

CEL 4 (2010)

10 February 2010

Addresses

For action

NHS Board Chief Executives;
NHS Board Directors of
Planning;
NHS Patient Focus and
Public Involvement
Designated Directors

For information

NHS Board Directors of
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Dear Colleague

**INFORMING, ENGAGING AND CONSULTING PEOPLE IN
DEVELOPING HEALTH AND COMMUNITY CARE SERVICES**

Purpose

To provide revised guidance – Informing, Engaging and Consulting People in Developing Health and Community Care Services – to assist NHS Boards with their engagement with patients, the public, and stakeholders on the delivery of local healthcare services. The principles of the guidance should be applied, proportionally, to any service change proposed by a Board, including any changes considered to be major.

Summary

The guidance, which has been prepared by the Scottish Government Health Directorate in consultation with a wide range of stakeholders, supersedes the Scottish Home and Health Department circular ("*Closure and Change of Use of Health Service Premises*") dated 3 June 1975, the [draft interim guidance](#) ("*Consultation and Public Involvement in Service Change*") issued through an HDL in 2002 (HDL (2002) 42), and the [draft guidance](#) ("*Informing, Engaging and Consulting the Public in Developing Health and Community Care Policies and Services*") issued for comment in 2004.

Scope

The guidance:

- Sets out the relevant legislative and policy frameworks for involving the public in the delivery of services;
- Provides a step-by-step guide through the process of informing, engaging and consulting the public in service change proposals;
- Explains the decision making process with regard to major service change and the potential for independent scrutiny; and
- Clarifies the role of the Scottish Health Council.

How to use the Guidance

Whilst decisions regarding the provision of NHS services remain a matter for NHS Boards (with the exception of major service changes), there is a need to ensure a consistent and robust approach is adopted when Boards consider and propose new services or changes to existing services. This guidance should therefore provide a suitable framework to deliver that aim.

The guidance should also be considered alongside associated guidance prepared by the Scottish Health Council on major service change (*'Guidance on Identifying Major Health Service Changes'*) and the option appraisal process (*'Involving Patients, Carers and the Public in Option Appraisal for Major Health Services Changes'*).

Training

As part of their commitment to the provision of training in support of NHS Boards Patient Focus and Public Involvement activity, NHS Education for Scotland has commissioned training for NHS staff which will assist in the implementation of this guidance. For further information please contact Jane Davies, Educational Projects Manager (PFPI) at NES on 0141 352 2927 or jane.davies@nes.scot.nhs.uk.

Access and Updating

The guidance will be available in electronic format on the Scottish Government website www.scotland.gov.uk and the Scottish Health Council's website <http://scottishhealthcouncil.org> (where the guidance on major service change and the option appraisal process can also be found). The guidance will be reviewed by the end of 2011, or earlier if required.

Actions for NHS Boards

NHS Boards are asked to ensure that this guidance is brought to the attention of all appropriate staff involved in the provision of new services or changes to existing services. Ministers will wish to see evidence of this when considering proposals for major service change and through Boards' wider patient focus and public involvement activities.

Yours sincerely



KEVIN WOODS

INFORMING, ENGAGING AND CONSULTING PEOPLE IN DEVELOPING HEALTH AND COMMUNITY CARE SERVICES

Introduction

1. This guidance has been developed to assist NHS Boards with their engagement with patients, the public and stakeholders on the delivery of local healthcare services. The principles of the guidance should be applied, proportionally, to any service change proposed by a Board, including any changes considered to be 'major'. When appropriate, Special Boards and the Common Service Agency/NSS Scotland¹ exercising a non-clinical or public-facing function should also follow the principles of this guidance when engaging with their stakeholders.

2. The duty of public involvement covers all Health Boards, Special Health Boards and the Common Services Agency when they are providing a service to the public which they are responsible for². This also includes when services are provided on their behalf, for example by a contractor, to the public. For Health Boards this will cover the majority of their actions but Special Health Boards and the CSA will have to consider whether their actions impact directly on services provided to individuals and, if so, follow the principles of this guidance.

3. This guidance supersedes the Scottish Home and Health Department circular ("*Closure and Change of Use of Health Service Premises*") dated 3 June 1975, the [draft interim guidance](#) ("*Consultation and Public Involvement in Service Change*") issued through an HDL in 2002 (HDL (2002) 42), and the [draft guidance](#) ("*Informing, Engaging and Consulting the Public in Developing Health and Community Care Policies and Services*") issued for comment in 2004.

