substantial variations **and developments** of health services

a guide

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better scrutiny for better government

Acknowledgements

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The Centre for Public Scrutiny

The Centre for Public Scrutiny promotes the value of scrutiny in modern and effective government, not only to hold executives to account but also to create a constructive dialogue between the public and its elected representatives to improve the quality of public services. The Centre has received funding from the Department of Health to run a three-year support programme for health overview and scrutiny committees of social services authorities as they develop their power to promote the well-being of local communities through effective scrutiny of healthcare planning and delivery and wider public health issues.

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introduction

This guide is for local authority overview and scrutiny committees (OSCs), NHS bodies and other organisations with an interest in developments to health services within England. The guide is about working together, within the legal framework, to improve the experience of patients. Whilst concentrating on substantial variations or developments of health services, a recurrent theme is the need for the NHS and OSCs to remain focussed on the needs of patients and opportunities to improve their care.

The guide aims to:

- clarify the roles of OSCs considering health issues and how they relate to consultations on substantial variations and developments of health services;
- encourage and enable OSCs and NHS bodies to reach agreement on what constitutes 'substantial' within their local context;
- help OSCs and NHS bodies to develop their understanding of their respective and distinct roles and to suggest ways of joint working to improve their contribution to public accountability of health services.

The guide is not about establishing 'rules' on how to consider substantial issues, but suggests criteria and protocols based on legislation and the experience of OSCs and NHS bodies from across the country.

The successful modernisation of health services to meet the needs of local people and improve patient experiences relies on developing good relationships between organisations and individuals. Much can be achieved by co-operation, clarification of issues, and understanding each other's priorities and constraints at an early stage.

requirement for the NHS to consult patients and the public

The NHS has been required to consult on changes to health services for many years. However, the establishment of the current structure for involving patients and the public developed the requirements for consultation, and identified new statutory consultees. NHS bodies have specific duties in relation to consultation that are set out in sections 7 and 11 of the Health and Social Care Act 2001.

ongoing involvement and consultation – section 11

Section 11 places a duty on strategic health authorities, PCTs and NHS trusts to make arrangements to involve and consult patients and the public in:

a) planning services;

b) developing and considering proposals for changes in the way services are provided; and

c) decisions to be made that affect how those services operate.

Guidance on the duty to involve and consult recommends:

a) discussing with patients and the public how services could be improved and resources used more effectively, to produce plans for change – *this constitutes involvement in planning;*

b) discussing ideas, experiences, and the reasons why the NHS body has identified the need for change with patients and the public, and with key partner organisations – *this constitutes involvement in the development of health services;*

c) consultation on proposals for change, using evidence from the involvement activities as well as clinical evidence for improvement of treatment and care – *this constitutes consultation*.[8]

The duty to involve and consult must be implemented in the planning and development of services and in relation to decisions that might affect services.

It is important that involvement and consultation is meaningful. Plans should take into account time allowed, content, and detail appropriate to the scale of the issue being considered. For example, part of the involvement process might be to find out from stakeholders the best way to involve them.

PPIFs have a role in monitoring how effectively NHS bodies involve and consult patients and the public, and to advise them on how this might be improved. The performance management of NHS trusts and PCTs in implementing the duty to involve and consult is undertaken by Strategic Health Authorities and through the Healthcare Commission's annual healthcheck. More information about NHS bodies and the section 11 duty is available at www.dh.gov.uk

consultations on substantial variations or developments of services – section 7

Regulations under section 7 require NHS bodies to consult relevant overview and scrutiny committees on any proposals for substantial variations or developments of health services. This duty is additional to the duty of involvement or consultation under section 11 i.e. other stakeholders should be consulted and involved in addition to OSCs.

It is important that NHS bodies recognise the difference between the Executive members and the OSC members within a local authority. If a proposal for change impacts upon the provision of social care or other local authority services, it is likely that early discussions will have included staff and councillors with an interest in these services. It should not be assumed that this involvement would have included OSCs. Often the officers involved may be service managers who have little contact with overview and scrutiny, and the councillors involved may be Executive members with delegated powers to make decisions relating to the services that they lead. OSCs are separate from the Executive, to enable them to scrutinise Council services and Executive decision-making. A proposal, which might be substantial, may impact on local authority services as well as NHS services, for example where health and social services are developed in partnership. It is therefore important for NHS bodies to make direct contact with OSCs and to treat this as unconnected from other local authority input into proposals that might have already taken place.

