



Department  
of Health

# NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015

Government Response to the Consultation

November 2015

**Title: NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015 - Government Response to the Consultation**

**Author:**

Social Care, Local Government, Care Partnership/ Integrated Care Team/ 11120

**Document Purpose:**

Consultation Response

**Publication date:**

November 2015

**Target audience:**

This document is intended to update all those with an interest the Government's response to the consultation regarding the proposed amendment of the NHS Bodies and Local Authorities Partnership Arrangement Regulations.

**Contact details:**

Jessica Sharp

[Jessica.sharp@dh.gsi.gov.uk](mailto:Jessica.sharp@dh.gsi.gov.uk)

Richmond House

79 Whitehall

London

SW1A 2NS

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/)

© Crown copyright

Published to gov.uk, in PDF format only.

[www.gov.uk/dh](http://www.gov.uk/dh)

# NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015

Government Response to the Consultation

Prepared by the Integrated Care Team

# Contents

Contents .....	4
Executive summary .....	5
1. Respondents and Questions .....	7
2. Views on the proposal .....	8
3. Views on the scope .....	11
4. Views on Safeguards.....	13
5. Additional comments from respondents.....	15
6. Impact on Equalities & Health Inequalities .....	17
7. Next Steps .....	19

# Executive summary

On 6 February 2015 the Government launched a consultation regarding proposed amendments to the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 to bring primary medical services into scope. This document will set out the headline responses from consultees, the Government response to issues raised and the next steps.

The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000<sup>1</sup> currently provide a legal framework for pooled budgets across the key health functions of clinical commissioning groups (CCGs) and the health-related functions of local authorities, including social care. At present they underpin the operation of the Better Care Fund at local level.

On 6 February 2015 the Government launched a consultation regarding the proposal to amend these regulations to include primary medical services on the list of prescribed functions which can be subject to partnership arrangements. This permissive change would enable NHS England to participate in partnership arrangements with CCGs and local authorities with respect to their primary medical care functions where there is an agreement across all parties.

The proposed change provides greater flexibility and local powers around the use of pooled budget arrangements, and removes a potential legislative barrier to continued efforts to increase integration. It will not impose any requirements on areas or NHS England to make use of these additional flexibilities. Furthermore, commissioners can only make use of the amended regulations where it is likely to result in an improvement in the way that functions are exercised.

The proposal reflects the Government's view that general practice has an important role to play in delivering more integrated out-of-hospital care for people with complex health and care needs.

The intention is to promote investment in general practice services at a local level and to further encourage collaborative working. By bringing together, and bridging the gap between, local and national commissioners of both health and social care, more strategic joint commissioning can take place across the whole local health economy. Of course, not all areas will be ready to make use of the change, which will require strong leadership, good working relationships across the organisations, and a history of collaboration. However, this is an additional flexibility for those areas with more ambitious plans for transforming the out of hospital environment.

---

<sup>1</sup> As amended. The reference number for these Regulations is SI 2000/617.

## NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015

The Government is working with NHS England to provide a range of complementary models to support integration, from which commissioners can choose to suit local needs. The proposal will complement the significant progress being made by the Integrated Care Pioneers, the New Models of Care programme, NHS England's programme for co-commissioning of primary care with CCGs, the Better Care Fund (BCF), and most recently areas like Greater Manchester seeking to take on greater devolved responsibility for health and social care.

The consultation proposed a further change to regulations, which was to remove the requirement to consult before entering into partnership arrangements where the approach has been mandated by central government, such as in the case of the BCF.

Under section 223GA of the National Health Service Act 2006 ("the NHS Act 2006") (inserted through the Care Act 2014), CCGs and local authorities are effectively required to establish a section 75 agreement for the purposes of the BCF. The draft NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015 therefore amend the existing regulations to dis-apply the requirement to consult, where the bodies are already required to enter into partnership arrangements in connection with section 223GA of the NHS Act 2006.

Those looking to voluntarily enter into partnership arrangements will still be required by the regulations to consult beforehand. Where there has been a central mandation, such as the BCF, there will still be an expectation that those responsible for planning engage and consult with those affected by the plans such as providers and recipients of services.