Background

4. NHS Boards are required to involve people³ in designing, developing and delivering the health care services they provide for them. Boards' responsibilities in this area were initially set out in the policy document, *Patient Focus and Public Involvement (PFPI)*. However, to reflect the importance of this agenda, duties of public involvement and

¹ References to NHS Boards or Boards should be read to include reference to Special Health Boards and CSA/NSS where appropriate.

² Section 2B of the National Health Service (Scotland) Act 1978, as inserted by the National Health Service Reform (Scotland) Act 2004.

³ in this guidance the word "people" should be interpreted to refer to health service users, patients, staff, members of the public, carers, volunteers, and the voluntary organisations which represent them.

equal opportunities were placed on NHS Boards in the *NHS Reform (Scotland) Act 2004*⁴.

5. The Scottish Health Council was established to ensure NHS Boards meet their patient focus and public involvement responsibilities, and to support them in doing so. *Better Health, Better Care: Action Plan (2007)* set out a vision for the NHS, based on a theme of mutuality that sees the Scottish people and the staff of the NHS as partners, or co-owners in the NHS. One of the ways in which this will be measured is through the new Participation Standard, and the processes set out in this guidance should help Boards demonstrate their efforts around public involvement.

6. It should be noted that this guidance extends to the services delivered by GPs etc through Primary and Community Care, although it is recognised that the contractual arrangements for GPs, GDPs, GOPs and Community Pharmacists⁵ are all governed by particular regulations. While services themselves are provided by contractors, Boards are still required to adhere to this guidance when they are considering changes to the contractual, and other, arrangements for primary care services. While independent contractors are responsible for running their own practices they are also expected to engage in a proportionate way with their patients and relevant community groups (such as Public Partnership Forums) when planning any changes to the way they deliver services.

Community Engagement

7. To fulfil their responsibilities for public involvement, NHS Boards should routinely communicate with and involve the people and communities they serve to inform them about their plans and performance. Where appropriate, this should also include involvement of and partnership working with wider stakeholders and other agencies. In doing so, Boards should follow the principles and practice endorsed by the Scottish Health Council, in particular the *National Standards for Community Engagement*.

8. Public Partnership Forums, established by Community Health Partnerships, provide a mechanism for promoting the routine involvement of local people in the design and delivery of the health services they use. NHS Boards should also work closely with their Community Planning

⁴<http://www.opsi.gov.uk/legislation/scotland/acts2004/20040007.htm>

⁵ In fact, the National Health Services (Pharmaceutical Services) Regulations 2009 at paragraph 2 of Schedule 3, places an obligation on Boards to consult the public when they are considering an application for inclusion on the pharmaceutical list.

partners to consider opportunities for joint working and to minimise duplication in their community engagement mechanisms.

NHS Board responsibilities

9. In accordance with equalities legislation, including the public sector duties (<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/>), a Board is responsible for:

- ensuring that the informing, engaging, consulting process is fully accessible to all equality groups; and
- ensuring that any potentially adverse impact of the proposed service change on different equality groups has been taken account by undertaking an equality impact assessment

10. Where a Board is considering consulting the public about a service development or change, it is responsible for:

- informing potentially affected people, staff⁶ and communities of their proposal and the timetable for:
 - involving them in the development and appraisal of options.
 - involving them in a (proportionate) consultation on the agreed options.
 - reaching a decision.
- ensuring that the process is subject to an *equality and diversity impact assessment*.
- ensuring that any potentially adverse impacts of the proposed service change, on, for example, the travel arrangements of patients, carers, visitors and staff, have been taken account of in the final proposal.
- providing evidence of the impact of this public involvement on the final agreed service development or change.

11. Where a proposed service change would impact on the public in another area, the Board proposing the change should lead the public involvement process. The Board, and any other affected Board(s), should aim to maximise the involvement of affected individuals and communities in the process. Proposed changes to regional or national services should

⁶ in this guidance the word 'staff' should be interpreted widely to include those who are employed or contracted to work in or with the affected service. Boards would be expected to demonstrate that they had appropriately involved staff.

also follow the principles set out in this guidance and, as above, the Board proposing the change should lead the involvement process, ensuring that it engages with the public and its wider stakeholders.

The Scottish Health Council's role

12. The Scottish Health Council was established to ensure NHS Boards meet their patient focus and public involvement responsibilities, and to support them in doing so. Boards should therefore keep the Scottish Health Council informed about proposed service changes so that it can provide Boards with advice and, if necessary, support in involving potentially affected people in the process.

13. When a Board proposes a major service change, its staff should work with the Scottish Health Council to ensure that potentially affected people and communities have the information and support they need to play a full part in the consultation process. As the Scottish Health Council is required to quality assure the process as it develops, Boards should engage with it at the earliest possible stage and ensure any issues identified by it are acted upon.