Proposals for service change should be discussed at an early stage, to identify whether the proposals are substantial, and to gain clarity and agreement on the purpose of consultation.

Initial discussions should also aim to reach agreement on conduct of the consultation taking into account local circumstances and other constraints, e.g. timescales for external funding bids. Cabinet Office guidelines recommend that full consultations should last a minimum of twelve weeks and that consultations should ensure that groups that are traditionally hard to engage are involved, in addition to the wider community and OSCs. The guidelines set out the basic minimum principles for conducting effective consultation and aim to set a benchmark for best practice. The guidance is available at www.cabinet-office.gov.uk

It may be possible for OSCs and NHS bodies to reach agreement about a different timescale for consultation. What is important is the quality of consultation.

what is a ‘substantial variation or development’?

models and protocols

A ‘substantial variation or development’ of health services is not defined in Regulations. Proposals may range from changes that effect a small group of people within a small geographical area such as changes in the timing of podiatry services within a health centre, to major reconfigurations of specialist services involving large numbers of patients across a wide area. The key feature is that there is a major change to services experienced by patients and future patients.

OSCs and NHS bodies are encouraged to develop local agreements or sets of criteria about what might be regarded as ‘substantial’ in the local context. This should be informed by discussions with other key stakeholders, including PPIFs and service user groups. It also requires OSCs to have a clear picture of local health needs and the provision of health services. This information may be collated from a number of sources, including:

- Director of Public Health annual reports;
- data collated by regional Public Health Observatories;
- PCT local delivery plans and NHS trust business plans;
- reports from strategic health authorities;
- Healthcare Commission inspection and improvement reports;
- support from the Centre for Public Scrutiny advisory team under the health scrutiny support programme.

Although a number of OSCs and NHS bodies have attempted to define what is ‘substantial’, definitions either tend to be very broad, covering all changes or so targeted that some significant changes may be missed. It is difficult to have a standard, rigid definition of what is ‘substantial’ but some NHS bodies and OSCs have agreed protocols or procedures to help identify whether proposed variations or developments in services are ‘substantial’. These have proved very useful in distinguishing proposals that require formal consultation with OSCs from proposals which do not. Research undertaken by Manchester University on behalf of the Centre for Public Scrutiny[9] has identified that whilst around 3/4s of NHS bodies responding to the research had consulted OSCs about substantial variations, only around 1/3 had agreed criteria with OSCs for identifying whether an issue was in fact ‘substantial’. This finding from the research indicates that a lack of agreement about what might be considered ‘substantial’ in the local context might lead to uncoordinated and ineffective scrutiny that potentially might overburden OSCs and the NHS. This guide encourages OSCs and NHS bodies to agree a method of evaluating the need for formal consultation.

Example: In Bath and North East Somerset, Bristol, North Somerset, Gloucestershire, South Gloucestershire, Swindon and Wiltshire, OSCs and NHS bodies have an agreed process that officers and managers should follow when considering whether an issue is substantial, and how to address such issues. Partner organisations meet regularly to identify potential issues. The agreement also identifies basic information that OSCs need to consider. A key part of this process is asking some patient groups for their opinion about whether issues are substantial.

Example: In Lewisham, NHS trusts are developing an impact assessment tool intended to clarify whether a proposed change is substantial or not and whether it requires full consultation. The tool is used at an early stage in the development of proposals or discussions about service change, and then submitted by the lead NHS trust to the OSC. It addresses specific issues such as changes in accessibility; effect on the wider community; the patient population affected; and, methods of service delivery. The impact assessment requires the local NHS trusts to score the potential consequences of the proposals. It also requires a score from representatives of people affected by the proposals, i.e. patients, service users or carers.

Example: In Norfolk, Suffolk and Cambridgeshire the OSCs, NHS trusts, PCTs and SHA have produced a framework and signposting document for health overview and scrutiny. The document states that the NHS has accepted that OSCs may decide whether a proposal requires formal consultation and that the NHS bodies will accept this decision.

