

OFFICIAL SENSITIVE - CONFIDENTIAL
NHS England and NHS Improvement Board meetings held in common

Paper Title: Health and Social Care Bill

Agenda item: 7 (Public session)

Report by: Ian Dodge, National Director Primary Care, Community Services and Strategy

Paper type: For noting

Organisation Objective:

NHS Mandate from Government	<input type="checkbox"/>	Statutory item	<input type="checkbox"/>
NHS Long Term Plan	<input checked="" type="checkbox"/>	Governance	<input type="checkbox"/>
NHS People Plan	<input type="checkbox"/>		

Executive summary:

Introduction of a Health and Social Care Bill is expected shortly and this paper invites the Boards to note the likely Parliamentary attention and future impact on the NHS.

Action:

The Boards are invited to note that the most significant NHS primary legislation for a decade is due to be published imminently.

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- In September 2019, NHS England and NHS Improvement (NHSEI) published recommendations for an NHS Bill¹.** The recommendations aimed to remove current legislative barriers to integration across health and social care bodies, foster collaboration, and more formally join up national leadership.
 - These recommendations were strongly supported and backed across the health and social care sector² and included:**
 - largely removing the Competition and Markets Authority's role in the NHS and abolishing Monitor's role and functions in relation to enforcing competition;
 - simplifying procurement rules by scrapping section 75 of the 2012 Act and removing the commissioning of NHS healthcare services from the jurisdiction of the Public Contracts Regulations 2015;
 - providing increased flexibilities on tariff;
 - reintroducing the ability to establish new NHS trusts to support the creation of integrated care providers;
 - ensuring a more coordinated approach to planning capital investment,
 - the ability to establish decision-making joint committees of commissioners and NHS providers and between NHS providers;

¹ [NHS Recommendations to Government - September 2019](#)

² [Letter of support for NHS recommendations](#)



- enabling collaborative commissioning between NHS bodies – it is currently easier in legislative terms for NHS bodies and local authorities to work together than NHS bodies;
 - a new “triple aim” duty for all NHS organisations of ‘better health for the whole population, better quality care for all patients and financially sustainable services for the taxpayer; and
 - merging NHS England and NHS Improvement – formalising the work already done to bring the organisations together.
3. One of the key considerations in our initial recommendations was how, and to what extent, ICSs should be put on a statutory footing. Following a further engagement exercise, **NHSEI published additional recommendations to establish Integrated Care Systems as statutory organisations.** The ICS Design Framework³, published on 16 June 2021, continues the journey in implementing stronger Integrated Care Systems, (without prejudging Government or Parliament’s decisions).
4. **The Government White Paper⁴, published on 11 February 2021, accepted these recommendations and set out a small number of additional proposals.**
5. **The Health and Social Care Select Committee undertook a short inquiry to understand the implications of the proposals and published their findings⁵ in May 2021.** Their recommendations included:
- Social care: to ensure Integrated Care Systems can operate most effectively that there is also a fully funded plan for social care, recommending that *“a duty is included in the Bill for the Secretary of State to publish a 10-year plan with detailed costings within six months of the Bill receiving Royal Assent.”*
 - ICSs: that legislation and associated guidance make clear the roles and responsibilities of Integrated Care Systems (ICS) and how other organisations, such as Foundation Trusts, align or do not duplicate.
 - Workforce: proposing *“Health Education England publish objective, transparent and independent annual reports on workforce shortages and future staffing requirements that cover the next five, ten and twenty years including an assessment of whether sufficient numbers are being trained. We further recommend that such workforce projections cover social care as well as the NHS given the close links between the two systems.”*
 - Powers for the Secretary of State: *“we recommend that the Bill includes provisions that set out in detail, both the range and restrictions that will apply to each of the additional powers proposed including provisions for transparency around ministerial interventions and the operation of the public interest test.”*
 - Additional powers on reconfigurations: *“provisions be included in the Bill that set out the criteria under which the Secretary of State may intervene in reconfigurations. We further recommend that a duty be placed on the Secretary of State to lay before Parliament all information and advice in relation to an intervention in a reconfiguration.”*

³ [ICS Design Framework](#)

⁴ [Health and Social Care White Paper - February 2021](#)

⁵ [Health and Social Care Select Committee - report on White Paper](#)

- welcoming statements on the proposals to legislate on measures to tackle obesity and to change the responsibilities for implementing fluoridation measures and welcoming the proposed NHS provider selection regime.
6. The Queen's Speech included plans to bring forward a Health and Social Care Bill in the current Parliamentary session. Introduction is expected imminently

Five high-level NHS aspirations for the legislative process

7. As the Bill is published and scrutinised by Parliament and stakeholders, our preference is that:
- (i) **the Bill to progresses the recommendations made by the NHS itself;**
 - (ii) **the Bill is suitably permissive and avoids over-prescription**, giving local systems and frontline staff the flexibility they need to tailor arrangements to local circumstances. Removing legislative barriers can make it easier for NHS staff to get on with improving care, but legislation is not the main driver of NHS improvement;
 - (iii) **the Bill ensures that NHS clinical and operational independence continues to be adequately and clearly supported**, within a transparent framework of Parliamentary and Departmental accountability;
 - (iv) **the spirit of listening to and achieving consensus with NHS organisations staff and patients that was the hallmark of the original proposals should hold true for the passage of this Bill**, so that:
 - (a) the legislative process itself does not become a distraction from our focus on improving NHS care, and
 - (b) the Bill provisions are able to command the broad overall support of NHS, whilst recognizing it is not always possible to achieve 100% agreement on.
 - (v) **the legislative process continues to support ICSs taking statutory form from 1 April 2022** given that delay could adversely impact on NHS recovery.