Since the consultation closed, the agreement of devolution deals with places like Greater Manchester<sup>2</sup> has highlighted the further potential benefits that could be derived from local partners being able to work in partnership with each other and with NHS England across health, social care and wider services. While it is our intention to move to amend these regulations now, in response to the consultation on the original proposals, Government will also consider whether further legislative change might be beneficial to support local areas to move towards this kind of place-based, joined up approach for the benefit of patients and communities.

This document outlines the headline responses to the consultation, and explains the Government's decision to proceed with the proposed amendment.

---

<sup>2</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443087/Greater\\_Manchester\\_Further\\_Devolution.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443087/Greater_Manchester_Further_Devolution.pdf)

# 1. Respondents and Questions

## Who responded?

The Department received 47 responses from a wide range of individuals and organisations with different interests and expertise, including: CCGs, County Councils, health and wellbeing boards (HWB), local medical councils, national professional representative bodies, charities and consultancy groups.

## Consultation Questions

The consultation asked respondents five specific questions on the proposed amendment:

- Do you agree that the proposed amendment will provide a helpful additional flexibility, and support the Government and local areas' continued efforts to drive more integrated and person-centred out-of-hospital care?
- Do you agree with the Government proposal to limit the amendment to primary medical services/general practice (rather than other aspects of primary care), on the basis that this is where the benefits of pooled fund arrangements are likely to be greatest?
- Do you agree that existing safeguards are sufficient to address any potential conflicts of interests where primary care funding forms part of pooled funding arrangements? If not what additional measures do you think are necessary?
- Do you have any other comments regarding the draft regulations?
- Do the proposals have any impact (adverse or positive) on people sharing protected characteristics, as defined in the Equality Act 2010?

Set out below is a summary of the responses on each of the questions and the Government response to the views and issues raised.

## 2. Views on the proposal

**Question 1: Do you agree that the proposed amendment will provide a helpful additional flexibility, and support the Government and local areas' continued efforts to drive more integrated and person-centred out-of-hospital care?**

*“Including GP services in the regulations for pooled budgets is as much a symbolic acknowledgement of their importance as it is the removal of a practical barrier to further locally determined work on integration.” - quote from consultee*

### Headline responses:

Approximately two thirds of respondents agreed that the proposed change would provide additional flexibility and that it would support efforts to build on existing work to provide integrated and out of hospital care.

Reasons for a positive response to the proposed amendment included:

- The view that the change would be a symbolic acknowledgement of the importance of general practice in the delivery of integrated care which might serve to aid the drive for increased recruitment to general practice
- That it would support and encourage greater investment in primary medical services. For example we heard that the change would be an opportunity to boost the role of the practice nurse, build multidisciplinary teams around the GP practices, and shift the local focus to preventative approaches to managing people's health
- That the change is timely as it will support other ongoing work, such as:
  - the Better Care Fund (BCF)
  - new models of care (as set out in the Five Year Forward View)
  - primary care co-commissioning, whereby NHS England commissions general practice services jointly with – or delegates some of its commissioning functions to – CCGs
- A number of respondents specifically welcomed the fact that, while the proposed change would provide flexibility to NHS England and local areas looking to maximise the use of partnership arrangements, it does not impose requirements
- That greater use of pooled budgets reduces the temptation to reduce spending on services in one area, thereby inadvertently causing a spike in services elsewhere

Of the remaining respondents most took a neutral stance and some concerns about the change were raised, which include:

- That pooling budgets might lead to the diversion of funding away from general practice
- That the change will dilute the clinical voice in commissioning decisions



## Views on the proposal

- That the change might leave the final decision for the commissioning with the county council and that decisions might be taken against the will of the CCGs
- That multiple new ways of working are being trialled (co-commissioning, personal health budgets and New Models of Care) and it might be better to make this change at a later date once these have been evaluated
- That the capacity to make use of such flexibilities varies between areas depending on the strength of local relationships
- A small number of respondents queried the additional benefits of this change, given that CCGs and local authorities can already use pooled budgets to commission additional primary medical services, albeit through stand-alone contracts

### **Government Response:**

The majority of the responses to the consultation supported the proposal echoing the view that the amendment would provide greater scope for integration across health and social care and reflect the prominent role that general practice has to play in this.