However useful a protocol or tool can be, it is important that agreement is reached. Department of Health guidance, and good practice, indicate that in deciding whether a proposal is substantial, the following issues should be considered:

a) changes in accessibility of services;

b) impact of the service on the wider community and other services, including economic impact, transport and regeneration;

c) number of patients affected, changes may affect the whole population of a geographical area or a small group. If a change affects a small group of patients it may still be 'substantial', especially if patients need to continue to access that service for many years;

d) methods of service delivery, e.g. moving a particular service into a community setting from an acute hospital setting.

The evidence used to identify these should include feedback from patients and the public.

Example: Oxfordshire County Council's OSC has developed a table to help it identify whether a service development or variation is likely to be substantial. The table considers issues that include:

Characteristics likely to lead to a view that formal consultation is *not* required	**Characteristics likely to lead to a view that formal consultation *is* required**
Nature of impact upon patients and the public	
For example: Legal obligations set out under Section 11 (Health and Social Care Act) to 'involve and consult' have been fully complied with. (Details of the methods of public involvement used must be provided)	**For example:** Legal obligations under Section 11 have not been implemented, either partially or fully.
Rationale/policy behind proposed service change or development	
For example: The proposed service change or development is primarily driven by clinical factors but also has financial and/or staffing and/or other managerial benefits.	**For example:** The proposed service change or development is primarily driven by financial, staffing or other managerial factors but also has clinical merit.
Clinical Factors	
For example: The proposed service change improves clinical governance and reduces risk, and is based upon agreed best practice e.g. N.S.F. standards, N.I.C.E. Guidance.	**For example:** The proposed service change plays no part in improving clinical governance or reducing risk, and does not support or enable the implementation of e.g. N.S.F. standards, N.I.C.E. Guidance
Other	
For example: The commissioning body/ies is/are aware of and has/have been involved in the drafting of the proposal/s.	**For example:** The commissioning body/ies is/are not fully aware of and supportive of the proposal/s.

Example: In Hampshire, Isle of Wight, Portsmouth, and Southampton the OSCs have produced a framework for assessing substantial change in NHS provision. The framework was developed with input from the IRP and was subject to full consultation with local NHS bodies, district councils and other partners. It has been particularly helpful as a starting point for dialogue about whether a proposal is substantial or not, and has served as a guide to NHS managers who are dealing with OSCs for the first time. The OSCs have identified that publication of the framework has resulted in a better understanding in the NHS between section 11 and section 7 requirements, and has increased engagement with key stakeholders regardless of whether section 7 applies.

Another approach is for OSCs to identify standard questions to ask NHS bodies. For example, Warwickshire County Council has developed four standard questions that are used when the OSC has been notified for the first time about a proposal to vary or develop services.

a) How the views of the public were obtained in the earlier stages of the change programme, including consultation procedures used, numbers involved, timescales for consultation and the questions asked.

b) What views were expressed by the public, to establish how well informed, clear and representative these views are, and how they influence the options available.

c) How these views were interpreted by NHS bodies and factored into the development of the proposals, whether for or against.

d) What the public response is now to any proposals that differ from those submitted to the public in the initial round of consultation.

The answers to the questions are used to identify whether witnesses would be required to attend a future meeting and give oral evidence.

case law

Previously, health authorities (and subsequently strategic health authorities) were required to consult Community Health Councils on proposals for any substantial variations or developments.[10] As there was no definition of 'substantial', it led to the establishment of case law, which may be used today to help define whether a proposal is substantial. There has been no case law since the implementation of the responsibility to consult OSCs on 'substantial' issues, but following case law from the previous framework may be helpful in reaching agreement about what is substantial.

R-V-West Sussex Health Authority ex parte Littlehampton Town Council

Decision to close temporarily 12 beds at cottage hospital and withdraw minor casualty service from 8.00pm to 9.30am. There was another hospital 2 miles away and extra beds would be opened there. The Health Authority (HA) undertook to carry out a strategic review of services in the locality and to consult on any proposals for permanent changes. The Court held that bearing in mind the temporary nature of the proposals and the undertaking to keep the effect under review, the HA was entitled to conclude that the proposals did not involve a substantial variation.

R-V-Hampstead Health Authority ex parte LB Camden

In order to keep within its financial allocation the HA decided to move 100+ geriatric patients from New End Hospital to the Royal Free Hospital. It subsequently planned to close and sell the New End Hospital, but the relocation of patients was seen as an immediate, and temporary, cost-saving measure. The Court held that this was a substantial variation.

