Information to support applicant CCGs in making declarations of compliance

There are twelve statements where applicants for authorisation are asked to self-certify compliance on their application form. This information pack summarises salient information and actions to take (both before and after authorisation) for eight of those statements. Our intention is that this pack will support applicants to correctly declare compliance.

Four areas do not have an information sheet. This is because they are either self-explanatory or necessary information has already been brought together elsewhere:

1. **Constitution** – see NHS Constitution

2. **PCT inheritance** – local work to prepare for transition is already underway

3. **Statutory responsibilities** – see *The Functions of Clinical Commissioning Groups* which will be published shortly on www.commissioningboard.nhs.uk

4. **Capability and capacity to commission** – this is part of your overall preparation

Information sheets are included in the order set out on the application form:

1. **Research**

2. **Procurement**

3. **Choice and shared decision-making**

4. **Equality**

5. **Education and training**

6. **Sustainability**

7. **Innovation**

8. **Commissioning support**

The information pack reflects the current legal, regulatory and policy position. In some instances it is anticipated that regulations will be made, or guidance issued during the period applications for authorisation are being made. These are flagged in the information pack, and CCGs should ensure that they are declaring compliance with the position that is correct at the time of application.

NHS Commissioning Board Authority
May 2012

Authorisation of Clinical Commissioning Groups
Supporting Information for Domain 4.2.2A – Self Certification

Promotion of research and treatment costs of patient participation in research
We declare that our CCG understands and will comply with our statutory responsibilities regarding promoting research; and that we are committed to following the policy of ensuring that the NHS meets the treatment costs for patients who are taking part in research funded by Government and research charity partner organisations

What do we need to understand?

The NHS Constitution sets out seven key principles which guide the NHS in all it does. One of these principles includes a commitment to:

> *the promotion and conduct of research to improve the current and future health and care of the population*

The NHS White Paper, *Equity and excellence: Liberating the NHS*, sets out the core role that research plays in the NHS:

> *The Government is committed to the promotion and conduct of research as a core NHS role. Research is vital in providing the new knowledge needed to improve health outcomes and reduce inequalities.*

The *Government Response to the NHS Future Forum Report* made the following commitments with respect to CCGs and research:

> *Clinical commissioning groups' legal duties should reflect their key role in making sure that, at a local level, the need for good research, innovation and a strong evidence basis for clinical decisions is paramount. We will …make sure that clinical commissioning groups… ensure that treatment costs for patients who are taking part in research funded by Government and Research Charity partner organisations are funded through normal arrangements for commissioning patient care, as set out in existing guidance (HSG(97)32).*

The *Health and Social Care Act 2012* places the following duties with respect to research on CCGs, from the date of establishment:

> *Each clinical commissioning group must, in the exercise of its functions, promote*
> *(a) research on matters relevant to the health service, and*
> *(b) the use in the health service of evidence obtained from research.*

What could we do beyond authorisation?

To deliver their statutory duties with respect to research, once authorised, you - either as individual organisations or as part of a collaborative with neighbouring CCGs - will wish to consider:

- The need, when procuring services, and monitoring and renewing contracts, for commissioners to ensure that providers have processes in place to facilitate recruitment of patients into research studies
- The need for commissioners to have in place a process to meet the treatment costs of research for patients who are taking part in research funded by Government and research charity partner organisations
- The need for commissioners to ensure they use the best available research evidence when commissioning services
- How best to ensure responsibility for research and the use of research evidence is clear at a senior level, equivalent to board level or similar, with operational responsibility delegated as appropriate

- The benefits of proactive engagement with local partners who promote and support research, including the local NIHR Clinical Research Networks and the emerging Academic Health Science Networks.

Where can we go for further support and information?

You can obtain support and advice regarding meeting their statutory duties with respect to research from your local NIHR Clinical Research Network and (until April 2013) your local PCT R&D office.

Authorisation of Clinical Commissioning Groups
Supporting Information for Domain 3.3D – Self Certification

Procurement
We declare that at the point of authorisation our CCG will be compliant with current procurement requirements, and will have systems in place to discharge those requirements.

