



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

To: Please see attached list

Eich cyf . Your ref
Ein cyf . Our ref

3rd October 2006

Dear Colleagues,

NHS TRUST CHANGES - CONSULTATION ISSUES

The Assembly Government's Department for Health and Social Services is aware that certain proposals for substantial service changes have the potential to give rise to plans to reconfigure the management arrangements of provider services locally. This could take the form of NHS Trust mergers or other Trust organisational changes, any of which may require consultation. We have been asked to provide guidance on the type and level of consultation that should take place where such changes are proposed and to advise how such proposals should be best presented alongside proposals for substantial service change. This document does not cover proposals to make changes to Local Health Boards.

In response to this request, the document attached to this letter seeks to restate the legal position and to provide general guidance which may be applied locally. It does not remove the need for NHS organisations to take their own legal advice in respect of individual proposals or consultations, if this is thought necessary.

Yours sincerely,

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Mrs Ann Lloyd, Head of Department for Health and Social Services
Directors of the Health and Social Services Department's Regional Offices
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Mrs Wendy Chatham, Director of Quality, Standards and Safety Improvement,
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Mr John Sweeney, Director of Community, Primary Care and Health Service Policy,
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NHS TRUST CHANGES: CONSULTATION ISSUES

1. Introduction

Current proposals to reconfigure health services across Wales have the potential to give rise to related proposals to change management arrangements (e.g. Trust mergers, etc). The statutory position on organisational restructuring is different to that governing consultation relating to service changes. For the latter we would refer you to *Shaping Health Services Locally (WHC (2004) 84)*.

On matters of Trust organisational change, the Welsh Assembly Government's Department for Health and Social Services has prepared this additional guidance to assist NHS organisations in Wales in taking forward such changes and in fulfilling their statutory obligations on consultation. This advice states the position for proposed changes to NHS Trusts and does not set out the position for proposals to make changes to Local Health Boards; this will be dealt with in separate advice if necessary. It seeks to state the current legal position and does not replace or change any existing guidance, nor does it remove the need for NHS organisations to consider taking their own legal advice, if necessary, in respect of individual proposals or consultations. Nothing in this guidance should be taken as representing the Welsh Assembly Government's support or otherwise for individual proposals currently under consideration.

Whilst the statutory position may be different, the common factor in both service and organisational changes is that inevitably they are of considerable interest to those who work in the service, to patients, the public and other stakeholders. Clearly communicated proposals and proper engagement and consultation, done at the right time, are therefore key elements in ensuring a wide understanding of why change may be needed not only at service level, but also organisationally.

The process to follow in respect of individual proposals is set out at Part 3. It is also advisable, as a matter of courtesy and good practice, to inform local Assembly Members and Members of Parliament of early thinking on such proposals.

2. NHS Trusts – what constitutes a change?

Potential changes to NHS Trusts may include:

- *Amalgamations of two or more existing NHS Trusts.* This would normally involve the dissolution of the existing NHS Trusts, the transfer of staff, property, rights and liabilities and the establishment of a new NHS Trust;
- *Amendments to existing NHS Trusts.* This may, for example, involve the removal of certain services from one or more NHS Trusts to form a single service NHS Trust.

3. NHS Trusts – who can bring about a change and how does the process work?

Proposals to dissolve an existing NHS Trust can either be made at the request of an existing NHS Trust or Trusts, or by the Assembly Government deciding that dissolution is appropriate in the interests of the health service. This guidance covers requests from the NHS and not decisions of the Assembly Government.

A number of processes need to be undertaken, some in parallel. NHS Trusts wishing to put forward proposals should discuss them first of all with the Local Health Boards which commission their services. Contact should also be made with the Assembly Government Department for Health and Social Services Regional Office. The Regional Director would expect to see that, in addition to discussions with the commissioners of the services, some level of engagement had already taken place (e.g. with staff representatives, local CHCs, Assembly Members, Members of Parliament and ideally the wider public). The Regional Director will ask your views on local reaction to the proposal. He will then advise the Minister of the proposals, the reasoning behind them and the anticipated timing. When the Minister has noted the proposals, the Regional Director will advise the NHS organisations and provide any feedback at that stage.

