DECISION-MAKER:		PANEL B		
SUBJECT:		NHS WHITE PAPER: LEGISLATIVE FRAMEWORK AND NEXT STEPS		
DATE OF DECISION:		13 JANUARY 2011		
REPORT OF:		CHIEF EXECUTIVE, NHS SOUTHAMPTON CITY		
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STATEMENT OF CONFIDENTIALITY
None

SUMMARY

This update updates the panel on the government's response to the consultation on the NHS White Paper – Equity and Excellence.

RECOMMENDATIONS:

(i) To note the Governments changes to the NHS White paper as a result of the recent consultation, in particular the implications for Health Overview and Scrutiny Committees.

REASONS FOR REPORT RECOMMENDATIONS

1. To ensure members are aware of the Government's response to the NHS White Paper consultation.

CONSULTATION

2. None.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3. None.

DETAIL

Introduction

4. The Government has published its response to the series of consultations conducted following the publication of the NHS White Paper. It has also indicated which proposals will be in a Health and Social Care Bill to be brought before Parliament in January. In the main, the Government is going ahead with the structural changes proposed in its original NHS White Paper, including the move to GP commissioning and the transfer of the public health function to local government. However, the legislative framework indicates a number of proposed changes in response to the consultation. These include a longer transition period to GP commissioning and, of importance to local government, significant extra statutory powers and duties for the proposed health and wellbeing boards and abandonment of the proposal to remove the health scrutiny power from OSCs to these boards.

How the Government has modified its original proposals

5. In response to the consultation, the Government has made a number of changes to its original proposals. The effect of the changes will be to:

- Abandon the proposal to move local authorities' health scrutiny functions into the health and wellbeing boards – instead councils' formal scrutiny powers will be extended to cover NHS-funded services and local authorities will be given greater freedom in how these powers are exercised, whether through a specific health OSC, or through a "suitable alternative arrangement". The forthcoming Bill will confer the health overview and scrutiny functions directly on the local authority itself
- Significantly strengthen the role of health and wellbeing boards in local authorities, and enhance joint working arrangements through a new responsibility to develop a "joint health and wellbeing strategy" spanning the NHS, social care, public health and potentially other local services. Local authority and NHS commissioners will be required to have regard to this. Legislation will allow for boards to include representatives from lower tier authorities. GP consortia will also be required to be members with provision for "lead consortium" arrangements.
- Accelerate the introduction of the health and wellbeing boards through a new programme of early implementers
- Phase in responsibility for local authorities for commissioning NHS complaints advocacy services and allow these to be commissioned from other organisations as well as from local HealthWatch
- Create a statutory committee with the Care Quality Commission (CQC) to lead HealthWatch England
- Allow a longer transition period for completing reforms to providers
- Take a more phased approach to the introduction of GP commissioning, by setting up a programme of GP consortia pathfinders
- Require all GP consortia to have a published constitution
- Allow maternity services to be commissioned by GP consortia instead of by the NHS Commissioning Board, as originally proposed
- Give GP consortia a stronger role in supporting the NHS Commissioning Board
- Create an explicit duty for all arm's length bodies to co-operate in carrying out their functions with a new disputes resolution mechanism. In particular, Monitor and the NHS Commissioning Board will have to work jointly in setting prices, rather than have Monitor decide and the Board able to appeal.

6. The legislative framework document discusses responses to the consultation in some detail and, in response to scepticism and concern raised by a number of respondents, gives assurances that the founding principles and quality of the NHS will not be compromised and that the proposed reforms will not undermine the potential for efficiency savings, as some respondents

fear.

Proposals relating to local government

7. The proposals that relate to the role of local government in health are discussed in some detail. In the light of consultation responses, the Government has decided to expand, strengthen and adapt significantly its proposals for legislation in this area. It is introducing enhanced obligations in relation to joint assessment of need and development of strategy, and revised proposals on scrutiny, as indicated in the bulleted list above. The document notes that "local authorities will take on the major responsibility of improving the health and life-chances of the local populations they serve".

8. In the reformed system, the process and product of the joint strategic needs assessment (JSNA) takes on much greater importance. In future JSNAs will be undertaken by local authorities and GP consortia (each with an equal and explicit obligation) through the health and wellbeing boards with the intention of ensuring that "GP consortia take commissioning decisions based on the overall needs of the in future rather than the needs of their current set of patients". Responsibility for local pharmaceutical needs assessments will also be transferred to local authorities, to be discharged through health and wellbeing boards. There will be a new legal obligation on NHS and local authority commissioners to have regard to the JSNA in exercising their relevant commissioning functions.