What do we need to understand?

This section summarises the requirements that currently apply to NHS commissioners, focusing on procurement of healthcare (clinical) services. Procurement requirements in relation to commissioning support services are covered in sheet 8.

As set out in 'Protecting and Promoting Patients' Interests: the Role of Sector Regulation', it is for commissioners to decide where choice and competition for services are in the best interests of patients. Commissioners should decide, taking into account a range of factors:

- whether to use tendering ('competition for the market')
- whether to enable patients to choose from any qualified provider ('competition in the market')
- whether to extend or vary existing contracts, or (where there are no other capable providers) to use a single tender process.

Accountability

Where you arrange for commissioning support services to carry out procurements on your behalf, you will remain accountable for procurement decisions and retain responsibility for making decisions throughout the process. You should ensure that an individual and/or committee has specific responsibility for procurement matters and ensures that you meet your obligations.

Procurement legislation

The current EU Procurement Directives, implemented into UK law by the Public Contracts Regulations 2006, apply to the award of contracts by public bodies. Under the current regulations, services are categorised as Part A or Part B. Part A services include cleaning services, waste services, consumables and equipment as well as many commissioning support services (see sheet 8). Health and care services are Part B services.

The regulations allow more flexible procedures to be used in procuring Part B services. Whatever procedure is used, the overarching principles of transparency, proportionality, equality of treatment and non-discrimination apply. These principles apply whether an NHS commissioner is using a competitive tender procedure, accrediting qualified providers from whom patients can choose (AQP), or commissioning from an incumbent or single provider.

Principles and Rules of Co-operation and Competition

The Co-operation and Competition Panel is an advisory body to the Secretary of State. Its guidance includes principles and rules for commissioning and provision of NHS services.

Transparency

NHS commissioners must be able to account publicly for expenditure and actions, e.g. by:

- publicly stating commissioning strategies and intentions
- publicly stating the outcome of service reviews and how services will be secured
- advertising procurements on NHS Supply2Health® and (where applicable) OJEU
- maintaining an auditable documentation trail regarding key decisions.

Proportionality

The procurement process should be proportionate to the value, complexity and risk of the services. Low value contracts may be procured using more streamlined processes, provided that quality standards are not compromised and the process is open and transparent.

Non-discrimination
The bidding process should not discriminate against or in favour of any particular provider or group of providers. Objective evaluation criteria and weightings must be applied to all bids.

Equality of treatment
All potential providers must be treated the same throughout the process, for example by:

- providing the same information to all potential providers at the same time; and
- ensuring that rules of engagement and evaluation criteria are decided in advance of provider involvement and applied in the same way to each of them

Tendering processes
To reflect these principles, tender processes should include the following stages:

Advertising the procurement
Procurement opportunities should be advertised through NHS Supply2Health®. Where you arrange for a CSS to manage the process, you will need to have signed off the service plan and ensured that the advert correctly reflects your intentions.

Inviting providers to respond to the requirements
An "invitation to tender" or "invitation to negotiate" is used to specify the clinical and other requirements that the provider(s) will need to meet, how they should demonstrate their ability to meet the requirements, the process for choosing the preferred provider (e.g. method of shortlisting, terms of any negotiation) and the criteria for evaluating responses. You will need to ensure that the service specification correctly reflects your commissioning intentions and that the evaluation criteria reflect your priorities and requirements.

Evaluating the responses
A non-discriminatory, transparent and objective process must be used to evaluate responses. You will need to ensure that the evaluation is carried out in accordance with the published criteria. Where you are using CSSs to manage the process, you as a CCG should always make the final decision about any appointment.

Contract award
Any new contract awards will need to be posted on NHS Supply2Health® and (where appropriate) OJEU.

What do we need to do for authorisation?

The requirements and guidance set out here are those that currently apply to PCTs. The Department of Health will be consulting during the summer on regulations governing best practice in relation to procurement for CCGs and the NHSCB. We anticipate that those regulations will draw on existing best practice for PCTs complying with EU legislation described above. By demonstrating an understanding of the current requirements and guidance, you will be well placed to follow the best practice likely to be reflected in the regulations.

