



NHS England Scheme of Delegation

Approved by Board on xx March 2023

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1 Introduction

- 1.1 This Scheme of Delegation (the Scheme) sets out the arrangements for the delegation of functions within NHS England, as approved by the Board.

2 Delegation of NHS England Functions

- 2.1 NHS England may¹ arrange for the exercise of any of its functions on its behalf by:

- any Non-Executive Member;
- any Employee (including any Executive Member or a person seconded to NHS England); or
- a Committee or Sub-committee.

Any reference in this Scheme to an employee of NHS England includes a person seconded to NHS England from another body.

- 2.2 NHS England may also arrange for its functions to be exercised by or jointly with a relevant body (as defined by section 65Z5(2)), local authority (within the meaning of section 65Z6(2B)), or combined authority under section 65Z6 of the NHS Act 2006. Where NHS England arranges for the joint exercise of its functions with another body, it may arrange for the function to be exercised by a joint committee of theirs. In addition, NHS England may enter partnership arrangements with a local authority to exercise certain of its functions (see regulations under section 75 of the NHS Act 2006).

- 2.3 The exercise of these powers is subject to such directions as may be given by the Secretary of State.

- 2.4 NHS England is under a statutory duty to carry out its functions effectively, efficiently and economically².

- 2.5 The delegation and accountability from Parliament and the Secretary of State for Health and Social Care to NHS England and the Chief Executive in their role as Accounting Officer are set out in:

- the NHS Act 2006, ~~and~~ the Health and Social Care Act 2012 and the Care Act 2014, ~~both each~~ as amended (the Acts);
- the Government's mandate to NHS England, part of the NHS Accountability Framework;
- and such other regulations or directions that may be issued from time to time.

- 2.6 The NHS England Board remains accountable for all of its functions under the Acts, including those it delegates and therefore requires information about the

¹ paragraph 13 of Schedule A1 of the NHS Act 2006 (as amended),

² Section 13D NHS Act 2006.

exercise of delegated functions to assure itself and enable it to maintain a monitoring role.

3 General

3.1 The purpose of this document is to set out arrangements made by NHS England for the exercise of its functions, in particular the delegation of functions of NHS England to committees and to employees, and the matters which are reserved to the Board.

3.2 Any function of NHS England not specifically delegated under this Scheme may be delegated by the Board by a separate Board resolution.

3.3 In addition to this Scheme, the NHS England Standing Financial Instructions provide for the reservation and delegation of various functions and decisions of the respective bodies relating to financial matters.

3.4 The Scheme is transitional and will require further updating ~~be further updated later this year~~ for three main reasons:

3.4.1 The Scheme provides for delegation of functions which are to be repealed under the Health and Care Act 2022, but where the replacement provisions have yet to come (fully) into force, for example in the areas of ~~pricing~~, procurement and patient choice.

~~3.4.2 The Scheme includes the functions transferred from NHS Digital on 1 February 2023, but does not yet include provision for the proposed transfer of the functions of Health Education England (expected 1 April 2023).~~

3.4.2 The proposed transfer of the functions of the Healthcare Safety Investigation Branch from NHS England to the new statutory body to be established under the Health and Care Act 2022 and a new Special Health Authority.

~~3.4.3 Further changes may also be required for new functions for NHS England that are yet to come in to force.~~

3.4.3

Chief executive

3.5 The Chief Executive is responsible for the overall performance of the executive functions of NHS England. Under paragraph 15(4), Schedule A1 to the NHS Act 2006, the Chief Executive is the Accounting Officer.

3.6 As Accounting Officer, the Chief Executive has the responsibilities as set out in HM Treasury Guidance *Managing Public Money*, including ensuring that NHS England acts in accordance with the legislative framework that established it and with the terms of the Framework Agreement agreed between NHS England and the Department of Health and Social Care.

- 3.7 The Chief Executive, together with the Chief Financial Officer, is responsible for ensuring the discharge of NHS England's obligations under any Financial Directions from the Secretary of State.

4 Reservation of Functions, Duties and Powers to the Boards

- 4.1 The Board has the overall function of establishing and maintaining the strategic direction of NHS England.
- 4.2 It is for the Board to decide which matters it does not delegate. Those matters are reserved for decision by the Board. For NHS England these are set out in the Annex to this Scheme. All functions that are not reserved for decision by the Board, nor have been delegated by the Boards direct to a Committee, have been delegated to the Chief Executive. The Chief Executive then delegates such functions to other employees or to committees, as set out in the Annex to this Scheme.
- 4.3 The Board, in full session, may decide on any matter it wishes that is within its legal powers.
- 4.4 The Board reserves the ability to, at any time, withdraw the delegation of a function and exercise that function or further delegate it.

