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Guidance to integrated care boards on applying to NHS England to amend their constitution

July 2022

About this document

NHS England is issuing this guidance under the NHS Act 2006 as amended by the Health and Care Act 2022 (the Act), and Integrated Care Boards (ICBs) must have regard to it.

It sets out the procedure for ICBs to apply to NHS England to amend their constitutions and highlights how ICBs should keep up to date their list of those organisations eligible to nominate partner members of the ICB board. It also sets expectations for the timeliness of NHS England's response to applications.

Action required of ICBs

To have regard to this guidance when:

- Applying to NHS England to amend their constitution
- Undertaking annual checks to confirm their partner NHS trusts and FTs
- Preparing to initiate the joint nomination process for one of those board members

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Procedure for ICBs to apply to amend their constitution

Every ICB must have a constitution and it cannot be amended – and no amendments can come into effect – without NHS England¹ having approved them in accordance with the Act. Changes to an ICB's supplementary governance documents² do not require NHS England approval.

ICBs must follow the procedure described below when applying to amend their constitution. The timeliness standards for NHS England's response are also set out.

The legal and policy requirements of ICB constitutions are set out in [Guidance to Clinical Commissioning Groups on the preparation of Integrated Care Board constitutions](#) with its annex providing the ICB model constitution. NHS England will refer to those legal and policy requirements when considering whether to approve an ICB's proposed amendment to its constitution.

This guidance does *not* address:

- proposals to change ICB areas, which were determined for establishment following the Secretary of State's review of ICS boundaries. The relevant ICBs and their upper tier local authorities would be expected to jointly develop and bring forward such proposals. Such a change would require NHS England to amend the establishment order and to approve the relevant changes to the constitutions of the affected ICBs, in addition to the technical and financial adjustments that would need to be planned. Where there are such proposals, the Chairs of the affected ICBs should engage their NHS England Regional Director.
- changes to the ICB with which a GP patient list³ is associated. While those associated GP practices are not identified in the constitution itself⁴ and so are

¹ This includes the ICB's Standing Orders where those are integrated into the ICB's constitution.

² For example its Scheme of Reservation and Delegation, functions and decisions map, and other documents within its governance handbook.

³ For essential services within core hours

⁴ Those practices eligible to nominate must be identified in the governance handbook, amendment of which does not require NHS England approval

not subject to the procedure covered in this guidance, any such change would have financial and technical implications. Such changes are only expected to occur very exceptionally outside a review of an ICB's area – for example when a practice physically relocates from one ICB's area to another's – and would need to be agreed and planned with NHS England well in advance.

- the power given to NHS England by each ICB constitution (which is a mandatory provision in ICB constitutions pursuant to the Act) to amend ICB constitutions. NHS England expects to use that power only in exceptional circumstances.

Considerations on equality and health inequalities

ICBs are subject to section 149 of the Equality Act 2010 (the Public Sector Equality Duty) and other specific equality duties set out in the Act, as well as the wider provisions in the Equality Act 2010. ICBs should be mindful of the [technical guidance](#) on the Public Sector Equality Duty and the relevant [statutory codes of practice](#), published by the Equality and Human Rights Commission, when considering the impact of any proposed changes to their constitutions.

ICBs should be mindful that the Health and Care Act 2022 identifies a range of ICB obligations in relation to health inequalities. These should underpin the discharge of functions in each ICB and be taken into account when considering changes to the ICB constitution.

Application process

NHS England will consider applications for changes to ICB constitutions throughout the year. ICBs considering changes to constitutions are advised to discuss their proposed application with the relevant NHS England regional team at an early stage and well in advance of submission.

Prior to submitting an application to change its constitution, an ICB should successfully conclude any local procedure for determining and endorsing such an application, as set out in its constitution.

The application should consist of the following:

1. The reason why change is being sought.

2. The proposed revised constitution, with the amended clauses clearly identified.
3. Assurance that there has been meaningful engagement with all relevant stakeholders and that such engagement was proportionate to the nature of the change being proposed. This should describe the engagement that has taken place, which stakeholders were involved, a rationale for the approach and how feedback was taken into account. It should include how the views of patients and the public were sought on the proposed change (or rationale as to why doing so was not considered necessary), how the ICB has given proper consideration to those views and how people will be informed of the change and what it means to them.
4. Confirmation of board level approval of the proposed change and that the ICB board is satisfied that the revised constitution continues to meet legal and policy requirements.
5. Assurance that the ICB has considered the need for legal advice on the implications of the proposed change, including confirmation of whether such advice has been obtained and, that the ICB is satisfied that the proposed changes are lawful.
6. An impact assessment of the proposed change. This should cover, as a minimum, the factors NHS England is required to consider; see the next section.

A recommended template for submitting constitution changes to NHS England is given in the Appendix to this document.

NHS England may seek clarification or additional information when considering applications.

Consideration by NHS England of the proposed change

NHS England will take the following into account when considering an application for change under this procedure. Whether:

1. the revised constitution meets the requirements of legislation

2. the revised constitution complies with the policy requirements set out in [Guidance to Clinical Commissioning Groups on the preparation of Integrated Care Board constitutions](#)
3. the ICB has made appropriate arrangements to ensure it is able to discharge its functions following any proposed change
4. the board of the ICB affected by the proposed change would be correctly constituted in accordance with the legislation and statutory guidance
5. the process for appointing partner members, and any other ordinary members, would comply with the Act, relevant statutory guidance and policy as set out in the [ICB model constitution](#)
6. the likely impact of the proposed change on the persons for whom the ICB has responsibility has been given proper consideration, including on equalities and health inequalities
7. the likely impact of the proposed change on the discharge of NHS England's functions has been given proper consideration⁵
8. the support, or otherwise, for the proposed change from the integrated care partnership (ICP) affected by it has been given proper consideration
9. the views of patients and the public have been sought on the proposed change where appropriate and the ICB has given proper consideration to those views, as part of a transparent process open to the public.