Where can we go for further support and information?

Protecting and Promoting Patients' Interests: the Role of Sector Regulation
Principles and Rules of Co-operation and Competition
Procurement guide for commissioners of NHS-funded services

Authorisation of Clinical Commissioning Groups
Supporting Information for Domain 2.4.1A – Self Certification

Choice and shared decision-making
We declare at the point of authorisation our CCG is aware of its statutory duties to, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of their care and to promote the involvement of individual patients, and their carers and representatives, in decisions about their care and treatment.

What do we need to understand?

The Health and Social Care Act 2012 places a duty on CCGs, from the date of establishment, to act with a view to enabling **patient choice** (for example, by commissioning services so as to allow patients a choice of treatments, or a choice of providers, for a particular treatment and ensuring that this choice is offered to patients).

The right to choice is underpinned presently by legally binding directions from the Secretary of State, which were published alongside the NHS Constitution and took effect from 1 April 2009. These directions were amended 31st March 2012[1] and require PCTs to ensure that patients needing an elective referral are offered a choice. They also place requirements on commissioners to publicise and promote patients' entitlement to choice. The Department of Health's intention is that standing rules will be used to replicate these requirements and apply them to CCGs.

The Department of Health is currently consulting on proposals to extend choice all along the patient pathway. A final round of consultation will start shortly with a view to identifying the final core offer and precisely how it will be implemented. Proposals include:-

- Choice in Primary care – including greater choice of GP practice and choice of any qualified provider in community and mental health services, providing support to people with long-term conditions,
- Choice before Diagnosis – choice of diagnostic test provider
- Choice at Referral – choice of provider, named consultant-led team, mental health and maternity services.
- Choice after Diagnosis – choice of treatment, choice of alternative provider at 18 weeks and end of life care

The Act also contains a section entitled 'Duty to **promote involvement of each patient'** [2]which states that:

> *Each clinical commissioning group must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to:-*
>
> *(a) the prevention or diagnosis of illness in the patients, or*
>
> *(b) their care or treatment.*

The underlying policy is the commitment to "shared-decision-making: "no decision about me without me"[3]. This is also supported by one of the seven principles of the NHS Constitution that "Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment."

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[1] The Primary Care Trusts (Choice of Secondary Care Provider) (Amendment) directions 2012
[2] Section 14U of the 2006 Act, inserted by section 26 of the 2012 Act.
[3] Outlined in the White Paper *Equity and Excellence: Liberating the NHS*. DH July 2010

The CCG should also be aware that this duty is distinct from the 'Public involvement and consultation by clinical commissioning groups' duty, which applies more broadly, for example to cover commissioning priorities and intentions.

What do we need to do for authorisation?

You will need to specify the arrangements made by the CCG to discharge both duties (usually within your constitution).

Further requirements about choice could be included within the Secretary of State's Mandate to the NHS Commissioning Board, and in regulations expected to be in force by April 2013. You should ensure compliance with these, once they are in place.

You will need to be confident that you will meet the duty on patient involvement when exercising your commissioning functions.

What could we do beyond authorisation?

To meet your duty to 'promote the involvement of patients' you could identify relevant functions, assess them for their effect on patient involvement and make changes acordingly. The NHS Commissioning Board will issue guidance to help you with this duty.

The decisions that the duty refers to would apply to any commissioning decisions that impact on all stages of an individual's health care, from preventative measures, diagnosis of an illness, and any subsequent care and treatment they receive.

Effective involvement of patients in these decisions might include working with patient groups to set clear expectations for providers about opportunities for patients to participate in treatment decisions in partnership with health professionals, to be supported to make informed decisions about the management of their care and treatment and to discuss opportunities for them to manage their own condition. CCGs will also play a key role in ensuring that patients are made aware of their opportunities to make choices over their care and treatment as set out above.

Where can we go for further support and information?