5 Caution over the use of Delegated Functions

- 5.1 Functions are delegated to Committees, Sub-Committees, Non-Executive Members, Executive Members and employees, provided they do not use such delegated functions, duties and powers in a manner that is likely to be a cause for public concern and that they be exercised responsibly.

6 Ability to Delegate Delegated Functions

- 6.1 The Committees, Sub-committees, Executive and Non-Executive Members and employees to which a function has been delegated may not further delegate that function, unless specifically authorised to do so under this Scheme or as part of the delegation of that function.
- 6.2 The Chief Executive and the Chair of the NHS England Board (or their nominated deputies) may in so far as it is reasonable and appropriate in an emergency delegate the authority to make urgent decisions to alternative individuals or committees to those identified in this Scheme. Such alternative delegated authority shall continue for the period considered reasonable by the Chief Executive and Chair in the relevant emergency context. The making of such arrangements by the Chief Executive and the Chair will be reported to the next formal meeting of the Board for formal ratification.
- 6.3 This Scheme should be used in conjunction with other processes and procedures established and set out in other documents within the Governance Manual, including the Standing Orders and the Standing Financial Instructions.
- 6.4 Managing Directors of hosted organisations have the authority to delegate functions delegated to them as recorded in the relevant Operating Framework,

which has been approved by the National Director who is Senior Responsible Officer for the relevant hosted organisation.

7 Failure to comply with NHS England's Standing Orders, Scheme of Delegation and Standing Financial Instructions

- 7.1 Failure to comply with the various documents in the Governance Manual may result in disciplinary action in accordance with the relevant disciplinary policy and procedure at that time.
- 7.2 If for any reason the reservation of powers or delegations detailed in this document are not complied with, including the exercise of powers without proper authority, full details of the non-compliance and any justification for non-compliance shall be reported to the next formal meeting of the Audit and Risk Assurance Committee for determining or ratifying action.
- 7.3 Notwithstanding the above, all members of the Board and all employees must report any instance of non-compliance to the Chief Financial Officer, Chief Executive or Director of Governance, Legal and Inquiry immediately when they become aware of it.

8 Committees and Sub-committees

- 8.1 The Board may appoint Committees and provide for the appointment of Sub-committees.
- 8.2 The NHS England Board may delegate any function for which it is responsible to a Committee or Sub-committee, provided it has not delegated that function elsewhere in this Scheme (see also the Standing Orders).
- 8.3 The Board may delegate its responsibility for determining the powers and functions of a Committee and its responsibilities under rules SO6 of the Standing Orders in relation to such a Committee, to the Chief Executive of NHS England (see SO6 of the Standing Orders).
- 8.4 A Committee may delegate any of the functions of NHS England for which it is responsible to a Sub-committee of that Committee, subject to the provisions of the Committee's terms of reference.
- 8.5 Each Committee has delegated responsibility for exercise of those functions falling within their terms of reference (as approved by the Board), other than any matter reserved to the Board (see SO6 of the Standing Orders). The Committees which have been appointed by the Board and the functions delegated to those committees are not set out in this Scheme, although this may be specified in the Standing Orders.

9 Scope, exercise of functions and interpretation

- 9.1 This Scheme applies to all the directorates and employees of NHS England, other than the Healthcare Safety Investigation Branch (HSIB). The exercise of functions by HSIB is subject to the NHS England (Healthcare Safety

Investigation Branch) Directions 2022, the NHS England (Healthcare Safety Investigation Branch) (Additional Investigatory Functions in respect of Maternity Cases) Directions 2022 and arrangements made by NHS England under those directions.

