



Summary of *Integration and innovation: working together to improve health and social care for all*



Introduction

The Department of Health and Social Care published their legislative proposals for the NHS on 11 February 2021, in the *Integration and innovation: working together to improve health and social care for all*¹ white paper. The proposals build on the *NHS long term plan*² and the subsequent *NHS's recommendations to Government and Parliament for an NHS bill*³. The proposals cover three key areas; working together and supporting integration; reducing bureaucracy; and enhancing public confidence and accountability. The white paper also contains additional proposals around social care, public health and quality and safety.

The white paper states that the proposed legislation is not intended to address all the challenges faced by the health and social care system, and that there are further reforms to be undertaken. These broader changes include proposals to reform social care, the future design of the public health system and modernising the Mental Health Act.

The legislative proposals not only build on the *NHS long term plan* but are also designed to accelerate the positive changes in the health and care system that have come about through the pandemic. The white paper highlights that legislation is just one part of the change and much relies on having the right workforce, good leadership and getting the incentives and financial flows right. A supporting implementation programme will be developed for these areas and it is expected that the reforms outlined in the white paper will begin to be implemented in 2022.

The remainder of this briefing sets out the key proposals for legislative change in the NHS. The white paper should be referred to for the full set of proposals.

¹ Department of Health and Social Care, *Integration and innovation: working together to improve health and social care for all*, *Integration and innovation: working together to improve health and social care for all*, February 2021

² NHS, *The NHS long term plan*, January 2019

³ NHS, *The NHS's recommendations to Government and Parliament for an NHS Bill*, September 2019

Working together and supporting integration

Establishing integrated care systems in law

The white paper proposes to establish statutory integrated care systems (ICSs). These will be made up of an ICS NHS body and an ICS health and care partnership. The two elements of the ICS recognise that it has two key, but separate, requirements upon it.

The ICS NHS body will be responsible for:

- developing a plan to meet the health needs of their population
- developing a capital plan for NHS providers within their geography
- securing the provision of health services to meet the needs of the system population.

It is intended that the allocative functions of CCGs are part of the ICS NHS body, recognising that it is important to provide stability of employment for staff and minimise uncertainty during times of change.

The creation of statutory ICS NHS bodies will also allow NHS England to set financial allocations and other financial objectives at a system level. There will be a duty to meet the system financial objectives and deliver financial balance. NHS providers within the ICS will retain their current structures, governance, and organisational financial statutory duties but there will be a new duty to compel providers to have regard to the system financial objectives.

The ICS NHS body will take on the commissioning functions of CCGs and their responsibilities in relation to oversight and scrutiny committees. It is expected that the public name of the body will reflect its geographical location, for example, NHS Nottinghamshire. Each NHS ICS body will have a board which will, as a minimum, include a chair, the CEO and representatives from NHS trusts, general practice, local authorities and non-executives.

The second part of the ICS is the ICS health and care partnership. This partnership will bring together health, social care and public health as well as other bodies as appropriate, to develop a plan to address the wider health and care needs of the system. This plan will inform decision making by ICS NHS bodies and local authorities.

Annex B of the white paper sets out more detail about how ICSs are expected to operate. It sets the context that successful integration often happens at the smaller place level within a system and that some variation of form is necessary to recognise the balance of responsibilities between place and the wider system. Therefore, the proposed legislation is at an ICS level with place-based arrangements left to local discretion to meet local circumstances.

There is also an acknowledgment of the different accountabilities between the NHS and local authorities.

Reserve power over foundation trusts' capital spend limit

Foundation trusts (FTs) have greater freedoms than other NHS bodies to spend on capital projects, where they can use surpluses or borrow to do so. However, this expenditure still counts towards the capital delegated expenditure limit (CDEL) for the DHSC and for individual systems. Where a foundation trust is not working effectively to prioritise capital expenditure within their ICS, the white paper proposes a power to set a legally binding limit of capital spending. This would be a targeted power and is not intended to be used to direct all FTs or erode autonomy.

Joint committees

The white paper proposes to create provisions to allow the formation of joint committees between ICSs and NHS providers, and between NHS providers separately, to give a legal basis for taking joint

decisions. Both types of joint committee could include representation from other bodies such as primary care networks and local authorities.