Making shared decision-making a reality: No decision about me, without me – a report from the Kings Fund on shared decision-making
http://www.kingsfund.org.uk/publications/nhs/nhs_decisionmaking.html

http://www.health.org.uk/publications/implementing-shared-decision-making-in-the-uk/

http://www.health.org.uk/publications/leading-the-way-to-shared-decision-making/

SHA Shared Decision-making Projects website - A network of projects led by SHAs to explore staff/clinical issues in primary, community and secondary care settings around embedding shared decision-making and the signposting of reliable patient information.
http://www.networks.nhs.uk/nhs-networks/sha-shared-decision-making-and-information-giving

NICE Patient Experience in adult NHS services Quality Standard
http://www.nice.org.uk/guidance/qualitstandards/patientexperience/home.jsp

NICE Quality Standard for service user experience in mental health
http://www.nice.org.uk/guidance/qualitystandards/service-user-experience-in-adult-mental-health/index.jsp

Authorisation of Clinical Commissioning Groups
Supporting Information for Domain 4.2.1l – Self Certification

Public sector equality duty
We declare that at the point of authorisation our CCG will be compliant with the public sector equality duty and can demonstrate the use of the EDS (or equivalent) to help attain compliance and ensure good equality performance

What do we need to understand?

The public sector Equality Duty

The public sector Equality Duty, part of the Equality Act 2010, is made up of a 'general duty' which is the overarching requirement and the 'specific duties' which are intended to help performance of the general duty. The general duty has three aims and it applies to most public authorities, including the NHS Commissioning Board and CCGs (and bodies exercising public functions such as private healthcare providers), who must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic[4] and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The Equality Delivery System (EDS)

The Equality Delivery System (EDS) is a tool-kit that can help NHS organisations improve the services they provide for their local communities, consider health inequalities in their locality and provide better working environments, free of discrimination, for those who work in the NHS. Used effectively, it supports NHS organisations to:

- meet the public sector Equality Duty of the Equality Act 2010;
- deliver on the NHS Outcomes Framework and the NHS Constitution;
- and, if they are providers, meet the Care Quality Commission's "Essential Standards of Quality and Safety"

The EDS has four key goals, with 18 specific outcomes. NHS organisations need to listen to and engage with patients, carers, voluntary organisations and people who work in the NHS in order to grade their equality performance, identify where improvements can be made and act on their findings. The EDS goals and grades are:

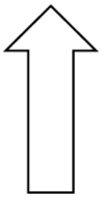
[4] Under the Equality Act 2010 there are nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Please note that there are exceptions for some protected characteristics under the public sector Equality Duty, please refer to Equality and Human Rights Commission guidance.

EDS Goals

1. Better health outcomes for all
2. Improved patient access and experience
3. Empowered, engaged and included staff
4. Inclusive leadership at all levels

EDS Grades

▲ Excelling – Purple
▲ Achieving – Green
▲ Developing – Amber
▲ Undeveloped – Red



The EDS supports organisations to have a structured way of measuring the four goals, a clear way of setting outcomes for the year ahead and engage effectively with staff, patients and local communities when grading their performance and setting new and objectives.

What do we need to do for authorisation?

By the time you submit your application for authorisation, you need to be able to demonstrate compliance with the general provisions of the public sector Equality Duty, and that you have used the EDS, or equivalent, to help you attain compliance and ensure good equality performance.

Under the specific duties of the public sector Equality Duty public authorities are required to publish in a manner that is accessible to the public, and by the point of authorisation aspiring CCGs would need to be able to describe how they intend to:

1. Publish information to demonstrate its compliance with the public sector Equality Duty at least annually. This information must include, in particular, information relating to people who share a protected characteristic who are:
    - its employees – (public authorities with fewer than 150 employees are exempt)
    - people affected by its policies and practices.

2. Equality objectives at least every four years. All such objectives must be specific and measurable.

The publication schedule for CCGs to make the above information available post-authorisation is still being finalised and will be communicated shortly.

Where can we go for further support and information?

