

## **Implementing the Long Term Plan: Proposals for possible changes to legislation**

### **Purpose of report**

For discussion.

### **Summary**

This report provides a summary of the proposals for legislation in relation to the NHS Long Term Plan, which are currently being consulted upon. The report requests CWB views on a proposed set of tests to assess the impact of the proposals on local government powers and duties. Chris Gormley, Deputy Director of Mandate, Legislation and Accountability from NHS England, and Ben Dyson, Executive Director of Strategy from NHS Improvement will be attending the CWB meeting to hear the Boards views on the proposals, in particular their impact on local government.

### **Recommendation**

That the Board discuss the proposed set of tests to identify the implications for local government of the proposals outlined in the NHS England consultation document.

### **Actions**

Officers to action as directed by the Board.

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## Implementing the Long Term Plan: Proposals for possible changes to legislation

### Background

1. The NHS Long Term Plan (LTP), published in January 2019, sets the priorities and policy direction for the NHS for the next five to ten years. It also proposed legislation to make it easier for NHS organisations to work collectively. The NHS has now launched a consultation exercise on the proposals for changing legislation relating to the NHS. The consultation document is available [here](#). The consultation document recognises that it is possible to implement the LTP without primary legislation, though legislation could make implementation easier and quicker.
2. Chris Gormley, Deputy Director of Mandate, Legislation and Accountability from NHS England, and Ben Dyson, Executive Director of Strategy from NHS Improvement will be attending the CWB meeting to hear the Board's views on the implications for local government in relation to the proposals for legislative reform outlined in the consultation.
3. This report provides Board members with a summary of the legislative proposals and sets out some proposed tests to apply to the proposals to identify the impact on local government powers and duties.

### Summary of main proposals for changes to legislation

4. **Promoting collaboration** - The aim is to provide a better balance in the NHS between competition and collaboration. In particular, changing the Competition and Markets Authority (CMA) role in relation to proposed mergers and acquisitions involving NHS Foundation Trusts. The proposal is to remove the CMA role in reviewing mergers, acquisitions and transfer it to NHS Improvement (NHSI) to ensure that there are clear patient benefits. In addition, NHSI's competition powers and duties are also removed.
5. NHSI (with NHSE) is responsible for the National Tariff Payment System. Currently it is required to refer any objection from relevant bodies to tariff prices to the CMA or consult on a revised set of proposals. The proposal is that NHSI and NHSE are able to reach a final decision without reference to the CMA.
6. **Getting better value for the NHS** - The aim is to remove 'overly rigid' procurement requirements on the NHS by introducing a new 'best value' test and stronger protection for patient choice. Currently, NHS procurement is undertaken under section 75 (S75) regulations (Health and Social Care Act 2012) and the Public Contracts Regulations 2015. NHSE contends that current requirements lead to lengthy and costly procurement processes. Furthermore, these make it difficult for NHS organisations to collaborate in developing new models of care as there is a chance that this will be challenged on the grounds of not treating all potential providers equally.
7. NHSE proposes that S75 regulations are revoked and replaced with a 'best value' test, to be defined in statutory guidance and focusing on the impact on quality of care and health outcomes, and acting in the best interests of patient. This means that NHS providers and commissioners would be removed from the scope of the Public Contracts

Regulations. NHSE also proposes a new measures to strengthen patient choice, including the roll out of personal health budgets.

8. **Flexibility of NHS payment systems** - The aim is to develop the national tariff to provide incentives for collaboration between commissioners and providers to improve the quality of care and ensure the most efficient use of resources. NHSE proposes the following legislation:
  - 8.1. all national prices to be set as a formula rather than a fixed value, so that the price payable can reflect local factors;
  - 8.2. provide a power for national prices to be applied only in specified circumstances, for example allowing national prices for acute care to cover 'out of area' treatments but enabling local commissioners and providers to agree appropriate payment arrangements for services that patients receive from their main local hospital in accordance with tariff rules; and
  - 8.3. allow adjustments to provisions within the tariff to be made within a tariff period, for example to reflect a new treatments, rather than having to consult on a new tariff in its entirety for even a minor proposed change.
9. There is also a proposal that, once Integrated Care Systems (ICSs) are fully developed, the power to apply to NHSI to make local modifications to tariff prices should be removed.
10. Regarding section 7A arrangements, under which NHSE commissions services on behalf of the Secretary of State, it is proposed to revise the legislation so that the national tariff can include prices for section 7A public health services, such as immunisation and vaccinations, prisoner health and national screening programmes.
11. **Integrating care provision** - This proposes introducing a new type of NHS trust bringing together primary, community and acute care under a single provider organisation. The Integrated Care Provider (ICP) contract is being introduced as a discretionary tool to enable this to happen but in some areas it may be difficult for commissioners to identify an existing provider to take on an ICP contract. This proposal would enable the Secretary of State to establish a NHS trust for the purposes of providing integrated care.
12. **Managing NHS resources better** –This proposal gives NHSI more powers to direct mergers in circumstances where the reluctance of one provider is a barrier to a merger. Currently, NHSI currently has this power but only where there is serious failure or risk of failure.
13. **Improving planning of capital spending** - This proposal aims to enable a more collective approach across different NHS organisations in capital investment to support integrated care. Currently, Parliament approves an annual financial envelope for capital expenditure across the Department of Health and Social Care (DHSC) and NHS trusts but there are no equivalent mechanisms to set the capital spending of NHS foundation trusts (which have specific freedoms in relation to their capital assets). The proposal is that NHSI should have powers to set annual capital spending limits for NHS foundation trusts in the same way as it can for NHS trusts.