Regarding the concerns that the change might result in a diversion of funds from general practice, it should be noted that the NHS Five Year Forward View includes a commitment to invest more in primary care over the next five years. The following safeguards will be relevant to any areas wishing to make use of the proposal:

- Under section 75 arrangements, all parties retain accountability for their health functions. NHS England would, therefore, retain accountability for commissioning primary medical care services to meet people's needs in every area of the country
- NHS England could only enter into a section 75 arrangement in respect of primary medical care services where it was confident that it would result in an improvement in the way that these functions are exercised
- Before entering into a partnership arrangement of this sort, there is a requirement to consult those affected by the arrangement. This offers both recipients of services and providers, amongst others, an opportunity to express any local concerns

Regarding the concerns that the proposal might dilute the clinical voice in commissioning, it is important to note that the current arrangements enable CCGs and local authorities to establish pooled budgets and joint commissioning arrangements for most hospital and community services, but not for primary care services. This flexibility would enable primary medical care services to come within the scope of these joint local commissioning arrangements, which should enhance the local clinical voice.

We agree that there will be variation in the ability of local areas to make use of these arrangements for primary medical services. As stated previously, this is a permissive change which should suit areas with ambitions and capacity to go further than current arrangements allow. However, there is no expectation that all areas should necessarily make use of this flexibility.

While it is correct that it is already possible for CCGs and local authorities to pool their own resources to commission additional services from primary care, the current arrangements prevent these services from being commissioned through variations to the main contracts held by GP practices. The Government view continues to be that preventing NHS England from participating in section 75 pooled funds in respect of their primary medical care functions and funding is an unnecessary barrier to local and national ambitions for integrating health and social care. It is also inconsistent with the powers allowing NHS England to commission primary medical care jointly with CCGs, which are already being used to take forward the primary care co-commissioning programme.

## 3. Views on the scope

**Question 2: Do you agree with the Government proposal to limit the current amendment to primary medical services/general practice (rather than other aspects of primary care), on the basis that this is where the benefits of pooled fund arrangements are likely to be greatest?**

### Headline responses:

Responses to this question varied, but nearly half of the respondents to this question agreed that the scope of the proposal should be limited to primary medical services. Of those, many suggested that the potential for inclusion of other services (such as wider primary care, and the other listed exclusions) should be reviewed at a later date. Reasons for this view included:

- this would allow time to assess the actual impact of the proposed change
- while removal of further exclusions may prove beneficial in the same manner as the original proposal, more consideration was needed as to what this would enable commissioners to do differently

Those in favour of broadening the scope of the amendments frequently cited community pharmacy as a particular area for consideration. The main reason presented for this view related to the positive impact that community pharmacy can have in reducing pressure on GPs and emergency services through the various enhanced services such as medicines use reviews.

For those in favour of full inclusion of all primary care services to the list of prescribed functions under the regulations, the logic related to the role that these services play in the overall prevention and self-care strategies required for those with, or at risk of, complex and multi-morbidity care needs.

However, some significant concerns were raised regarding the inclusion of pharmacy within the scope of the proposed change, the most significant of which are outlined below:

- GP and community pharmacy providers are at times in direct competition with one another for the provision of some services. If CCGs were potentially to have a greater role in determining the commissioning of community pharmacy, this may represent an additional conflict of interest
- Core services provided by community pharmacies (the essential and advanced services) are not subject to the same flexibilities that we see in GP contractual arrangements and therefore should remain outside the proposed change to the partnership regulations
- Enhanced services might be worth considering at a future date, but there would need to be further consideration as to the management of conflicts of interest

**Government Response:**

It was encouraging that so many respondents demonstrated an appetite for greater levels of collaborative and innovative working across the whole health and social care system. On balance, at this stage we are minded to limit the proposed scope of the changes to the original proposition. We will, however, review the other exclusions in more detail to examine the scope for further freedom to integrate while being mindful of the concerns raised.

## 4. Views on Safeguards

**Question 3: Do you agree that existing safeguards are sufficient to address any potential conflicts of interests where primary care funding forms part of pooled funding arrangements? If not what additional measures do you think are necessary?**

### **Headline Responses:**

The majority of the respondents felt that the current safeguards were adequate for the inclusion of primary medical services in the list of prescribed functions under the partnership regulations as they did not feel that the proposal created new, or increased, risks.