14. The Scottish Health Council does not comment on clinical or financial issues; the adequacy of Board compliance with the technical requirements laid out in *The Green Book* option appraisal process; or the effectiveness of a Board's engagement with its own staff. It will, however, look to the Board to provide evidence that the views of potentially affected people and communities have been sought, listened to and acted on; and treated with the same priority (unless in exceptional circumstances e.g. patient safety) as clinical standards and financial performance.

Major Service Change

15. Where a proposed service change will have a major impact on a patient or carer group, members of equalities communities or on a geographical community, the Scottish Health Council can advise on the nature and extent of the process considered appropriate in similar cases. Boards should, however, seek advice from the Scottish Government Health Directorate (SGHD) on whether a service change is considered to be major and, for those that are, Ministerial approval on the Board's decision will be required. Prior to seeking the Scottish Government Health Directorate's advice on whether the proposed service change is major, Boards should use the Scottish Health Council's guidance "Guidance on Identifying Major Health Service Changes" to help inform their own considerations.

Independent Scrutiny

16. The purpose of independent scrutiny is to promote confidence in the major service change process in the NHS in Scotland, by providing an expert and impartial assessment of the proposals developed by Boards, and the assumptions that underpin them. In some cases - and where the benefits outweigh the costs - Ministers may decide to establish an Independent Scrutiny Panel to assess the safety, sustainability, evidence base and value for money of proposals. The Panel will seek to ensure that proposals are robust, person-centred and consistent with clinical evidence and/or best practice, national policy, and that all practical options have been considered.

17. The Panel will provide a clear, comprehensive and accessible commentary on the evidence presented by the Board, and the notes of the Panel's meetings and its report will be published. The Independent Scrutiny Panel will not reach a view on a preferred option as this will remain a decision for the Board to take as part of the option appraisal process.

18. Independent scrutiny is likely to be conducted prior to the Board's formal public consultation process as the Board will ultimately be expected to demonstrate how they have taken the Panel's findings into account in finalising its service proposals for consultation.

The Process of Informing, Engaging and Consulting

19. Public consultation about a service change should grow naturally out of a Board's everyday communication and dialogue with the people it serves. This guidance should support staff in their efforts to engage the public, and offer potentially affected people and communities a real opportunity to influence the Board's decision-making about the design and delivery of services through their involvement in:

- developing and appraising possible options to decide which should be the subject of a public consultation; and
- the public consultation on the preferred option(s).

20. The public involvement process should be applied in a realistic, manageable and proportionate way to any service development or change, including those that are time limited (temporary) or trialled through a pilot initiative, which will have an impact on the way in which people access or use NHS services. The process should be applied to

any proposed service change, although some additional criteria will apply for any service changes considered to be major. These are:

- The consultation period should last for a minimum of 3 months;
- The Scottish Health Council will produce a report assessing whether the Board has involved people in accordance with this guidance;
- The Board's final proposal will be subject to Ministerial approval

Planning

21. As soon as a Board is aware of a need to consider a change to a service, it should develop an involvement and communication plan which details how the engagement process will be carried out. One tool that could be used to do this is the VOiCE (Visioning Outcomes in Community Engagement) database, which has been developed to help those involved in community engagement activity achieve the National Standards by planning, recording and monitoring community engagement activity.

22. The plan, which can be developed with advice from the Scottish Health Council, should ensure that potentially affected people and communities are provided with the information and support they need to play a full part in the consultation process. The Scottish Health Council can provide:

- views on the type of involvement they would expect to see for the proposed service development or change.
- views on similar work and good practice elsewhere.
- support in quality assuring the process (major service changes only) as it develops.
- guidance on the evaluation process

Informing

23. The people and communities who may be affected by a proposed service development or change should be given information about the:

- clinical, financial and other reasons why change is needed and which may limit possible choices, including reference to any relevant legislation or Scottish Government policies.
- benefits that are expected to flow from the proposed change.
- processes, such as carrying out a transport needs assessment, which will be put in place to assess the impact of the proposal.

24. When appropriate, it is also good practice to inform people about changes to management or organisational structures, even if they do not directly affect service users.

Engaging

25. There should be an open, transparent and accessible process of developing the choices or options which can be delivered within the available resources, in which potentially affected people and communities should be proactively engaged. The Scottish Health Council can be consulted about the communication and involvement techniques to be used which will vary depending on the issue involved, and the people and groups the Board is trying to reach.

Option Development and Appraisal

26. The Board should work with local people to develop options which are robust, evidence-based, person-centred, sustainable and consistent with clinical standards and national policy. Where this happens, the subsequent consultation process will have greater credibility and authority.