It is for the ICB to determine what information, in addition to the requirements set out in the application process above, it should submit to help NHS England decide on the application for constitution change.

NHS England may ask for clarification or additional information at any stage. Additionally, NHS England may consider any other material it considers relevant to making its decision, not just material submitted by the ICB. All stages of the procedure will involve communication between NHS England and the ICB.

⁵ Early discussion will be needed with NHS England if the unusual circumstances are likely to arise where a partner trust may, under the level of service provided condition, change the only ICB with which it is a partner and so change the system to which NHS England may financially apportion it

NHS England will acknowledge all applications for changes to ICB constitutions within **two weeks** of receipt. Typically, NHS England will notify the ICB in writing of its decision on the ICB's application to change its constitution within **four weeks**⁶ of receipt.

Where applications relate to changes of a minor or administrative nature, NHS England will expect to notify the ICB of its decision well within this timescale. However, should NHS England require supplementary information from an ICB before reaching its decision, such information must be provided in a timely fashion, and the final decision may take longer.

If NHS England considers that its statutory duties in relation to ICBs make deferring determination of the application preferable, it may do so until:

- later in the financial year in which it was received where granting the application would have a significant financial impact on the system in question or other systems, or
- it has received any related applications for changes to the constitutions of other ICBs.

It is expected that decisions regarding applications for changes are taken within NHS England regional teams at a level proportionate to the change requested.

There is no appeal or review process for the decision.

The revised constitution, and any necessary changes to supplementary governance documents within the ICB's governance handbook, should be published on the ICB website once the change has been approved.

⁶ The four weeks include, rather than follow, the two weeks in which to acknowledge the application

Organisations eligible to nominate partner members

ICBs are required to confirm or revise the organisations eligible to nominate the partner members of their board in two circumstances:

- trusts⁷ – annually, prior to initiating updates to the joint forward plan for the following year
- all nominating organisations – prior to initiating nomination processes for the relevant ICB board partner member(s)

Eligible trusts and local authorities are named in the ICB constitution so a change would require an application to amend it. Such changes are expected to be infrequent.

GP providers eligible to nominate ICB board partner members are identified in the ICB's governance handbook, rather than the constitution, so amendments do not require the approval of NHS England.

Annual trust check

ICBs must ensure that relevant trusts are engaged in the process of updating the joint forward plan⁸ on an annual basis. They are therefore required to confirm or adjust their partner trusts on an annual basis in accordance with the forward plan condition and level of service provided condition set out in secondary legislation. The application⁹ of these conditions is explained in [Guidance to Clinical Commissioning Groups on the preparation of Integrated Care Board constitutions](#).

This check should be conducted before updating the five year joint forward plan for the following financial year. It is the ICB's responsibility to ensure that the trusts identified as nominating organisations in its constitution continue to meet the prescribed

⁷ "Trusts" refers to both NHS trusts and Foundation Trusts

⁸ The Health and Care Act 2022 requires ICBs and their partner trusts to develop a five year joint forward plan which they must update annually

⁹ Further to that guidance, for future calculation the most recent full financial year should be used. Where that financial year includes a period prior to the establishment of ICBs, the income from CCGs should be included in the calculation if it is for local NHS services that are subsequently commissioned by ICBs.

description(s) set out in secondary legislation, and that all trusts that now meet the prescribed described are identified as nominating organisations.

This check could lead to annual changes to the list of nominating trusts, but it is generally expected that this will remain stable unless there is a clear rationale for a change in eligibility (eg changes in commissioning arrangements).

Check prior to initiating partner member nominations

ICBs must also confirm or adjust the relevant nominating organisations prior to initiating nomination processes for the relevant ICB board partner member(s). This is to ensure that the correct nominating organisations participate in the joint nomination process.

Confirming or adjusting nominating organisations

Where there is no change to the nominating organisations, no further action is required.

Where there is, this is expected to be mutually agreed between the ICB and the affected organisations. For changes in nominating trusts, the ICB constitution must be updated and the amended constitution approved by NHS England. For changes to eligible general practice providers, the list in the ICB's governance handbook should be updated; this list is not part of the constitution and as such updates do not require NHS England approval.

Changes in nominating organisations should be made in a transparent manner and any organisations whose eligibility to nominate is subject to a change should be made aware of this in a timely manner. For example:

- trusts should have sufficient time to engage with appropriate ICBs to update five year joint forward plans for the following financial year
- nominating organisations should be able to participate in nomination processes for the relevant ICB board partner member.

Where an appointed partner member of the ICB board is employed by an organisation that is no longer a nominator, it should be considered whether it is appropriate for them to remain a partner member, but recognising that they were nominated to bring the perspective of their sector rather than that of any individual organisation.

Appendix: constitutional change application template

ICBs should use the following template when submitting applications to NHS England to change their constitution.

ICB Name:	
1. Reason for proposed change	
2. The engagement that has taken place	
3. The likely impact of the proposed change, including on equalities and health inequalities, and on NHS England functions	
5. Whether it has been necessary to take legal advice and confirmation that the ICB is satisfied the proposed changes are lawful	
6. Any further information to support the application	
7. Attachments, should include: <ul style="list-style-type: none"> a. copy of the constitution with the requested variations made in tracked changes for ease of review by the NHS England regional team b. confirmation that the changes have been approved by the ICB in accordance with the ICB's constitution and that the revised constitution meets policy requirements c. a document that assesses the equalities and health inequalities impact of the changes to be considered by NHS England d. supporting documents referred to in the application, such as minutes of board meetings 	

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