R-V-Tunbridge Wells Health Authority ex parte Goodridge

HA decision temporarily to close Tunbridge Cottage Hospital. Formal consultation took place over the use to which the hospital should be put in future, with a proposal that it should be a mental health rehabilitation unit. Court held that proposal was a substantial variation since (a) it would result in hospital never reopening as a cottage hospital; and (b) in any event, proposal for a "temporary" closure of one year or more would be a substantial variation.

R-V-West Thames Regional Health Authority ex parte Daniels

Decision to close Westminster Children's Hospital (WCH) and transfer services to the Chelsea and Westminster Hospital (C&W). Initially, it was proposed that the bone marrow transplant unit at WCH would close and be replaced at C&W. However, capital funding was not available for the bone marrow unit and it was therefore allowed to run down and close without replacement. The Court held that this was a substantial variation requiring consultation.

(Summary of case law provided by Capsticks Solicitors)

The application of case law and the development of local protocols demonstrate that where NHS bodies can provide evidence that they have fulfilled their duties under section 11, it is less likely that OSCs will wish to be formally consulted.

Whilst it is desirable for OSCs and NHS bodies to agree whether issues are substantial in order to help health scrutiny to be co-ordinated and effective, it is not a requirement. Alternatively in the absence of a local agreement, where OSCs believe that there is a substantial variation and there has been no formal consultation with the OSC on the proposal, the OSC is able to refer the proposal to the Secretary of State on the grounds of inadequate consultation.

exemptions to the requirement to consult on a substantial variation or development

A number of circumstances are exempt from the requirement for NHS bodies to consult OSCs.

Exemptions identified in the OSC regulations

a) any proposal to establish or dissolve an NHS trust or PCT unless dissolution represents a substantial variation or development to the services that will be delivered in the future;

b) pilot schemes within the meaning of Section 4 of the National Health Service (Primary Care) Act 1997 (1);

c) when an NHS body believes that a decision has to be taken on an issue immediately because of a risk to the safety or welfare of patients or staff, e.g. if a hospital ward needs to be closed immediately due to a viral outbreak. This might be considered a substantial variation but allowing time for consultation could place patients or staff at risk. In such cases, the NHS body must notify OSCs immediately of the decision taken and the reason why no consultation has taken place. As good practice, the NHS body should also provide information about how patients and carers have been informed about the change to the service and what alternative arrangements have been put in place to meet their needs. It should also provide information about the recovery plan for restoring the original service.

Where OSCs are not satisfied about the reasons given for not carrying out consultation, they may refer the issue to the Secretary of State.

Example: Surrey and Sussex Strategic Health Authority has developed the following chart, or 'decision tree', which may be used to help determine whether consultation is required under section 7 HSC Act in the event of unforeseen or urgent need to vary services.

An urgent and/or unforeseen need to change services arises

Is the change urgently required for clinical or patient safety issues?
E.g. infection on ward, unsafe staffing levels

No

Is it a 'substantial variation' to services?
This to be determined in discussion with OSC where unclear
No standard definition of substantial.
It is a judgement call based on patient impact.
Criteria for decision include:
- Impact on patient access
- Service reduction/closure usually considered a substantial variation
- Numbers of patients affected
- Extent of impact e.g. if long-term
- Local feeling about the proposal

Yes

It is acceptable to proceed without consultation.
Notify OSC of decision and the reason for no consultation

No

Consultation under section 7 not required.
PPI under Section 11 still applicable

Yes

Is it a temporary change?
Can only argue it is temporary if there is a plan and date in place to reinstate service. It also needs to be for a reasonable time period i.e. months rather than years.

Yes

Temporary changes are often not seen as substantial variations but this must be agreed with OSC.
If agreed, consultation under Section 7 not required.
PPI as appropriate does apply

Not agreed

No

Consultation with OSC under section 7 is required.
Issue consultation document to OSC and proceed (see Cabinet Office Code)
The consultation arrangements with the OSC can be negotiated – e.g. if the change is considered urgent, the NHS can ask the OSC for an urgent meeting or shorter consultation period than the usual 3 months.

Although a 'substantial' variation is generally accepted to trigger a 'full' public consultation, this is not automatic. Section 11 says that consultation should be proportionate. It is helpful to agree appropriate levels of consultation with the OSC.