Collaborative commissioning

The legislative proposals set out will allow NHS England to joint commission with more than one ICS board, allow groups of ICSs to use joint and lead commissioner arrangements to make decisions and pool funds across all their functions, and enable NHS England to delegate or transfer the commissioning of certain specialised services to ICSs or commission them jointly.

Data sharing

The white paper draws attention to a forthcoming data strategy for health and care. The strategy will set out proposals to address structural, cultural and legislative barriers to sharing data, for the benefit of the individual, population and system.

Patient choice

The white paper intends to strengthen patient choice and control in support of the *NHS long term plan*. Bodies that arrange NHS services will be required to protect, promote, and facilitate patient choice. The operation of the any qualified provider (AQP) arrangements will also be clarified.

Reducing bureaucracy

Competition

The move to a more collaborative way of working within the NHS has sometimes been hindered by competition rules. It is proposed that the Competition and Markets Authority power to review mergers involving foundation trusts is removed, although it would retain existing powers where a non-NHS body was involved. NHS England would be required to ensure that any merger decisions were in the best interest of patients. In addition, it is proposed that NHS Improvement's specific competition functions are removed.

Arranging healthcare services

The white paper sets out plans to remove the current procurement rules which apply to the NHS and public health commissioners when arranging healthcare services. The commissioning of these services will be removed from the scope of the Public Contracts Regulations 2015 and other sections of legislation will be repealed to eliminate the need for competitive tendering where it adds limited or no value. Voluntary and independent sector providers will continue to play an important role, but commissioners will be able to arrange services with the most appropriate provider. Commissioners will be able to run a competitive process where it adds value, recognising their duty to act in the best interest of patients, taxpayers and the local population.

These changes will only apply to the arrangement of healthcare services. All non-clinical services will remain subject to public procurement rules.

National tariff

The white paper recognises the positive impact that financial frameworks can have on joint working, as evidenced during the pandemic. The proposed changes to the supporting legislation for the national tariff include the ability to set either a fixed price or a price as a formula for a specified service; the ability to amend national tariff provisions in year; and removing the requirement for providers to apply to NHS Improvement for local modifications to prices.

New trusts

ICSs will be able to apply to the Secretary of State to create a new trust, but it is not the intention to significantly alter the provider landscape.

Ensuring accountability and enhancing public confidence

Merging NHS England, Monitor and NHS Trust Development Authority and Secretary of State powers of direction

NHS England and NHS Improvement (made up of Monitor and the NHS Trust Development Authority (NHS TDA)) have been working as a single organisation since 2019. However current legislation does not allow them to fully collaborate. The white paper sets out the intention to transfer the powers of Monitor and NHS TDA to NHS England and abolish the previous organisations.

As the former structure had different lines of accountability, changes are also set out to amend the intervention powers of the Secretary of State to formally direct NHS England in relation to relevant functions. The NHS will continue to maintain clinical and day to day operational independence.

The NHS mandate

The NHS mandate sets the strategic direction for the NHS by setting out the Government's top priorities. However, the timing of the annual publication of the mandate does not align with the NHS' planning cycle. The white paper proposes to remove the requirement to have a new mandate each year and instead just require that a mandate is always in place. NHS England's capital and revenue limits will no longer be included in the mandate and will be set in the annual financial directions which will be laid before Parliament.

Changing the NHS mandate requirements will also lead to changes for the Better Care Fund (BCF) which will be recreated as a standalone power, rather than relying on the mandate.

Reconfigurations intervention power

Service reconfigurations are normally managed locally, and this is expected to continue. However, in some cases, controversial changes can be difficult and lengthy, requiring the intervention of the Secretary of State. A new process is proposed that will allow this intervention to happen earlier than current legislation allows, to resolve issues more quickly.

Arm's length bodies transfer of functions power

The white paper sets out proposals to allow functions to be transferred between arm's length bodies (ALBs). It states that this will allow reviews of where functions are best delivered to support a more flexible and responsive system. It will also include the power to abolish an ALB if the transfer of powers means that it becomes redundant. Both types of change would require a statutory instrument after formal consultation.