27. Boards should ensure that public stakeholders are involved in developing options and in the appraisal process. Clinical and professional staff who work in the service should also be involved and can have an important role in presenting the range of options at meetings and other public involvement events.

28. The development and appraisal of options for major service change should be consistent with the fundamental approach outlined in HM Treasury guidance – *The Green Book*- which will ensure a consistent, systematic and robust approach. *The Green Book* makes clear that in the first place a wide range of service options should be created and reviewed, from which a short-list of options, including a ‘do minimum’ option, should be selected. To assist with their efforts, Boards should refer to the Scottish Health Council’s guidance (*“Involving Patients, Carers and the Public in Option Appraisal for Major Health Service Changes”*) and to the Scottish Capital Investment Manual for NHS Scotland, issued under the terms of [CEL\(19\) 2009](#).

29. There may be occasions where the number of practical options is limited, for example by requirements to comply with national policy or legislation. Where this is the case, the option development process should still be used to involve potentially affected people and

communities, and to seek to achieve a consensus around the limited number of practical options.

30. The Scottish Health Council's advice can be sought about establishing an appropriate open and transparent process to determine which options should proceed to the public consultation stage and how to involve people in this part of the process.

31. In publicising the outcome of the option appraisal process the NHS Board should take care to:

- ensure they accurately incorporate clinical views, financial implications and the views of patients and the public; and
- clearly explain why each option is considered practical, particularly in respect of any clear 'preferred' option that has emerged from the option appraisal process.

Consulting

32. For any service changes considered to be major, Boards should not move to the consultation stage until they have confirmation from the Scottish Health Council that public involvement thus far has been in accordance with this guidance.

The consultation document

33. A consultation document will need to be produced. This should:

- be easy to understand.
- be readily available and accessible.
- outline how the options offered for consultation were developed and agreed.
- offer balanced information in support of each option, including the financial implications
- contain sufficient information for the reader to be able to understand the reasons for the proposal(s) and come to an informed conclusion.
- outline the factors which will be taken into account in arriving at a decision.
- contain information about contacts for further information or clarification and direct consultees to public access points in libraries etc.
- allow sufficient time (at least 3 months for major service changes), for those consulted to consider and respond to the proposal.

34. Innovative and creative methodologies and technologies should be used to enable people who might otherwise be excluded from the consultation process to be involved and provide a response.

35. Where a preferred option is indicated, it must also be clear that all responses to the consultation will be considered. In particular, the Board should give genuine consideration to any alternative suggestions that are put forward as a result of the consultation.

The consultation process

36. Potentially affected people and communities should be consulted on the option(s) for the proposed service development or change. The advice of the Scottish Health Council can be sought about the consultation methodologies to be used in the consultation process.

37. An inclusive process should encourage and stimulate discussion and debate. While it may not result in agreement and support for a proposal from all individuals and groups, it should demonstrate that the NHS listens, is supportive and genuinely takes account of views and suggestions. Ultimately, Boards should demonstrate that there has been a wide ranging consultation, which has taken all reasonable steps to take account of differences of view.

Seeking Ministerial approval

38. For any proposed service changes considered to be major, the Board, when submitting its final proposal to the Minister for approval, should enclose a report from the Scottish Health Council which assesses whether the Board has involved people in accordance with the expectations set out in this guidance.

39. It should be noted that Ministers:

- will not consider a Board's submission unless it gives evidence of how potentially adverse impacts for the affected people and communities will be taken into account.
- reserve the right to ask a Board to carry out a consultation process again in whole or in part if the Scottish Health Council's assessment is that the public involvement process did not comply with this guidance.

Feedback

40. The feedback stage is of vital importance in maintaining public confidence and trust in the integrity of the involvement process and Boards should provide feedback to the stakeholders who took part in a consultation to:

- inform them of the outcome of the consultation process and the final agreed development or change.
- provide a full and open explanation of how views were taken into account in arriving at the final decision.
- provide reasons for not accepting any widely expressed views.
- outline how people can be involved in the implementation of the agreed change, and explain how communities can contribute to the implementation plan.

Evaluation

41. Evaluation is an appraisal of how the informing, engaging and consulting activities undertaken worked; the impact they had on the service change; and the lessons to be learned for future involvement work to be carried out by the organisation. The process should be positive and constructive, designed to highlight areas which may need to be strengthened or developed. It need not be lengthy or time-consuming, and any findings (reports etc) should be made available to interested parties. The Scottish Health Council can provide information and guidance on how to evaluate the consultation.

Scottish Government
Healthcare Policy and Strategy Directorate
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