; or
    - defer determination until it has received all related applications for establishment or variation from other CCGs.

28. There is no appeal or review process to NHS England's decision.

4 Procedure to agree a CCG merger

4.1 Background

29. CCGs have a legal right to apply for a merger and there are specific legal factors that NHS England must consider when deciding whether or not to agree the merger. There are provisions under section 14G of the NHS Act 2006 (as amended) allowing for mergers of CCGs.

30. The process to merge two or more CCGs will require the commitment and leadership of CCGs' governing bodies. Mergers should only be considered when there are demonstrable benefits to patients from the proposal, and the management of the merger will not be detrimental to the performance of the individual CCGs throughout the process.

31. NHS England expects that this approach will not lead to lots of mergers or create wide scale re-organisation. Instead it provides those CCGs who have been thinking about different ways of working across boundaries the opportunity to merge where this is considered appropriate.

32. Consistent with the 2006 Act and the Regulations,[4] NHS England will take into account the following five factors:
    - Coterminosity with local authorities: there is a presumption in favour of CCGs being coterminous with one or more upper-tier or unitary local authorities. If it is not, and a local authority objects, NHS England must consider both the views of the local authority and of the proposed CCG.
    - Clinically-led: the new CCG should demonstrate that it will remain a clinically-led organisation, and that members of the new CCG will participate in decision- making in the new CCG.
    - Financial management: NHS England will consider whether the new CCG will have financial arrangements and controls for proper stewardship and accountability for public funds.

[4] http://www.legislation.gov.uk/uksi/2012/1631/schedule/1/made

- Arrangements with other CCGs: the new CCG will have appropriate arrangements with others, for example lead commissioning arrangements.
- Commissioning support: NHS England can take into account whether the new CCG has good arrangements for commissioning support services.

33. In addition, NHS England will also consider whether merger proposals demonstrate the following six factors, which NHS England considers are relevant to one or more of the matters set out in section 14C(2) of the NHS Act 20016:
    - Strategic purpose: to provide a more logical footprint for delivery of the local STP.
    - Prior progress: the relevant CCGs must have already demonstrated progress in systematically implementing shared functions; and there is evidence of a willingness to work together. Ideally, we want mergers to be a natural next step rather than a major organisational upheaval. Where no formal joint working is already in place, we would want the CCGs to demonstrate how they will implement the change simply and quickly, without the merger distracting both organisations from the more important task of implementing the Forward View, achieving financial balance and delivering core performance standards.
    - Leadership support: the merger proposal enjoys the support of the STP leadership; the support of constituent CCG governing bodies; or it forms a necessary part of an agreed turnaround plan for a CCG under directions.
    - Future-proofed: the merger proposal provides the right footprint for oversight of likely local multispecialty community providers (MCPs) and primary and acute care systems (PACS) and to have the right critical mass to discharge the new, more strategic commissioning function. This also includes looking at alignment with existing or likely devolution arrangements.
    - Ability to engage with local communities: we would want assurance that the move to a larger geographical footprint is not at the expense the new CCG's ability to engage with GPs and local communities at locality level.
    - Optimising use of administrative resources: the merger should show how 20% in ongoing running costs will be released to supporting local system transformation, including how the changes are commissioned.

4.2 Application process to be adopted

34. For administrative simplicity, a merger will normally be enacted from the start of a new financial year. Formal applications should normally be made in writing by no later than 31 July of the year preceding the intended merger date. As an exception to the 31 July rule, NHS England does not rule out a very limited number of potential mergers occurring in time for 2017/18.

35. Should CCGs be contemplating formal merger, or sharing of management across individual CCGs, NHS England strongly encourages CCGs to engage at the earliest possible opportunity with the relevant NHS England DCO, prior to the formal application from the CCGs. NHS England will work with CCGs to help support essential change, and also minimise the risk of unnecessary work.

36. NHS England expects that where informal sharing of functions between neighbouring CCGs is taking place, DCO teams will be fully aware and supportive of these agreements. CCGs will still be required to obtain NHS England's approval for any agreement that requires a change in their constitution, or sharing of leadership team, for example of an Accountable Officer, which requires NHS England agreement.

37. A single application should be made in writing from all the relevant CCGs, to the NHS England Regional Director. The application must set out how it meets all the eleven tests in paragraphs 32 and 33. This means therefore that it needs to have been discussed and ideally agreed with CCG member practices and considered by local stakeholders including the local authority and local Healthwatch.

38. NHS England's Commissioning Committee will approve the final decision on merger proposals, based on recommendations from the executive board, coordinated by the National Director of Operations and Information.

5 Procedure to dissolve a CCG

5.1 Background

39. Section 14H of NHS Act 2006, provides that a CCG may apply to NHS England for the group to be dissolved and for its members to join other CCGs.

40. Key factors set out in the Regulations that NHS England must consider in relation to an application for dissolution are:
    - the impact on the local population served by the dissolving CCG of proceeding with a dissolution;
    - the financial implications of dissolution to both the CCG in question and other affected CCGs;
    - the impact on NHS England's functions; and
    - the stakeholder engagement the CCG has undertaken and how the CCG has taken the views of stakeholders into account.

5.2 Application process to be adopted

41. NHS England will consider applications for CCG dissolutions at any time in the year. This is because it needs to ensure that the entire population is covered by a functioning CCG at all times. Submissions should be made to the relevant Regional Director of Commissioning Operations.

