

Consultation and Involvement Regulations

Duty to Involve (CCGs)

NHS CCGs have a duty under Section 14Z2(2) of the NHS Act 2006, as amended by the Health and Social Care Act 2012 to ‘make arrangements’ to inform, involve and consult with the public. The full wording of the law is as follows;

14Z2 Public involvement and consultation by clinical commissioning groups

...

(2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—

- (a) in the planning of the commissioning arrangements by the group,*
- (b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and*
- (c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.*

The three areas that require public involvement (planning, proposals, decisions) often overlap but if any activities fall into one of those areas then involvement or consultation is likely to be required.

Similar duties apply to Providers and also NHS England (for directly commissioned services)

It is also important to check whether or not there would be an impact on service delivery or the range of services. If there is then the legal duty applies. If not then the legal duty to involve does not apply, but we should still consider and make a judgement about whether some form of public involvement would be beneficial. Some examples where public involvement would be expected are listed below.

Public involvement can take many forms starting with asking what we already know – there is no point replicating work that has recently been undertaken. A review of existing information can save time and money and spot gaps in insight. This helps to ensure that public involvement is focused and meaningful, rather than being generic and imposing an unnecessary burden on people. Some potential tactics and activities for involvement are listed below and can be discussed with the appropriate experts in the Communications and Engagement team.

Duty to Consult

Where substantial development or variation changes are proposed to NHS services, there is a separate requirement to consult the local authority under the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (“the 2013 Regulations”) made under s.244 NHS Act 2006. This is in addition to the duties on commissioners and providers for involvement and consultation set out above. The full wording of the Regulation is as follows;

23 Consultation by responsible persons

(1) Subject to paragraphs (2) and (12) and regulation 24, where a responsible person (“R”) has under consideration any proposal for a substantial development of the health service in the area of a local authority (“the authority”), or for a substantial variation in the provision of such service, R must—

(a) consult the authority;

(b) when consulting, provide the authority with—

(i) the proposed date by which R intends to make a decision as to whether to proceed with the proposal; and

(ii) the date by which R requires the authority to provide any comments under paragraph (4);

(c) inform the authority of any change to the dates provided under paragraph (b); and

(d) publish those dates, including any change to those dates.

(2) Paragraph (1) does not apply to any proposals on which R is satisfied that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff.

...

(12) In a case where R is a service provider and the proposal relates to services which a clinical commissioning group or the Board is responsible for arranging the provision of—

(a) the functions of R under this regulation must be discharged by the responsible commissioner on behalf of R; and

(b) references to R in this regulation (other than in paragraph (5)(c)) are to be treated as references to the responsible commissioner.

There is no legal definition of ‘substantial development or variation’ and for any particular proposed service change commissioners and providers should seek to reach agreement with the local authority on whether the duty is triggered. Where there is a duty for the commissioner to consult the local authority under the s.244 Regulations, it will almost invariably be the case that public consultation is also required. The detailed tactics and activities for a public consultation can be discussed with the appropriate experts in the Communications and Engagement team.

Further Reading, Scenarios for Involvement, Types of Involvement

NHS England Guidance on Patient and Public Participation:

<https://www.england.nhs.uk/wp-content/uploads/2017/05/patient-and-public-participation-guidance.pdf>

NHS England Guidance on Consultations: <https://www.england.nhs.uk/wp-content/uploads/2018/03/planning-assuring-delivering-service-change-v6-1.pdf>

The examples listed here indicate some circumstances where the legal duty to involve the public may apply and therefore where NHS organisations should assess this to determine the appropriate response.

As it is not possible to anticipate every such situation, the list is not exhaustive.

- The strategic planning of services, for example,
 - Plans to reconfigure or transform services or improve health.
 - Plans in response to the latest joint strategic needs assessment and health and wellbeing strategy.
- Developing and considering proposals to change commissioning arrangements, for example:
 - Changes to services, new models of care, new service specifications, local improvement schemes, etc.

- Reconfigurations involving movement of services from one provider or location to another.
- Procurement
 - Considering or developing proposed models, configurations or specifications for a service.
 - Commencing a procurement process.
- Contracts
 - Entering into a contract with a provider.
 - Varying a contract, other than a variation required by law.
 - Serving a notice to terminate a contract with a provider.
 - Receiving a notice to terminate from a provider.
- Overview and scrutiny referral
 - Any instance in which a referral has been made to the local overview and scrutiny committee.
- Equality
 - An equality impact analysis may indicate the need for engagement, for example a lack of evidence relating to certain groups

Involvement can take many forms and will need to be tailored to the specific circumstances but existing sources could include;

- Surveys
- Social media
- Healthwatch reports
- Care Quality Commission (CQC) reviews
- Research reports
- Complaints
- Patient Experience Library
- Intelligence from NHS bodies, the VCSE sector and local authorities
- Staff feedback including their own views, any 'whistleblowing' concerns and intelligence they have gained through their interactions with patients and the public

And if new involvement is needed then it could include the following;

- Feedback from elected representatives (MPs and councillors)
- Letters or emails to affected individuals
- Newsletters
- Information on notice boards in local community facilities such as GP surgeries, libraries, leisure centres and supermarkets
- Suggestion boxes
- Boards on the street for people to write their thoughts on a particular question, for others to see and contribute to the discussion
- Leaflet drops
- Dedicated events to enable discussion
- Focus groups and interviews
- Surveys and feedback forms
- Local events such as community celebrations, festivals, markets, schools, leisure centres, libraries, shopping centres, neighbourhood gatherings, etc
- Work with local VCSE organisations, local Healthwatch and the PPG at GP practices
- Formal public consultations
- Social media, for example Twitter, Facebook
- Public and patient advisory or reference groups
- Patient and public representatives who provide regular input to committees/groups/boards.
- Co-production with experts by experience