

Devolution

What does it mean from an NHS
England perspective?



This document is aimed at local systems pursuing devolution of health and social care, and intends to:

1. Set out overarching models of devolution of NHS England functions in terms of the current legislative framework
2. Provide further information on how NHS England will assess proposals for devolution of its functions
3. Provide further information on how the devolution agenda links with the Sustainability and Transformation Planning (STP) process

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Background and context

- Devolution of powers and funds from central government to local government has emerged as one of this **government's flagship policies**.
- Devolution has two mutually reinforcing objectives – to drive **local economic growth**, and to maximise the contribution of and value derived from public services, including health and social care.
- The inclusion of health within devolution deals could be seen as an extension to the policy direction moving us towards more **place-based commissioning and decision making**.
- Recent reforms have meant that **population-based budgets** are now split between CCGs, NHS England and LAs – with most NHS, public health and social care commissioning already devolved to local organisations.
- There has been ongoing policy focus on trying to **integrate commissioning and provision of health and care services** through a variety of initiatives such as:
 - Better Care Fund (BCF)
 - Integration pioneers
 - Integrated Personalised Commissioning (IPC)
 - 5YFV New Models of Care / Vanguard
 - Co-commissioning of primary medical care
 - Collaborative commissioning of specialised services
- Overlaid and joined up with these initiatives, **devolution** provides further opportunity to deliver services and support joined-up around people's needs. Together, these initiatives form part of a strategy to support the development of **place-based commissioning and joined-up care pathways** to improve the integration of care for people in England.

This document focuses on devolution, but should be considered in the context of the wider set of initiatives designed to support and improve integration of health and social care, and place-based commissioning

Cities and Local Government Devolution Act

What is it?

- The Cities and Local Government Devolution Act received Royal Assent on 28 January 2016. It is a broad piece of enabling legislation designed to be applied across a wide range of public service functions, depending on the nature of the specific deal agreed between local areas and Government. It enables the devolution of functions from national public authorities to local government, at the transferee's request.
- The Act enables:
 - A complete transfer of functions
 - A transfer so both organisations perform the functions jointly
 - A transfer so both organisations perform the functions at the same time but independently
 - A transfer so both organisations perform the functions jointly but the original organisation also retains the ability to perform the function independently
- Whilst expanding the range of possibilities for local partners to work together and make their own decisions, the Act also preserves national accountability for NHS services and ensures national standards will continue to apply.

Transfer orders under the Devolution Act

- Any function that is not a 'regulatory function' could be in a transfer order. The transfer orders can specify conditions to be attached to the transfer. In the context of health and care services, such conditions will include **standards and duties** to be placed on the transferee to ensure continuing accountability for NHS services.

Amendments to NHS Act (*via Devolution Act*) in relation to delegation and joint arrangements

- In line with the objective to promote more place-based and integrated approaches, a number of health-specific additions were made to the Act during its passage through Parliament. These take the form of amendments to the NHS Act 2006, and expand the range of options available to enable more place-based commissioning.
- **Section 13Z** of the NHS Act 2006 has been amended to enable NHS England to delegate functions to a group of local commissioners, probably acting together through a joint committee. That group must include at least one combined authority and/or local authority, plus at least one CCG. The group may, but does not have to, include NHS England.
- This means that NHS England may now delegate **specialised commissioning** functions to a group, which again must include at least a combined authority/local authority and a CCG and may include NHS England. Before doing so, NHS England must have regard to six statutory factors, including the impact on the provision of the service inside and outside of the commissioning area concerned.
- **Section 7A** of the NHS Act 2006 has been amended to allow the SofS to arrange for a combined authority to exercise public health functions, and to allow NHS England to delegate its s7A functions to a combined authority.
- A new **section 14Z3A** has been added, enabling CCGs to share their commissioning functions with combined authorities.

Spectrum of devolution

- In practice, there are a **range of options to achieve place-based transformation** of health and social care, and devolution deals are likely to be a mixture of local integration, regional aggregation and devolution from national to local organisations.
- Learning to date suggests the need to **balance power with risk sharing appetite and ability**.
- Most county-based bids to date are centered on **strengthening integration** across health and local government using existing powers under the NHS Act 2006.
- In all cases where NHS England functions are within scope of potential devolution, local systems will need to consider the **NHS England principles and decision criteria**, designed to support the development of local proposals (**annex 1**), as well as the Assessment Criteria Framework (**annex 2**).
- NHS England has developed the below framework to categorise the different nature of the 'ask' contained within devolution proposals in respect of health functions – considering the level of ambition for **devolution on a spectrum with 4 overarching models**:



Overarching models on devolution spectrum

Overarching model	NHS England definition
1. 'Seat at the table' for commissioning decisions	<ul style="list-style-type: none">• No legal change, or material organisational impact across the parties involved• Decisions about a function are taken by the function holder but with input from another body• Accountability and responsibility for function remains with original function holder (including budgetary responsibility and funding for overspends)
2. Co-commissioning or joint decision making	<ul style="list-style-type: none">• Two or more bodies with separate functions that come together to make decisions together on each other's functions, (e.g. S.75 partnership arrangements)• Accountability and responsibility for function remains with original function holder (including budgetary responsibility and funding for overspends)
3. Delegated commissioning arrangements	<ul style="list-style-type: none">• Exercise of the function is delegated to another body (or bodies)• Decision-making and budget rest with the delegate(s)• Ultimate accountability and responsibility for function remains with original function holder (including budgetary responsibility and funding for overspends)
4. Fully devolved commissioning (i.e. transfer of functions)	<ul style="list-style-type: none">• Function is taken away and given to another legal body on a permanent basis (meaning responsibility, liability, decision-making, budgets and everything else to do with that function) by a transfer instrument under the Devolution Act*• Accountability and responsibility for those functions transfers to the new 'owner' (including budgetary responsibility and funding for overspends) who will be accountable to the relevant national body for the function in question