14. **All the NHS working together** - These proposals aim to remove barriers to collaboration and joint decision-making by letting trusts and CCGs exercise some functions, and make some decisions jointly. This would be an alternative to creating an ICP. The aim is for ICS partnership boards to bring together commissioners, providers, primary care networks, local authorities, the community and voluntary sector and other partners. The proposal is that organisations will have the powers to form these joint committees. They would not do away with existing responsibilities of CCGs and NHS providers but they would provide a mechanism for collective decision-making on local priorities and the best use of collective resources. In addition, the NHS is seeking new provisions relating to the formation and governance of these joint committees and the decisions that could be delegated to them.
15. The NHS is seeking powers for NHS bodies to work together that are similar to the Section 75 NHS Act flexibilities that enable CCGs and local councils to establish joint committees, pool budgets and delegate commissioning and provision. The proposals also state that the NHS will work with local government to consider how existing provisions for joint working might be improved in the light of these proposed changes, including the ability for local authorities to be part of joint committees.
16. **Joined up leadership** – This aims to bring NHSE and NHSI closer, either to merge them completely or enable them to work more closely, while clarifying the accountability to the Secretary of State and Parliament.

#### **Proposed tests to identify implications for local government**

17. The LGA has welcomed many aspects of the NHS Long Term. It, however, recognises it is a plan for the NHS rather than a comprehensive plan for the wider health and care system. Inevitably, therefore, it offers only a partial solution to the health, social care and wellbeing challenges facing us. The LTP recognises that partners, in particular local government, have a role in promoting health, wellbeing and independence but the measures it outlines focus primarily on the NHS.
18. Similarly, the proposals for possible changes to legislation focus primarily on legal reform to enable greater collaboration between NHS organisations. Measures to enable greater collaboration between the NHS and other partners, including local government, are addressed but only in part or as a secondary consideration. We would like to see a greater consideration of how the legal framework can be reformed to give NHS and local government partners parity of esteem and equivalent freedoms and flexibilities in a more joined-up health and care system. We, therefore, propose that NHSE, DHSC and the Ministry of Housing Communities and Local Government adopt a set of tests to ensure that any legislative reform for enabling greater collaboration in the NHS also considers how this will impact on local government, with the aim of extending equivalent freedoms and powers to local government. The tests are outlined below.
  - 18.1. What impact will these proposals have on the existing powers and duties of local authorities in relation to their ability to collaborate with the NHS and other partners in order to improve the health and wellbeing of their populations?
  - 18.2. Is there any reason why equivalent freedoms and flexibilities proposed for the NHS cannot also be extended to local government? If not, what additional

legislative reforms are necessary to extend freedoms and flexibilities to local government?

- 18.3. Do the proposals adhere to the principle of subsidiarity? That is, do they ensure that decisions will be taken at the most relevant local level, rather than by a central authority? Furthermore, do the proposals ensure that there is local accountability of health, care and wellbeing services?
- 18.4. Do these proposals build on and make the most of the existing governance and accountability structures within the health and care system? In particular, do these proposals ensure that health and wellbeing boards continue to have a key role in promoting collaboration and integration?

### **Implications for Wales**

19. Health and social care policy are devolved to the Welsh Assembly.

### **Financial Implications**

20. This report has no financial implications for the LGA.

### **Next steps**

21. Community Wellbeing Board is requested to discuss the tests outlined in paragraphs 18.1 – 18.4 above.