DH expects every effort for local resolution to disagreements over whether a change is a substantial variation.

Not done

If OSC is not consulted on what it considers to be a substantial variation it has the **power to refer** the decision to the S of S on basis of a failure to consult it under Section 7

Does the OSC support the proposed change?
(Can be subject to recommendations)

No

If OSC concludes that the proposed change is not in the best interests of the health service in its area, and no agreement can be reached locally on amending the proposals, it has the **power to refer** the decision to the Secretary of State on that basis. The extent of public involvement in the development of the proposals can be taken into account here.

Yes

Proceed to implementation.
Agree ongoing liaison arrangements with OSC

For planned changes to services, the process is the same, but discussion with the OSC about whether the change constitutes a substantial variation should take place at a very early stage.

changes that result from national policies for service modernisation

The pace of change within the NHS and delivery of health services has increased rapidly since the publication of the NHS Plan in 2000. Currently a number of changes are being made to the way in which the NHS is organised, e.g. as part of *Commissioning a Patient-led NHS.*[11] In these circumstances, although significant changes may be proposed about how NHS organisations are structured, they do not automatically constitute substantial variations or developments. Changes that either alter the delivery of management or administrative functions of NHS bodies, or the number of NHS bodies, are not substantial variations or developments as outlined in the exemptions within Regulations. The NHS bodies concerned are required to consult key stakeholders on proposals and OSCs should be included in the list of consultees. However, as the consultation is not about a substantial issue, OSCs would be consulted in the same way as the other consultees and the power of referral to the Secretary of State would not be available.

Proposals may become substantial at the point at which specific changes to service delivery, which impact upon patients, carers and the public, can be identified. At this point, the process of agreeing whether the issue is substantial, and addressing it as such, may begin.

Likewise, the establishment and development of an Independent Treatment Centre (ITC) is not initially a substantial variation or development, as it is the establishment of a new service provider. When an ITC is proposed, the commissioning PCT should consult all key stakeholders about the proposal. OSCs should be included in the list of primary consultees, but at this stage they would not be able to use their powers of referral to the Secretary of State. If OSCs are concerned about issues of reliability of the ITC, they may wish to ask the commissioning PCT for details of its risk management strategy to ensure continuity of services for patients and the public. If, as a result of the establishment of an ITC, the commissioning PCT proposes changes to services received by patients, it should discuss the proposals with the local OSC(s) to agree whether or not these proposals are substantial.

A number of policies that impact upon the health and well-being of local people, but are not 'health services', are not bound by the regulations for health scrutiny and as such would not constitute substantial variations or developments. For example, proposals to implement fluoridation of the water supply is subject to a separate consultation framework (The Water Fluoridation (Consultation) Regulations 2005)

handling disagreements about what is 'substantial'

Where agreement is not initially reached on whether an issue is 'substantial', it is recommended that NHS bodies and OSCs discuss the reasons for their decisions with each other. OSCs should take into account all available information, including the reasons why NHS bodies consider that the issue is not substantial, and may wish to seek views from other NHS bodies. OSCs or NHS bodies can also ask the Independent Reconfiguration Panel for informal advice on whether the issue is substantial.

If agreement still cannot be reached and OSCs maintain the belief that the issue is substantial, it may refer the issue to the Secretary of State on the basis of inadequate consultation. At this point it will be for the Secretary of State, and then potentially the Courts, to determine whether it is substantial.

Example: The following flow chart has been developed by NHS bodies and OSCs within Norfolk, Suffolk and Cambridgeshire SHA area to help stakeholders understand the different roles and responsibilities in relation to sections 7 and 11 Health and Social Care Act 2001.