**(N.B. Other permutations of function sharing are also possible under a transfer order as described on slide 5)*

Formal NHS England assessment process

Decision making	Decisions around devolution of NHS England functions will be made with the formal authority of the NHS England Board (as set out in annex 1)
Timescales and process	<p>We expect it to take approximately 18 months from expression of interest in devolution or a devolution deal being agreed, to implementation of any devolution arrangements (along the lines of the trajectory followed by Greater Manchester). This would include:</p> <ul style="list-style-type: none">• submission of a clear outline business case / plan through the STP process - setting out clear 'asks', the value case for the proposed model of 'devolution', and confirming how the devolution footprint would work if this is not the same as the STP footprint.• any change in statutory accountabilities would need to be prefigured in a formal arrangement such as the joint signing of a MOU / Collaboration Agreement and shadow running of the devolved functions in the new body• for any large or complex geographies, or novel functional proposals, piloting in selected sectors of the area concerned may be required
Support	<ul style="list-style-type: none">• An assessment criteria framework has been developed to set out what NHS England will be looking for under each overarching model on the devolution spectrum (annex 2). This framework may be revised slightly as further work is undertaken with local systems over 2016-17.• Alongside this, a more detailed 'policy' framework is being developed in 16/17 to support local systems understand the 'art of the possible' under each of the 4 overarching models of devolution for NHS England functions, including more information on what each model could mean for issues such as:<ul style="list-style-type: none">➢ Governance, accountability, and assurance➢ Financial flows, where budgets could sit, how risk sharing might work➢ Workforce implications and organisation impact➢ Patient/public participation and consultation➢ Impact on other organisations➢ Impact of new policy announcements / broader policy direction of travel• The next slide sets out at high level the types of issues the framework will explore – this should be considered and factored into the development of local devolution plans.

5. Developing a framework for devolution of NHS England functions

High level framework for devolution of NHS England functions

Set out below is a high level framework containing key questions that should be considered if any NHS England functions are within scope of devolution plans.

NHS England Function	Models	Issues to consider	
Primary Medical Services	Model 1 – ‘Seat at the table’	<p><u>Legal</u></p> <ul style="list-style-type: none">• What are the legal options available to achieve this model?• What are the benefits and drawbacks of each legal option?• What are the implications for governance and accountability? <p><u>Assurance</u></p> <ul style="list-style-type: none">• Are accountability and governance arrangements clearly articulated, including input into national assurance arrangements?• Is the role of local advisory bodies clearly articulated? <p><u>Budgets and financial flows</u></p> <ul style="list-style-type: none">• Is there clarity around budgetary accountability and who is responsible for paying for which services , (particularly if the devolution area is not coterminous with existing NHS geographies)?• How much of the budget will be pooled / commissioned jointly / transferred and how can risk be effectively managed?• What financial risk sharing arrangements are in place across the various parties involved? <p><u>Organisational Impact and Workforce</u></p> <ul style="list-style-type: none">• Where does responsibility lie for providing capacity and capability?• Is an organisational impact assessment in place for ‘sender’ and ‘receiver’ organisations, with risks identified and mitigated, including for those geographies that may be on the borders.• What ability do local organisations have to engage with stakeholders? <p><u>Patient/public participation and consultation</u></p> <ul style="list-style-type: none">• What are the plans for consulting patients and the public on changes, and what are the plans for on-going engagement?	
Primary Dental Services			Model 2 – Joint Arrangements
Primary Ophthalmic Services			
Primary Pharmaceutical Services	Model 3 – Delegation		
Specialised Services			
Armed Forces Health			
Health & Justice System	Model 4 – Devolution i.e. transfer of functions		
S.7A Public Health			
EPRR			
Complaints Management			
GP Revalidation			
Investigating and Regulating Performers			

N.B. This list of functions is indicative only and not exhaustive.

System wide policy issues

There are a number of issues that fall outside the sole remit of NHS England in relation to health devolution proposals. Although this document focuses predominantly on commissioning options, we are working with **DH and other ALBs** together with local systems to consider other aspects of health and social care devolution. Listed below are examples of the types of issues on which we are working together on.

Regulation

Provider finance

Accountability

Estates and capital

Performance
management and
intervention

Pricing and tariff

National
programmes

Public health and
prevention

Workforce
strategies

N.B. This is not an exhaustive list

Devolution and STPs

- A number of devolution deals include a commitment for the local system to **co-design a business plan** for furthering integration of health and social care, and exploring the potential for devolution.
- Our intention is that local systems use the **Sustainability and Transformation Planning (STP) process to set out their business plan for devolution**, providing a clear understanding of the 'ask', the value proposition, and how they meet the principles and decision criteria agreed by the NHS England Board in September (*annex 1*).
- Where devolution footprints differ from **STP footprints, local systems were asked to set out how they expect to make any differences in footprints work** for them in their checkpoint return on 15 April. Any misalignment that lacks appropriate rationale may impact NHS England's assessment of a local system's readiness to take on devolved powers.
- To support local systems pursuing devolution of NHS England functions, a **supporting document** will be published in the Autumn (as described on slides 8 and 9).

Annexes

- Annex 1 – [NHS England Board paper on devolution principles and decision criteria](#)
- Annex 2 – [Draft devolution assessment criteria framework](#)
- Annex 3 – [FAQs](#)