9. The Government intends to specify that all health and wellbeing boards should have to develop a high-level "joint health and wellbeing strategy" (JHWS) that spans the NHS, social care and public health, and could potentially consider wider health determinants such as housing, or education. GP consortia and local authorities will be required to have regard to this strategy in commissioning services. There will be no statutory guidance on the nature of these strategies, nor will the health and wellbeing board be required to submit them to the Department, the NHS Commissioning Board or any other central organisation, but they will be made public.

10. Health and wellbeing boards will be able to make use of the existing flexibilities between the NHS and local authorities, looking at the totality of resources in their local areas for health and wellbeing. The NHS Commissioning Board will be under a duty to promote, but not enforce, the use of flexibilities by commissioning consortia. Health and wellbeing boards will become statutory committees of local authorities at the same time as GP consortia take on responsibility for the NHS budget, ie in April 2013, although they will come into existence in advance of this, with 'shadow' boards being established in every upper-tier authority from April 2012.

11. In relation to health scrutiny, in addition to the provisions indicated in the bulleted list above, any decision to refer a substantial service change proposal will be required to be triggered by a meeting of the full council, except in the case of a joint scrutiny arrangement in which case the joint OSC, whose decisions will be binding on all contributing councils, will hold the referral power. The right of referral will apply to any type of provider of NHS-funded services. The Secretary of State will have a new power to stop reconfiguration of services, subject to additional regulation, when they are

referred to him. The Secretary of State will continue to be guided by the Independent Reconfiguration Panel and additionally be required to take account of the safety, effectiveness and patient experience of services and the need for services to be financially sustainable

12 The Bill will enable the Government to extend the powers of local authorities to enable effective scrutiny of any provider of any NHS-funded service, including, for example, primary medical dental or pharmacy services and independent sector treatment centres, as well as any NHS commissioner.

Southampton's Joint Council and PCT Response (incorporating the Panel B/OSMC and S-Link responses as an annex).

13. Many of the changes proposed in this response to the consultation on *Liberating the NHS* have been made in response to local authorities' and their representatives' own responses to the consultation. Whilst many of the comments raised in the joint Council/PCT response have been addressed, two of the topics raised in response the are specifically cited in the document and attributed to Southampton: the clear separation of HealthWatch from the more general areas that are the responsibility of the Care Quality Commission; and the point that the increased focus on the JSNA will ensure that GP consortia will take commissioning decisions based on the overall needs of the population rather than the needs of GP practices current patients.

14 In addition an issue raised by the Health and Ethics Law Network at the University of Southampton relating to the role of GP consortia in helping to improve the quality of general practice services will address the conflicts of interest if GP practices were to commission for themselves

Conclusion

15. Legislation to enact the proposals in the legislative framework will begin with a Health and Social Care Bill to be introduced in Parliament in January 2011. In relation to the public health proposals which will affect local government, the Bill will go into more details about the respective roles of the Secretary of State, the NHS Commissioning Board and local authorities.

16. The legislative framework points out that moves are already under way to establish the provisions of the White Paper in advance of legislation. In particular:

- one-quarter of the country is already covered by 'pathfinder' GP consortia;
- by next year, it is expected that 25,000 staff – delivering some £900 million of NHS community services – will be doing so as members of social enterprises;
- the further development of NHS foundation trusts is proceeding at pace.

17 Further reports will be brought to the Scrutiny Panel as necessary to update members on the progress and impact of the legislation.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

18 None.

Revenue

19 None.

Property

20 None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

21 The duty to undertake overview and scrutiny is set out in Section 21 of the Local Government Act 2000 and the Local Government and Public Involvement in Health Act 2007.

Other Legal Implications:

22 None.

POLICY FRAMEWORK IMPLICATIONS

23 None

SUPPORTING DOCUMENTATION

Appendices

1.	None

Documents In Members' Rooms

1.	Liberating the NHS: Legislative framework and next steps

Background Documents

	Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None	

Background documents available for inspection at:

KEY DECISION? N/A

WARDS/COMMUNITIES AFFECTED:	N/A