Building and sustaining successful relationships with Overview and Scrutiny Committees and understanding how Section 11 & 7 fit together – Norfolk, Suffolk and Cambridgeshire SHA and OSCs

Section 11 Strengthening Accountability
This area is NHS driven

Keeping the OSC informed
■ Briefing OSC Officers ■ Horizon scanning
■ Agenda sharing ■ Advance notice to OSC Officers

Involvement in the process
■ Service reviews ■ Financial reviews
■ Acute service reviews ■ Cancer services
■ Etc (Mainly applies to OSC Officers, who will ensure the committee is informed)

Consultation with patients and the public and consultation with the OSC
■ Through involvement the OSC will decide if it requires a formal consultation (if this is required the code of practice on public consultation should be adhered to).
■ Substantial variation is defined through discussion with each OSC ■ OSC input required for successful capital investment schemes to the SHA

Scrutiny
May be fed by:
■ PPI forums ■ Evidence of public opinion
■ LSP activity ■ Interests of individual members
■ Media interest ■ Suggestions from NHS bodies
■ General intelligence gained by OSC and Officers
■ Decision to scrutinise substantial variation

Section 7 Overview and Scrutiny Powers
This area is Overview and Scrutiny driven

These processes are not mutually exclusive but are rather parts of the same continuum.
Key to their successful implementation is ■ Shared understanding ■ Partnership culture

identifying who is the consulting body

When changes are planned within a health economy, all NHS bodies need to be clear about who is responsible for consulting OSCs about issues of substantial change.

PCTs are responsible for consulting on the planning and commissioning of services for the local population. Where a number of PCTs commission services from an acute or other type of NHS Trust (e.g. a mental health trust or ambulance trust) it is common for one PCT to take a lead role, commissioning on behalf of the other PCTs within the health economy. The lead commissioning PCT will usually be responsible for consulting on any substantial variation or development to local health services that it commissions. If there is no lead commissioning PCT, or if the proposal relates to services across more than one PCT, the relevant PCTs will need to agree a process of joint consultation. The board of each PCT will need to formally delegate the responsibility to a joint PCT committee, which should act as a single entity. Following the consultation, the joint PCT committee will be responsible for making the final decision on behalf of the PCTs for which it is acting.

Where a proposed substantial variation to the provision of services has an impact across a strategic health authority (SHA) or several SHAs, the relevant PCTs may wish to invite them to co-ordinate the consultation process. This approach is optional. The decision for doing this rests with the PCT(s) leading the commissioning process. It is important that the SHAs are fully informed of, involved in and agreeable to taking on this role. Following the consultation, the responsibility for taking the final decision on any revision of service rests with the PCT(s), even where that consultation has been co-ordinated by an SHA.

Where an **NHS trust** plans to vary or develop services locally, it should discuss the proposal with OSCs to determine whether the proposal is substantial. If the outcome of the discussion is that it is a substantial development or variation, the trust must consult the OSC.

Where a **NHS Foundation Trust** intends to vary its authorisation, it must consult OSCs. If OSCs consider that it should refer the issue, the referral should be made to Monitor and not to the Secretary of State.

Where an issue of proposed change spans more than one PCT or NHS trust, an SHA will want to be satisfied that the consultation is undertaken in a way that ensures the full and relevant involvement of all stakeholders.

There may be times when a proposal for substantial change impacts on services across all NHS bodies within a health economy. In such cases it may be more difficult to establish how consultation might be carried out. The NHS (Functions of Strategic Health Authorities and Primary Care Trusts) Regulations may be of help. The Regulations regulate the exercise of functions, and the division of functions between SHAs and PCTs. They identify that:

- the duty to promote a comprehensive health service is a function exercisable by SHAs;
- the provision of services considered appropriate for discharging duties imposed on the Secretary of State, and doing other things to facilitate the discharge of such duties, is to be exercised by both SHAs and PCTs, and
- that the provision of hospital and other accommodation and medical, dental, nursing and ambulance services is a function exercisable by PCTs (and by SHAs for the purposes of performance management only).

In view of these Regulations, a provisional legal view is that the primary decision making responsibility in respect of the future provision of healthcare services will lie with PCTs. This will continue with the implementation of practice-based commissioning, as PCTs will remain responsible for the services received by local people although they will be commissioned at a more local level.

However, for this decision-making to be exercised in a manner which is consistent with the duty to promote a comprehensive health service, and in order to enable the SHA to performance manage the PCTs in its area, the SHA is also a relevant decision-maker. Both SHAs and PCTs may arrange for their functions to be exercised jointly with other SHAs and/or PCTs. The Regulations also provide that any functions that are exercisable by a PCT jointly with an SHA may be exercised by a Joint Committee or Sub-Committee of those bodies.