Consultation must take place on these proposals following certain statutory requirements, and details are discussed at Part 4 of this guidance.

Assembly Orders to dissolve or create NHS Trusts must be taken through the appropriate Assembly procedures. If the Minister agrees to a proposal, then designated Assembly Government officials will carry out the work associated with the Orders. They will keep in close touch with NHS colleagues during the process and explain the different requirements.

If proposals are received to amend an existing NHS Trust (i.e. to change its functions, but not to merge or dissolve it), then there may be a need to amend existing Trust establishment orders. Once again, such proposals should be discussed with the Regional Director who will advise accordingly.

4. Consultation requirements for NHS Trust changes – the statutory position

The NHS Trusts (Consultation on Establishment and Dissolution) Regulations 1996 set out the basis for consultation on these changes. If dissolution is at the request of an NHS Trust, the statutory requirement **is for consultation by the NHS Trust** with the relevant Community Health Council(s). For transfer of staff, property, rights and liability orders, the regulations **require consultation by the NHS Trust** with the relevant CHC(s) and staff interests. The regulations allow for consultation in relation to the dissolution and transfers to be conducted together. The regulations do not prescribe consultation periods but it is normal for a 12-week period to be allowed. A consultation report should be submitted to the Regional Office within the agreed timescales following the end of the consultation. It is important for CHCs in particular to note that the process referred to in *Shaping Health Services Locally* in respect of objections to consultations pursuant to the Community Health Councils Regulations

2004, does not apply to organisational proposals (i.e. there is no statutory provision providing for a CHC in these cases to ask the Minister to "call in" such a consultation).

Proposals to amend existing Trusts may not require statutory consultation under the above regulations but wider consultation could be justified on an extra-statutory basis depending on the extent and type of changes to be considered. This should be discussed locally and with CHCs and the Regional Director.

5. How consultation could work in practice

The different statutory requirements set out above in respect of NHS Trust organisational change (which must be undertaken by Trusts) and in *Shaping Health Services Locally* in respect of service change (which can be undertaken by Trusts or Local Health Boards) mean that ways must be found to present and consult on these issues sensibly, whilst complying with the requirements of the legislation. The Assembly appreciates the complexities that these arrangements pose in practice and realises that this will necessitate close working between Trusts and Local Health Boards particularly in deciding who is legally responsible for which part of the consultation.

Ideally, having discussions at the earliest possible opportunity with patients, the public and staff about service changes and the organisational structures which should support them is strongly encouraged. This might be termed a period of engagement during which the scene is set, problems are presented in public, the various options discussed and possible solutions debated.

This is not formal consultation, but is in line with the wider duty contained in Section 11 of the Health and Social Care Act 2001 to involve people in the planning of and decisions around service provision. It has been traditional for health service planners and managers to have these discussions internally, or with a limited selection of stakeholders, after which options and solutions are presented to the public at formal consultation. This approach, whilst tried and tested over many years, may result in opportunities being lost to explain and engage with people on important issues much earlier in the process.

Engagement as described above should inform the eventual proposals and then be followed by the formal consultation processes set out in the various pieces of legislation. Organisations may run concurrent consultations covering service changes and proposed organisational changes, and then present either separate or joint reports to the Assembly Government. This is desirable as it presents the Minister with a rounded view of public and stakeholder opinion on these matters.

If there has already been a period of formal consultation on service changes, out of which proposals to merge or make other changes to NHS Trusts arise, then the actions outlined in Part 3 should be followed and formal consultation as outlined in Part 4 can proceed.

6. Next steps

NHS Trust Boards are encouraged to carefully consider this advice and discuss with Regional Offices as necessary.