Guidance that explains how public authorities can meet the requirements of the equality duties is on the Equality and Human Rights Commission website at:
http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/

Guidance for NHS organisations on equality objectives is published on the NHS Employers website at:
http://www.nhsemployers.org/EmploymentPolicyAndPractice/Equalityanddiversity/e-d-in-practice/get-to/IdentifyingTheObjectivesAndOutcomes/Pages/Identifying-the-objectives-outcomes.aspx

For more information and a copy of the Equality Delivery System go to the NHS Midlands and East website at: www.eastmidlands.nhs.uk/eds

Authorisation of Clinical Commissioning Groups
Supporting Information for Domain 4.2.2B – Self Certification

Education and Training
We declare that at the point of authorisation our CCG will demonstrate commitment to the education and training of the NHS workforce. We agree to work in partnership with the local education & training boards to ensure that the system for the planning, commissioning and delivery of education and training is able to respond to service commissioning priorities.

What do we need to understand?

The Health and Social Care Act 2012 places a duty on the Secretary of State to exercise his functions under specified enactment so as to secure that there is an effective system for the planning and delivery of education and training to persons who are employed, or who are considering becoming employed, in an activity which involves or is connected with the provision of services as part of the health service in England. This duty will take effect from 1 April 2013 and part of this duty will be delegated to Health Education England.

The Act also places a duty on CCGs, in exercising their functions, to have regard to the need to promote education and training so as to assist the Secretary of State in the discharge of his education and training duty. This duty will take effect from 1 April 2013.

Background information

Health Education England will be established in June 2012 as a Special Health Authority. It will be responsible for providing national leadership for the education and training of the NHS and public health workforce in England.

Governing bodies of Local Education and Training Boards (LETBs) will be established as committees of Health Education England, formally taking on their functions when SHAs are abolished in March 2013. The governing bodies will represent the interests of all local NHS providers when carrying out their planning, commissioning and quality assurance of education and training functions.

The Act also requires arrangements for the provision of NHS services to include arrangements for securing that the provider co-operates with the Secretary of State in the discharge of his education and training duty. This duty will take effect from 1 April 2013. It will be achieved by amending the NHS standard contract from 2013/14.

The NHS standard contract for 2012/13 requires all providers of NHS services to assist the SHA clusters in making the necessary arrangements to establish LETBs and their governing bodies.

What do we need to do from April 2013?

To support education and training in the NHS and deliver their statutory duty with respect to education and training, once authorised, you will need to:

- consult with the governing bodies of LETBs in your area as commissioning plans are developed to ensure workforce development can rapidly respond to innovation and changes in the way services are delivered
- work in partnership with the governing bodies of LETBs in your area to ensure that plans for the commissioning and quality assurance of education and training are responsive to service commissioning priorities
- promote compliance with the terms of the NHS standard contract to ensure that all providers of NHS services are members of a LETB and therefore represented by a governing body of a LETB, and support the governing bodies of LETBs in your area in carrying out its education and training functions

Where can we go for further support and information?

Liberating the NHS: Developing the Healthcare Workforce: From Design to Delivery was published on 11 January 2012 and provides further detail on the education and training system. www.dh.gov.uk/health/2012/01/forum-response/

Authorisation of Clinical Commissioning Groups
Supporting Information for Domain 4.2.2A – Self Certification

Sustainability
We declare that at the point of authorisation our CCG will demonstrate commitment to promoting environmental and social sustainability through our actions as a corporate body as well as a commissioner.

What do we need to understand?

Sustainable development and carbon management are corporate responsibilities. Clear governance provides an assurance process that considers requirements, both in terms of the law and to achieve high quality healthcare.

Demonstrating high quality healthcare will not be possible without embedding sustainable development into NHS management and governance processes. This requires boards/ governing bodies, managers, clinicians, nurses and many other NHS staff groups to champion sustainability. For CCGs this includes the Climate Change Act 2008 which includes a legal requirement for the UK to reduce carbon emissions by 80% by 2050. For the NHS to meet this legal requirement an interim target has been set for the NHS to reduce emissions by 10% by 2015 from a 2007 baseline[5]. The Social Value (Public Services) Act 2012 when in force (early 2013) will include a duty[6] to consider social value ahead of a procurement involving public services contracts (within the meaning of the Public Contracts Regulations 2006) i.e. you must consider how you might use those contracts to improve the economic, social and environmental wellbeing of your community.

