

**SCRUTINY BOARD (ADULTS, HEALTH AND ACTIVE LIFESTYLES)
HEALTH SERVICE DEVELOPMENTS WORKING GROUP
TERMS OF REFERENCE**

1.0 Introduction

1.1 These terms of reference set out the purpose and scope of the Health Service Developments Working Group approach, which aims to assist the Scrutiny Board (Adults, Health and Active Lifestyles) in fulfilling the council's statutory health scrutiny function particularly around responding to proposed health service developments/ variations in the local area.

2.0 Background

2.1 Following the introduction of the Health and Care Act 2022, new guidance: "[Local Authority Health Scrutiny: Guidance to support local authorities and their partners to deliver effective health scrutiny](#)" (DHSC, 2024) was published on 9th January 2024 and replaces/supersedes guidance of the same name published in June 2014.

2.2 The new guidance includes an explanation and guide to the updated [Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) Regulations 2013](#)¹, and clarifies that the Regulations cover providers of health services (commissioned by NHS England, ICBs or local authorities) who are not themselves NHS bodies. Together with relevant NHS bodies these are known as 'responsible persons' in the legislation and include:

- ICBs.
- NHS England.
- local authorities (insofar as they may be providing health services to ICBs, NHS England or other local authorities).
- NHS trusts and NHS foundation trusts.
- GP practices and other providers of primary care services (previously not subject to specific duties under health scrutiny regulations as independent contractors, they are now subject to duties under the 2013 regulations as they are providers of NHS services).
- other providers of primary care services to the NHS, such as pharmacists, opticians and dentists.
- private and voluntary sector bodies commissioned to provide NHS or public health services by NHS England, ICBs or local authorities.

2.3 Regulation 28 states that local authorities may arrange for their relevant functions to be discharged by a Health Overview and Scrutiny Committee (HOSC). In Leeds, the Scrutiny Board (Adults, Health and Active Lifestyles) has been assigned to fulfil the council's statutory health scrutiny function. This is set out in Article 6 of the constitution under special responsibilities.

¹ The '[Local Authority \(Public Health, Health and Wellbeing Boards and Health Scrutiny\) \(Amendment and Saving Provision\) Regulations 2024](#)' sets out the relevant amendments which came into force on 31 January 2024.

Proposed health service developments/variations in the local area.

- 2.4 Part 4 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, and specifically regulation 23(1)(a), requires the responsible NHS body or health service provider to consult local authorities (through the health scrutiny function) where any proposal is under consideration for:
- a substantial development of the health service; or,
 - a substantial variation in the provision of such a service in the local authorities' area.
- 2.5 In accordance with Regulation 23(1)(b) to (d)), the relevant NHS body or health service provider will notify the local authority HOSC of the date by which they require the HOSC to provide comments in response to the consultation and the date by which they intend to make a decision as to whether to proceed with the proposal. These dates must be published and any changes to these dates must be notified to the HOSC.
- 2.6 Regulation 24 sets out certain proposals on which consultation with the local authority HOSC is not required. These are:
- where the relevant NHS body believes that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff. In such cases the NHS body must notify the local authority that consultation will not take place and the reason for this.
 - where there is a proposal to establish or dissolve an NHS trust or ICB or vary the constitution of the ICB, unless the proposal involves a substantial development or variation.
 - where proposals are part of a trust's special administrator's report or draft report (that is, when a trust has financial difficulties and is being run by an administration put in place by the Secretary of State) - these are required to be the subject of a separate 30-day community-wide consultation.
 - where proposals are contained in recommendations by a health special administrator on the action which should be taken in relation to a company subject to a health special administration order under section 128 of the 2012 Act (health special administration orders).
- 2.7 The original 2013 Regulations included the power for local authority HOSCs to make formal referrals to the Secretary of State where proposals are not considered to be in the interest of local health services and/or it is deemed that the consultation on the proposal has not been adequate in relation to content or time allowed. However, this power has now been removed and has been replaced with new ministerial intervention powers introduced by the Health and Care Act 2022.

Ministerial intervention powers introduced by the Health and Care Act 2022.

- 2.8 Powers for the Secretary of State to intervene in reconfiguration of NHS services were introduced by the Health and Care Act 2022 by inserting schedule 10A into the [National Health Service Act 2006](#). The new provisions came into force on 31 January 2024 with the publication of '[The National Health Service \(Notifiable Reconfigurations and Transitional Provision\) Regulations 2024](#)'. Statutory guidance was also published in terms of setting out the new process for ministerial intervention ([Reconfiguring NHS services – ministerial intervention powers](#)" (DHSC, 2024).