One respondent felt that areas making use of the flexibility would have strengthened safeguards due to the need to work with partners from other bodies.

Those who took a more neutral stance tended to suggest that safeguards should be kept under review in order to reflect the evolution of commissioning and provider arrangements beyond the remit of the proposed amendment.

A couple of respondents stated that they felt that the safeguards against conflict of interest are adequate on the CCG side, but they highlighted the importance of ensuring there are also adequate safeguards for local authorities.

### **Government Response:**

In line with the majority of responses the Government does not consider that the proposed amendment to the regulations will create new or increased risks around conflicts of interests, and believes that the current framework will continue to provide sufficient safeguards where these flexibilities are used. CCGs can and already do commission some additional services from general practice, and through the co-commissioning programme NHS England is already giving CCGs the opportunity to play a much greater role in decisions over 'mainstream' primary care commissioning (including, where appropriate, delegated commissioning arrangements).

In terms of existing safeguards:

- Section 14O of the NHS Act 2006 (as amended) sets out a range of statutory duties for CCGs around conflicts of interest, such as maintaining a register of interests, making arrangements for managing conflicts and potential conflicts of interest, and having regard to guidance on conflicts of interest published by NHS England
- NHS England published updated statutory guidance to CCGs on managing conflicts of interest. This includes strengthened requirements to reflect the additional role that CCGs will play under co-commissioning arrangements
- The existing section 75 pooled fund regulations include requirements for partners entering into pooled fund arrangements to have a formal written agreement in place, and for the 'host' partner to submit quarterly reports on income, expenditure and other information on the

effectiveness of the fund to other partners – this will help ensure other partners have adequate oversight over spending decisions in relation to primary care

- The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013<sup>3</sup> include a formal requirement that a CCG relevant body must not award a contract for the provision of health care services for the purposes of the NHS where conflicts, or potential conflicts, between the interests involved in commissioning such services and the interests involved in providing them affect, or appear to affect, the integrity of the award of that contract

For the reasons set out above the Government is content that the existing safeguards are sufficient for the proposed change, but we agree that it will be important to keep these under review.

Regarding comments about potential conflicts of interest stemming from the inclusion of local authorities, we do not consider that the proposal would increase conflicts of interest, as local authorities do not provide primary medical services. Therefore existing requirements would cover the proposed amendment.

---

<sup>3</sup> As amended. The reference number these Regulations is SI 2013/500.

## 5. Additional comments from respondents

### Question 4: Do you have any other comments regarding the draft regulations?

Of those who completed this section, many took the opportunity to reiterate or expand on their views to the above questions. Additional comments are outlined below.

**Consultation Response:** Some respondents suggested significantly expanding the scope of the proposed amendment:

- to remove all existing exclusions to the partnership arrangements such as: surgery; radiotherapy; termination of pregnancies; endoscopy; the use of class 4 laser treatment and other invasive surgery; and emergency ambulance services
- to bring in wider primary care services as described above
- to bring in broader services such as: some public health services; non-health functions as part of the wider determinants of health for example housing and education

**Government Response:** As previously stated, the Government is keen to encourage joint planning, including through the use of pooled budgets, and local innovation as to how to deliver high quality services differently and more efficiently. Government will consider further whether expanding the range of services that can be the subject of partnership arrangements could provide additional benefits in terms of local partners' ability to work together across patient pathways and wider geographical areas.

**Consultation Response:** Some respondents also used the section to discuss the proposal to amend the regulations to remove the requirement to consult before entering into partnership arrangements where central Government has required it, such as in the case of the BCF. The responses here can be roughly split into two:

- Those who were in favour, who generally felt that consulting about whether to enter into a partnership arrangement where there is a requirement to do so is clearly bureaucratic and burdensome. Many acknowledged that they would still need to consult about the shape of service change
- Those who were concerned that this might lead to significant service change without consulting those affected by the change

**Government Response:** The proposal to remove the requirement to consult is limited to such situations as the BCF in which there is a legal requirement to use pooled budgets. It does not therefore extend to a situation where NHS England wishes to become a partner in a pooled fund and voluntarily makes its own contributions. That would still require a consultation under the regulations. The Government is committed to the principle of consultation. As part of the

assurance process for BCF plans for 2015/16, areas were required to demonstrate engagement and consultation with a variety of stakeholders.