"Social value" is about how well scarce resources are allocated and used and how their collective use delivers measurable outcomes. It reflects a more balanced approach in assessing outcomes, taking into account the wider benefits to the patient, their wider community and the general public.

Social value may be thought of as the collective gain to the community from commissioning/procurement over and above the direct purchase of goods and services. It is primarily concerned with ensuring "impacts", both positive and negative, are measured and accounted for.

The NHS Carbon Reduction Strategy asks all NHS organisations to sign up to the Good Corporate Citizenship Assessment Model (2) and to produce a Board approved Sustainable Development Management Plan (SDMP).

What do we need to do for authorisation?

Familiarise yourselves with these requirements and consider how you will implement them.

What could we do beyond authorisation?

- Consider taking into account economic, social and environmental value, not just price, when buying/ commissioning goods and services.
- Develop a Sustainable Development Plan

The 'further support and information' section below provides a summary of the statutory, regulatory and policy requirements which you should consider as part of your Sustainable

[5] Linked to the Climate Change Act 2008
[6] the Public Service (Social Value) Act 2012

Development Plans which will need to be developed once authorised, if not done beforehand.

Where can we go for further support and information?

The NHS Sustainable Development Unit can support you to interpret these requirements and an updated guide for CCGs will be published over the next 5-6 months.

Public Services (Social Value) Act 2012

Requires all commissioners of public services to consider taking into account economic, social and environmental value, not just price, when buying goods and services.

The guidance for commissioners of public services has not yet been published. However, it is likely that it will include a requirement for commissioners to evidence a Triple Bottom Line (show Social, Environment and Economic assessments of commissioning decisions in a balanced way). This may include a Social Return on Investment assessment or the development of a Sustainable Development Management Plan.
http://www.legislation.gov.uk/ukpga/2012/3/pdfs/ukpga_20120003_en.pdf
http://www.sdu.nhs.uk/documents/publications/SD_for_CCGs.pdf

Climate Change Act 2008

Linked to this Act, the NHS has a target to reduce carbon emissions by 10% by 2015, from a 2007 baseline.
www.legislation.gov.uk/ukpga/2008/27/contents
http://www.decc.gov.uk/en/content/cms/emissions/carbon_budgets/carbon_budgets.aspx

Civil Contingencies Act 2004

The Civil Contingencies Act 2004 requires all NHS organisations to prepare for adverse events/ incidents. Organisations must demonstrate they have undertaken risk assessments, and Carbon Reduction Delivery Plans are in place in accordance with emergency preparedness and civil contingency requirements
www.legislation.gov.uk/all?title=civil%20contingencies

HMT Sustainability Reporting Framework

The Government Financial Reporting Manual (FReM) now includes mandatory sustainability and environmental reporting from 2011/12. Monitor and DH use FReM as the basis for NHS annual financial reporting. The sustainability and environmental framework is included in the annual reports for NHS organisations. A template has been created by DH to simplify the reporting for NHS organisations and is available on the SDU website. This may be adopted by the NHSCB.
www.hm-treasury.gov.uk/frem_sustainability.htm
www.sdu.nhs.uk/sd_and_the_nhs/reporting.aspx

NHS Carbon Reduction Strategy

The CRS sets an ambition for the NHS to help drive change towards a low carbon society. It sets an interim NHS target of a 10% reduction in CO_2e emissions by 2015 (based on a 2007 baseline). This may be adopted by the NHSCB.
www.sdu.nhs.uk/publications-resources/3/NHS-Carbon-Reduction-Strategy

NHS Annual Governance Statement

The NHS Annual Governance Statement replaces the Statement on Internal Control and is an annual reporting requirement for NHS organisations. It provides assurance that resources are being appropriately managed. From 2009/10 organisations are required to include mandatory disclosures on climate change adaptation and mitigation. This ensures risk assessments have been undertaken and plans are in place to comply with the Climate Change Act and the Civil Contingencies Act. This may be adopted by the NHSCB.

http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_132925
http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_113532.pdf
http://www.sdu.nhs.uk/publications-resources/17/Adaptation-to-Climate-Change-in-NHS-Organisations/

Authorisation of Clinical Commissioning Groups
Supporting Information for Domain 4.2.1J – Self Certification

Innovation
We declare that from 1 April 2013 our CCG will have robust arrangements in place to champion innovation and for the adoption of innovation

What do we need to know (legal, regulatory and policy position)?