42. The application should come from the CCG wishing to dissolve. The application should already have been discussed and agreed with CCG member practices and stakeholders, including those neighbouring CCGs which will be affected by the dissolution, should have already been consulted at the point of submission of the application.

43. Applications under section 14H must be accompanied by the following:

- assurance that all member practices of the CCG have plans in place to join other CCGs;
- confirmation that those other CCGs have been consulted and are content with the proposals for new members; and
- assurance that other stakeholders have been consulted.

44. CCGs receiving new practices as a result of a CCG dissolution should apply to vary their constitutions in tandem with the application for dissolution and to an agreed common timescale.

5.3 Consideration by NHS England of the proposed dissolution

45. Regulation 9 applies to applications to dissolve a CCG. Schedule 3 to the Regulations sets out the factors to be taken into account. NHS England may also take into account any other information which it deems relevant. The factors that must be considered are as follows:
    - the likely impact of the dissolution on population and patients of the CCG;
    - the likely impact of the dissolution on financial allocations;
    - the likely impact of the dissolution on NHS England's functions;
    - the extent to which the CCG to be dissolved has sought the views of the following, what those views are, and how the CCG has taken them into account:
        - unitary local authorities and upper tier county councils (within the meaning of paragraph 1 (2) of Schedule 1) whose area coincides with, or includes the whole or any part of, the area specified in the CCG's constitution;
        - any other CCG which in the CCG's view would be affected by the dissolution; or
        - any other person or body which in the CCG's view might be affected by the dissolution; and
    - the extent to which the CCG to be dissolved has sought the views of individuals to whom any relevant health services are being or may be provided, what those views are, and how the CCG has taken them into account.

46. Additionally, on receipt of an application for dissolution NHS England can consider the requirement to apply the failure regime under section 14Z21, and potential need for directions to support the carrying out of the CCG's functions in the period until dissolution takes effect.

47. If only some member practices have agreed plans to move to other CCGs, NHS England will consider whether the residual practices can form a viable CCG. If necessary, NHS England will consider the use of its powers under 14F to vary the membership of a CCG. NHS England will consider this on a case by case basis and in discussion with the CCG.

48. NHS England may refuse an application for dissolution if it is not satisfied that the alternative CCGs would meet the same threshold as required for initial authorisation.

49. NHS England will also assess, where relevant, whether the CCG(s) have ensured that appropriate plans are in place to maintain good information governance through the transition, in consultation with local IG Lead(s) – in particular for:
    - appropriate transfer or disposal of information assets, including manual records and electronic equipment;
    - physical audit of premises prior to release;
    - review of Data Protection Notification(s); and
    - revision to Fair Processing Information.

50. NHS England will acknowledge all applications for dissolution within two weeks of receipt.

51. If NHS England thinks that its statutory duties in relation to CCGs make it preferable for it to do so, it may:
    - where granting the application would have a significant impact on allotments to the CCG in question or other CCGs, defer determination of the application until the end of the financial year in which it was received and the date six months after it was received, whichever is the later; or
    - defer determination until it has received all related applications for establishment or variation from other CCGs.

52. In the event of dissolution, the assets and liabilities of the CCG will transfer to the organisation(s) to which the practices within that CCG become members. The dissolving CCG will need to confirm the split of assets and liabilities across practice populations. Where there is a dispute regarding the transfer of assets or liabilities, NHS England will determine the proportions to be allocated to the receiving CCGs. NHS England may make a property and/or staff transfer scheme as appropriate under section 14I of the NHS Act 2006. In the event of CCG functions being taken over by NHS England (as a result of its intervention procedures), any assets and liabilities will be transferred to NHS England proportionate to the functions being discharged.

53. There is no appeal process to NHS England’s decision.

Annex 1: Checklist for constitution changes

Please confirm that the following have been considered before making a constitution change request to your local team:

CCG name	
Reason for variation	
Have the requested variations been made in tracked change(s) for ease of review by regional team?	
Have member practices agreed to the proposed change(s)?	
Have the relevant stakeholders been consulted (if required)?	
Has the Chair or Accountable Officer confirmed that the revised constitution meets the requirements of the Act on behalf of the CCG?	
Have you considered legal advice where necessary?	
Have you completed an impact assessment of the changes to be considered by NHS England?	
Have you included practice codes for any proposed practice moves if applicable?	
Have you included LSOA codes for any proposed boundary changes if applicable?	
Have you included a map as part of your submission?	

Annex 2: Legal requirements of a CCG constitution

The full requirements of what a CCG must and may include in its constitution are provided in Schedule 1A Part 1of the 2006 Act (as amended.)[5] The essential legal requirements are listed below.

Name	
Members	
Area	
Arrangements made for discharge of functions including terms and conditions of employees	
Procedures for making decisions	
How to achieve transparency about decision making	
Arrangements to be made for discharging its functions under Section 140 of the Act, ie, the requirement upon the CCG to maintain registers of interest, publish those registers, ensure anyone affected declares conflicts or potential conflicts of interest and have regard to any guidance issued by NHS England on conflicts of interest[6].	
Effective participation by all members	
How the governing body will operate	
Arrangements for the appointment of the audit and remuneration committees	
Governing body decision making processes	
Provisions for public meetings	

[5] http://www.legislation.gov.uk/ukpga/2012/7/schedule/2/enacted
[6] https://www.england.nhs.uk/commissioning/pc-co-comms/coi/