**Consultation Response:** the continuing need to address health inequalities was raised; generally it was felt that the proposed amendment would support this as primary medical services play a key role in this agenda.

**Government Response:** The responses regarding health inequalities in relation to the proposed amendment are promising and the Government hopes that this will contribute to an understanding of best practice and an evidence base of what works. Please see the response to question 5 for more on this issue.

**Consultation Response:** Another respondent highlighted that partnership arrangements make reporting and accountability more burdensome and suggested that the requirements for reporting should be relaxed.

**Government Response:** it is important that public funds are managed properly and therefore we do not intend to amend the reporting mechanisms.



## 6. Impact on Equalities & Health Inequalities

**Question 5: Do the proposals have any impact (adverse or positive) on people sharing protected characteristics, as defined in the Equality Act 2010?**

*“If the benefits anticipated within these proposals are realised- i.e. more flexibility to deliver joined up and efficient services, and a more co-ordinated approach to planning and commissioning community-based health and social care services, then we would expect the proposals to have a positive impact on people sharing protected characteristics, as defined in the Equality Act, 2010.” - quote from consultee*

*“There is a close correlation between the protected groups identified in the Equality Act and those experiencing greater health inequalities. Bringing community health services, in particular GP and pharmacy services into the remit of S75 has a potential to make early intervention more accessible to these groups.” - quote from consultee*

### Headline Responses

No evidence was submitted to suggest that the proposal would have a negative impact on those sharing protected characteristics, and no one responding to this question outlined any reason to believe that there would be a negative impact on those with protected characteristics as described under the Equalities Act 2010.

Several responses outlined a degree of correlation between those with certain protected characteristics and those who are more likely to be at risk of worse health outcomes. With this in mind it was stated that these were among the people who would most likely benefit from more integrated commissioning.

Another response went on to state that increased investment in primary care (in particular primary medical services) would support efforts to deliver more preventative services to those with greater health needs.

One respondent stated that, while the proposal itself would not have a direct impact on those with protected characteristics, they would use it to support integrated commissioning which would support vulnerable people, such as frail older people, carers, those with disabilities and those with mental health problems.

### Government Response

The Equalities Act 2010 imposes a number of obligations on public authorities, including the public sector equality duty (PSED) which arises under section 149 of the Act. This duty applies to “public authorities”, including the Secretary of State, and sets out that a public authority must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, with marriage and civil partnership being a protected characteristic under (a) above.

The responses are in line with the Government's view that the proposal will not have an adverse effect on those with protected characteristics as described in the Equalities Act 2010 nor will it have a negative impact on health inequalities.

It is generally acknowledged that some aspects of the causes of health inequalities are beyond the immediate scope of health and care commissioners. However, addressing health inequalities must remain a system wide priority.

There is a wealth of literature outlining the importance of general practice in addressing health inequalities. This is generally related to its responsibilities for overseeing on an ongoing basis the health and care of its registered patients. However, for primary medical care to have a greater impact in this area, the design of integrated care models needs to actively consider health inequalities<sup>4</sup>.

It will of course be necessary to keep issues related to both equalities and health inequalities under review and we would encourage those intending to make use of the proposal to gather related evidence regarding the impact of integrated working and joint planning.

---

<sup>4</sup> Baker et. al. (2015) <http://www.rcgp.org.uk/Policy/RCGP-policy-areas/~media/Files/Policy/A-Z-policy/2015/Health%20Inequalities.ashx> RCGP.

## 7. Next Steps

The proposed amendments are to:

- include primary medical services on the list of prescribed functions which can be subject to partnership arrangements
- dis-apply the requirement to consult before entering into a pooled budget where the bodies are already required to enter into partnership arrangements in connection with section 223GA of the NHS Act 2006

A statutory instrument making provision to amend the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 as set out will be laid before Parliament for consideration in due course.