- 9.2 This Scheme also applies to organisations hosted by NHS England, and the employees working within such hosted organisations, including:
- 9.2.1 NHS England hosted Commissioning Support Units;
 - 9.2.2 NHS Interim Management and Support;
 - 9.2.3 Strategic Clinical Networks;
 - 9.2.4 Clinical Senates; and
 - 9.2.5 Employees of NHS England working within recognised devolution areas.
- 9.3 Many functions are delegated to the Chief Executive. In cases where the entry for a function in the Annex to this Scheme specifies further delegation to other employees or committees, the Chief Executive delegates that function to that committee or employee, subject to retaining overall responsibility.
- 9.4 Where a function is delegated to more than one director, each director may exercise that function in respect of matters or cases falling within the remit of the directorate or team for which they are a director or, in the case of a Regional Director, in respect of the region for which they are responsible.
- 9.5 Where a function is delegated to Regional Directors, each Regional Director may exercise that function in respect of the region for which they are responsible.
- 9.6 A Regional Director may also exercise a function in respect of another region, whether generally or in relation to particular cases, if agreed by the Regional Director for that other region, the Chief Operating Officer or Chief Executive.
- 9.7 A delegated function must be exercised in accordance with any statutory requirement which applies to the exercise of that function. This may include duties that apply generally to the exercise of functions by public and NHS bodies, such as the duty to have regard to the NHS Constitution (section 2 of the Health Act 2009) and the Public Sector Equality Duty (section 149 of the Equality Act 2010), or general duties specific to NHS England (e.g. the general duties of NHS England in sections 13C to 13PA of the NHS Act 2006).

Deputising etc

- 9.8 In this scheme, references to the holder of a named post includes references to an employee formally deputising for the post holder; for example, during a period of absence, leave or to cover a vacant post, subject to such deputising arrangements being formally documented and signed off by the appropriate Director or Chief Executive. Records should be retained locally for audit. Accountability for the discharge of the relevant functions will, however, remain with the designated post holder.

9.9 In addition, where a function is delegated to a postholder in accordance with this Scheme, then unless the context otherwise requires and subject to any alternative arrangements agreed by the Board:

9.9.1 an employee in the postholder's team who reports direct to that postholder and is an employee of NHS England, may exercise that function, if authorised in writing by the postholder (such authority must be retained for audit purposes);

9.9.2 the function may be exercised by the postholder's line manager, if:
(a) the line manager is an employee of the body whose function is being exercised, and
(b) the postholder is absent, the post is vacant or the postholder has requested the manager to exercise the function in question in relation to a particular matter.

9.10 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Scheme shall have the same meaning as in the Acts or in regulations, orders or directions made under the Acts. In addition, the following terms shall have the meanings specified below:

the Acts	The National Health Service Act 2006, and the Health and Social Care Act 2012 <u>and the Care Act 2014</u> , <u>each</u> as amended
the Board	means the board of NHS England
Capital Guidance	means the NHS England Guidance <i>Capital regime, investment and property business case approval guidance for NHS trusts and foundation trusts</i> and any guidance replacing that guidance
Chair	means the person appointed by the Secretary of State as the chair of NHS England, and references to the chair include references to the deputy/vice chair where authorised to act in the absence of the chair
CMA	the Competition and Markets Authority
Committee	means a committee of NHS England, and
Committee Member	means a person appointed as member of a Committee
Deputy Chair	means the Non-Executive Member appointed by the Board to act as deputy chair
employee	includes, when referring to NHS England employees, a person seconded to NHS England
Executive Member	means a member of the Board who has responsibility for overseeing the organisation's management (as a National Director)
FT	means an NHS foundation trust
HSIB	means the Healthcare Safety Investigation Branch

National Director	means a director of NHS England who is a member of the NHS Executive Group It also includes the Director of Provider Development
NHS Act 2006	means the National Health Service Act 2006
Non-Executive Member	means a member of the Board who does not have any management responsibilities
Operating Framework	sets out the planning, performance and financial requirements for organisations and the basis on which they will be held to account
PPCCR	the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 (SI 2012 no 500)
Regional Director	means a person appointed to as director for a region of NHS England (and a member of the NHS Executive), to provide strategic leadership for those bodies across the region, including co-ordination and oversight of local team
SCCL	means the Supply Chain Coordination Limited
Secretary	means the member of NHS England staff appointed as secretary to the Board
Secretary of State for Health and Social Care	m Means the Secretary of State for Health and Social Care or, where relevant within the context of legislative powers to direct or require anything of NHS England, any Secretary of State so empowered
Scheme of Delegation	means this Scheme
Sub-committee	means a sub-committee of a Committee
Transactions Guidance	means NHS England's <i>Transactions guidance – for trusts undertaking transactions, including mergers and acquisitions</i> , including appendices and addendums, or any guidance replacing that guidance

9.11 Within this document, unless the context otherwise requires:

- a. words imparting any gender include any other;
- b. words in the singular include the plural and words in the plural include the singular; and
- c. a reference to an enactment is a reference to that enactment as amended.