- 2.9 Paragraph 2 of schedule 10A to the NHS Act 2006 now places a duty on the NHS commissioning body to notify the Secretary of State when they propose a notifiable reconfiguration of NHS services.
- 2.10 The definition of “reconfiguration of NHS services”, as set out in Schedule 10A, means a change in the arrangements made by an NHS commissioning body for the provision of NHS services where that change has an impact on –
- (a) the manner in which a service is delivered to individuals (at the point when the service is received by users), or
 - (b) the range of health services available to individuals.
- 2.11 However, a “notifiable” reconfiguration for the purposes of paragraph 2(1) of Schedule 10A to the 2006 Act will also be when a reconfiguration would trigger a consultation with the local authority in accordance with the 2013 Regulations - namely when an NHS commissioning body or NHS provider has a proposal for a substantial development of the health service in the area of a local authority or for a substantial variation in the provision of a such a service.
- 2.12 The statutory guidance makes clear that the NHS commissioning body should consider the local authority HOSC’s views on a proposal when deciding when to notify and should (in the notification form) make clear to the Secretary of State the HOSC’s view of whether the reconfiguration is notifiable.
- 2.13 Schedule 10A to the NHS Act 2006 also provides a new call-in power to allow the Secretary of State to intervene in NHS service reconfigurations at any stage where a proposal exists and take or re-take any decision that could have been taken by the NHS commissioning body.
- 2.14 Any proposal for change (not just notifiable reconfiguration proposals) may be subject to call-in intervention by the Secretary of State. Local authority HOSCs and other interested parties can write to request (via a call-in request form) that the Secretary of State consider calling in a proposal. Linked to this, the Department for Health and Social Care expects requests only to be used in exceptional situations where local resolution has not been reached. Such requests will be considered as set out in the statutory guidance.

3.0 Scope of the Health Service Developments Working Group

- 3.1 Practice guidance published by NHS England ([‘Planning, assuring and delivering service change for patients’](#)) is designed to support NHS commissioning bodies and NHS providers, working with local authorities and providers, to carry out effective service reconfiguration in a way that puts quality of care first, is clinically evidence-based and which involves patients and the public throughout. It is intended to be used as a reference guide to help develop and implement plans in a clear and consistent way.
- 3.2 As part of this guidance, NHS England advises that, broadly speaking, service change is any change to the provision of NHS services which involves a shift in the way front line health services are delivered, usually involving a change to the range of services available and/or the geographical location from which services are delivered.

- 3.3 However, as the terms ‘substantial development’ and ‘substantial variation’ are not defined in the legislation, commissioners and providers are advised to take a proactive approach to sharing at an early stage any proposals on reconfigurations with the relevant local authority HOSC, drawing a distinction between informal discussions and formal consultations, and work with the local authority HOSC to determine whether the change proposed is substantial.
- 3.4 The overall purpose of the Health Service Developments Working Group approach is to therefore offer an environment that allows early engagement with the Scrutiny Board (Adults, Health and Active Lifestyles) regarding proposed developments and/or changes to local health services and reach a view on whether the change proposed is substantial, as well as determining appropriate next steps.
- 3.5 It should be noted that it is the Scrutiny Board (Adults, Health and Active Lifestyles) that has the power to make comments on any proposed substantial developments or variations by the date (or changed date) notified by the relevant NHS body or health service provider undertaking the consultation. However, the view of the Health Service Developments Working Group can usefully inform the deliberation of the Scrutiny Board.
- 3.6 The role of the working group can be summarised as follows:
- To consider, at an early stage, proposed developments and/or changes to local health services to reach a view on whether the change proposed constitutes as being substantial.
 - To consider whether or not relevant plans for public engagement and involvement linked to the proposed developments and/or changes are appropriate and appear satisfactory.
 - To consider appropriate next steps linked to the Scrutiny Board’s power to make comments on any proposed substantial developments or variations by the date notified by the relevant NHS body or health service provider undertaking the consultation.
 - To maintain an overview of progress associated with ongoing service change proposals and associated public engagement and involvement activity, including details of any stakeholder feedback and how this is being used to further develop the proposals.
 - To review the implementation of any agreed service change and/or development, including any subsequent service user feedback (as determined by the Scrutiny Board (Adults, Health and Active Lifestyles)).
 - To refer any matters of significant concern to the full Scrutiny Board (Adults, Health and Active Lifestyles), for further consideration.

4.0 Frequency of meetings

- 4.1 The working group will meet on an ad-hoc basis as the need arises.
- 4.2 It should be noted that the duty to consult with the Scrutiny Board (and the associated working group) remains the responsibility of relevant NHS bodies and health service commissioners which now come under the scope of health scrutiny.

5.0 Membership

- 5.1 All members of the Scrutiny Board (Adults, Health and Active Lifestyles) will be invited to take part in any Health Service Developments Working Group meetings.

- 5.2 The quorum of any Health Service Developments Working Group meetings will be the Chair (or the Chair's nominee) plus a minimum of two other members from the Scrutiny Board (Adults, Health and Active Lifestyles).
- 5.3 There will be a minimum of two political groups represented at any Health Service Development Working Group meeting.

6.0 Key stakeholders

- 6.1 The following key stakeholders have been identified as indicative contributors to the Health Service Developments Working Group meetings:
- NHS West Yorkshire Integrated Care Board (Including the Leeds Committee of the West Yorkshire ICB)
 - Leeds Teaching Hospitals NHS Trust (LTHT)
 - Leeds and York Partnership NHS Foundation Trust (LYPFT)
 - Leeds Community Healthcare NHS Trust (LCH)
 - Director of Adult and Health (or nominee)
 - Director of Public Health (or nominee)

7.0 Monitoring arrangements

- 7.1 The Scrutiny Board (Adults, Health and Active Lifestyles) will be kept fully updated on the work and activity of the working group.

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