The innovation policy context and requirements of CCGs as NHS organisations is set out in *Innovation Health and Wealth, Accelerating Adoption and Diffusion in the NHS* and the *NHS Operating Framework 2012-13.* Innovation is defined in *Innovation Health and Wealth* as 'an idea, service or product, new to the NHS or applied in a way that is new to the NHS, which significantly improves the quality of health and care wherever it is applied.'

Innovation Health and Wealth identified three important stages in the innovation process;
Invention – the originating idea for a new service or product, or a new way of providing a service
Adoption – putting the new idea, product or service into practice, including prototyping, piloting, testing and evaluating its safety and effectiveness
Diffusion – the systematic uptake of the idea, service or product into widespread use across the whole service

The CCG legal duty to promote innovation will apply to all three stages of the innovation process, and will apply from the date of establishment.

What could we do beyond authorisation?

The actions you could take to ensure compliance with the innovation duty are:

- Have a plan in place, or under development, to set out our approach to innovation. This could include:
  - specifying local priority areas in line with the *NHS Operating Framework for the NHS in England 2012-13* in which innovation will be identified, adopted and diffused
  - detailing how the actions within *Innovation Health and Wealth* will be met locally e.g. strengthen leadership and accountability for innovation at 'board-level', increase compliance with NICE technology appraisals
  - specifying plans for delivering the adoption and spread of each of the six high impact innovations in *Innovation Health and Wealth* e.g. Digital by Default, 3 Million Lives
  - considering how local flexibilities in the use of tariff might be used to incentivise innovation
- Take steps to ensure strong leadership and accountability for innovation within our organisation
- Facilitate partnerships with public and private sector organisations and patient networks and organisations to enable local innovation and its diffusion
- Give evidence of plans to be an active partner in the local Academic Health Science Network once established

Guidance to support you in meeting the legal duty to promote innovation will be published in the autumn.

Where can we go for further support and information?

Innovation Health and Wealth: accelerating adoption and diffusion of innovation *Innovation, Health and Wealth;* a delivery agenda for spreading innovation at pace and scale in the NHS, December 2011

Innovation Health and Wealth High Impact Innovations
The NHS Institute are working on a number of implementation support packages to accelerate the spread and adoption of the six high impact innovations for healthcare

High Quality Care for All
NHS Next Stage Review final report by Lord Darzi which described the first national innovation strategy, June 2008

Creating an Innovative Culture
This best practice guidance document to support SHAs in fulfilling their legal duty to promote innovation will be of support to CCGs in making their declaration of compliance with the innovation statement. April 2009

Life Sciences Strategy
BIS Innovation and Research Strategy for Growth, December 2011

And for further support?

Innovation Hubs
England has eight Innovation Hubs, aligned to SHA boundaries. The Innovation Hubs help local NHS staff to identify, develop and commercialise innovations and also help with issues around Intellectual Property.

National Innovation Centre
The NHS National Innovation Centre (NIC) supports innovators, commissioners, and clinicians to speed up the development and use of innovations that will benefit the NHS. The web portal enables self assessment of innovations, finding others who may help and also support in commercialising appropriate innovations.

The National Institute for Health and Clinical Excellence
The National Institute for Health and Clinical Excellence (NICE) provides independent, authoritative and evidence-based guidance on the most effective ways to prevent, diagnose and treat disease and ill health, reducing inequalities and variation.