Special health authorities time limits

It is proposed to remove the three-year time limit on all special health authorities, as their functions are enduring. Special health authorities include NHS Blood and Transplant, NHS Counter Fraud Authority and NHS Business Services Authority.

Workforce accountability

The DHSC proposes to introduce a duty for the Secretary of State to publish a document every five years which sets out roles and responsibilities for workforce planning and supply in England.

Additional proposals

A number of additional proposals are included in the white paper to support social care, public health, and safety and quality.

Social care

Integrated care systems and adult social care

The ICS health and care partnership will include social care and a more clearly defined role will be created within the structure of the ICS NHS board

Improve the quality and availability of data across the health and social care sector

The white paper sets out the future intention to improve data collection in adult social care, particularly where people fund their own care. It is recognised that better data is required to link with health information and understand the lifetime cost of care to enable population care planning.

A new assurance framework in social care

The white paper proposes to introduce a new duty for the Care Quality Commission to assess local authorities' delivery of their adult social care duties. However, this will be introduced over time and DHSC intend to work with local authorities and the social care sector to enhance existing assurance frameworks.

Provide a power for direct payments to providers

The Secretary of State can currently make direct payments to not-for-profit bodies engaged in the provision of health or social care services in England. This proposal would extend that power to make payments to any bodies engaged in the provision of social care services in England, to only be used in exceptional circumstances.

Discharge to assess

The requirement to assess prior to discharge will be removed, along with related financial penalties. A legal framework will be put in place for discharge to assess so that NHS continuing healthcare (CHC), NHS funded nursing care (FNC) and Care Act assessments can take place after being discharged from acute care.

Public health

Public health power of direction

The white paper proposes to create a requirement for NHS England to undertake delegated public health functions. Currently this is undertaken by annual agreement and NHS England do not have to take the function. These are commonly referred to as section 7A services and include services such as national screening programmes, child health information services and sexual assault services.

Other public health proposals

The white paper takes the opportunity to make changes to the Food Safety Act 1990 to amend food labelling to tackle obesity and to review television food advertising. The proposals also cover water fluoridation.

Proposals relating to safety and quality

Health service safety investigations body

A new independent body will be created to investigate incidents which have, or may have, safety implications for patients. Their remit will also include health care provided in and by the independent sector.

Professional regulation

A review of professional regulation is being undertaken across the United Kingdom to recognise the changing roles within health and care. The proposals include the ability to remove a profession from statutory regulation if risk levels change and the power to abolish an individual health and care regulator; current legislation allows new ones to be created but none to be closed.

Measures are also proposed to allow the future statutory regulation of senior managers and leaders, should it become necessary to do so to address the concerns raised in the Kark review⁴.

New national medicines registries

The proposal in the white paper will allow the Medicines and Healthcare products Regulatory Agency (MHRA) to develop and maintain publicly funded and operated medicine registries to better understand the use of medicines and provide evidence for decision making.

Hospital food standards

Secondary legislation is proposed to implement national standards for food across the NHS.

Reciprocal healthcare agreements with rest of the world countries

The white paper includes proposals to develop reciprocal healthcare agreements with rest of the world countries. Under current legislation this is only possible with the EU, EEA, EFTA or their member states.

⁴ Department of Health and Social Care, *Kark review of the fit and proper persons test*, February 2019

About the HFMA

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. For over 70 years, it has provided independent and objective advice to its members and the wider healthcare community. It is a charitable organisation that promotes best practice and innovation in financial management and governance across the UK health economy through its local and national networks.

The association also analyses and responds to national policy and aims to exert influence in shaping the wider healthcare agenda. It has particular interest in promoting the highest professional standards in financial management and governance and is keen to work with other organisations to promote approaches that really are 'fit for purpose' and effective.

The HFMA offers a range of qualifications in healthcare business and finance at undergraduate and postgraduate level and can provide a route to an MBA in healthcare finance. The qualifications are delivered through HFMA's Academy which was launched in 2017 and has already established strong learner and alumni networks.

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