The provisions referred to do not apply to NHS Trusts. Thus, Trusts are unable to participate in joint committees with PCTs and SHAs. To the extent that they are required to make decisions following consultation exercises, they must do so separately.

Within some health economies, protocols have been produced to help NHS bodies identify which organisation should take the lead role in consulting OSCs and what action the lead organisation should take.

Example: South West Peninsula and Essex Strategic Health Authorities have written guides, which include information about general principles for patient and public involvement as well as good practice in consultation.

gathering information about potential proposals for 'substantial' change

Most OSCs produce annual plans identifying a programme of scrutiny over a 12 month period. Plans should include some capacity for the committee to respond to issues that arise during the year, but it is important for OSCs to be aware about potential proposals for change when producing their plans.

Example: In Norfolk the OSC periodically contacts its local NHS bodies to ask for their top priorities for the coming six or twelve months. This information is compiled into a long list of potential issues, which might be monitored.

Opportunities for identifying information about NHS changes include:

- sharing annual reports and forward plans;
- regular meetings between OSC support staff and NHS staff;
- discussions between OSC members and NHS staff during the drafting of the local delivery plan;
- the involvement of local authority staff in regular or ongoing work with NHS bodies, e.g. in partnership boards or in the governance of PCTs, may enable them to identify potential changes and alert OSC support staff;

It is important for NHS bodies to be aware that most OSC support staff within regions or SHA areas meet on a regular basis. If a proposal is being developed which may impact across a wide catchment area there is the potential to raise this with all OSCs at one meeting and at an early stage.

checklist for dealing with ‘substantial variations and developments’

The following ‘checklist’ has been drawn from good practice across the country to help OSCs and NHS bodies plan their work regarding issues of substantial variation or development of health services:

1. NHS bodies should recognise the difference between local authority Executives and Overview and Scrutiny Committees.
2. Regular communication between NHS bodies and OSCs can help to identify substantial proposals at an early stage so that scrutiny can be efficient and effective.
3. OSCs should be clear about the information they need from NHS bodies to identify whether an issue is likely to be substantial.
4. It is acceptable for OSCs and NHS bodies that keep in close contact to agree that an issue is not substantial.
5. The quality of consultation is more important than rigidly sticking to a 12-week timescale.
6. By developing partnerships with district councils and other social services authorities, the power of delegation may help OSCs to use their powers more effectively.
7. In responding to a consultation, OSCs should consider the range of information they need to judge the proposals and the witnesses that may be able to help them form a view. This may include establishing whether similar changes have been made elsewhere, and if so what was the experience of the OSC, NHS body(ies) and patient and service user groups.
8. An OSC can choose not to be consulted on an issue that has been defined locally as being substantial, if it does not believe that it would add additional value to involvement and consultation already undertaken.
9. OSCs should be able to identify how they have added value to the consultation process relating to substantial variations or developments after their involvement.
10. Consultation on substantial change is only one part of health overview and scrutiny. It may not always have as large an impact on improving the health of the local population as scrutinising other issues, such as public health issues.

The following flow chart has been developed to help OSCs to undertake their roles more effectively.

Flow Chart Illustrating the Stages of Consultation

developed by Essex County Council and partner NHS bodies

Examples of issues and potential proposals	Informal involvement → Informal consultation → Formal consultation			
Major service reconfiguration e.g. proposals involving re-provision/closure or development of new services				**Category 4** Formal consultation process required
Change in demand for specific services e.g. proposal to relocate GP surgery or cessation of some surgery sessions			**Category 3** Formal mechanisms established to ensure that patients/service users/carers and the public are engaged in planning and decision-making (ref: Section 11 Health & Social Care Act)	
Need for modernisation of hospital based service e.g. proposal to relocate and modernise day surgery unit on a particular hospital site		**Category 2** More formalised structures in place to ensure that patients/service users/carers and patient groups views on the issue and potential solutions are sought		
Changes in demand for specific services (e.g. Baby clinics) e.g. proposal to extend or reduce opening hours of Health Visitor Clinics	**Category 1** Informal discussions with individual patients/service users/carers and patient groups on potential need for changes to services and solutions			

OSC normally involved

OSC may be involved

NB The examples listed on this continuum are not definitive and there may be some local variation in the way they are dealt with
**It is envisaged that health bodies will submit brief details of these proposals to O&S committees to indicate which category they fall into and why.

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