The NHS Institute for Innovation and Improvement
The purpose of the NHS Institute for Innovation and Improvement is to support the transformation of the NHS, through innovation, improvement and the adoption of best practice

National Technology Adoption Centre
Established in 2007, the NHS Technology and Adoption Centre's (NTAC), mission is to work directly with industry & the NHS at a clinical, managerial and procurement level to identify and overcome the hurdles to adoption for innovative technologies which have already demonstrated clear benefits to patients and will improve system efficiency. A key focus of NTAC's work is to provide the NHS with key information to accelerate the adoption and spread of high impact technologies to deliver improved outcomes. This has led to the publication of the How to Why Guides How to Why to Guide™to support clinicians, managers, key decision makers and other stakeholders on how to implement specific technologies.

Strategic Health Authorities
SHAs have a legal duty to promote innovation. CCGs are encouraged to contact their SHA Innovation Lead for advice and guidance on innovation. Contact details can be found on SHA websites.

http://www.nhs.uk/ServiceDirectories/Pages/StrategicHealthAuthorityListing.aspx

Authorisation of Clinical Commissioning Groups
Supporting Information for Domain 5.4D – Self Certification

Commissioning Support
We are aware of our duties as a statutory body to conduct a formal procurement for any commissioning support we wish to use, within a reasonable timescale; and that we will need to begin preparing for that procurement from April 2013

What do we need to understand?

'Commissioning support' is the assistance that CCGs may choose to share or buy in from external sources like NHS Commissioning Support Services (CSSs) or from the independent and voluntary sector and local authorities.

Once established, CCGs will be statutory public bodies and will be subject to the procurement rules and processes that govern public sector bodies[7]. This means that they will need to formally procure their commissioning support – including, in time, NHS hosted services - as soon as they are ready and able to do so. Failure to comply with procurement law can lead to legal challenge.

The commissioning support guidance '*Towards Service Excellence'* recognised the practical difficulties in expecting CCGs to have carried out procurements for their commissioning support arrangements by April 2013. The guidance emphasises the need for CCGs first to understand their business and commissioning support intentions following authorisation.

The period of NHS hosting from April 2013, provides time for resolving these issues so that CCGs are sufficiently supported in taking on their new roles from April 2013, through NHS hosted commissioning support services, and are able to formally procure their requirements from the open market at the earliest opportunity.

There are clearly practical issues about how commissioning support is procured in ways that minimises the burden on both CCGs and prospective suppliers. Over the next few months, we will be working closely with CCGs to explore the potential procurement approaches in more detail and how to address some of the potential risks, and we will be consulting on this shortly.

What do we need to do for authorisation?

As part of your organisational development plan, you will need to show that you have thought about the capacity and capability you will need in order to formalise your commissioning support arrangements through a procurement process from April 2013. This is different from any arrangements you put in place for clinical services.

This is likely to vary from one CCG to another. In some cases, you may wish to source this kind of support from outside agencies, or even from your commissioning support service so long as potential conflicts of interest are managed. In other cases, you may wish to embed some of these skills within your own organisation and this will need to be described within your organisational development plan.

Some of the key roles that you should be looking to identify to support your procurement include:

- The Senior Responsible Officer (usually a very senior individual in the organisation with clearly delegated authority) who is responsible for approving and signing the contract.

[7] See procurement information sheet

- Project Manager to design and manage the process including the evaluation.
- Subject matter experts for the design of the specification and evaluation of bids.
- Legal advice and support to review the contract terms.
- Financial advice to review payment and performance mechanisms to ensure that procurement represents value for money.
- Communications support to handle communication of the advert and manage any public or press queries.
- Contract manager, who might be the same as the project manager, but whose role is perhaps the most important in ensuring that the services are delivered, the agreed key performance indicators are being met, relationships managed, and any contract deviation or issues are dealt with.

Further information/resources

Over the coming weeks the NHS Commissioning Board Authority will be working closely with CCGs to develop a range of potential options and different procurement approaches that we will consult on over the summer.

In addition, building on the recent 'informed customer' events, we are currently working with national stakeholders to develop a series of basic procurement guides and factsheets that will help CCGs to make decisions about what type of commissioning support they need and what options are available.