Health, Wellbeing and Local Government Committee
HWLG(3)-18-10-p7
17 November 2010

GIG CYMRU NHS WALES

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Welsh Assembly Government

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Consultation Document

Draft Guidance for Engagement and Consultation on Changes to Health Services

Date of issue: **22 October 2010**
Action required: Responses by **21 January 2011**

Overview

This consultation is about new guidance to be issued to the NHS in Wales. It will assist the NHS in managing effective public engagement and in handling consultations on service changes. Views on the draft guidance are invited.

How to respond:

Those wishing to respond should write or e-mail the addresses below under contact details.

Further information and related documents:

Large print, Braille and alternate language versions of this document are available on request.

The documents are also available on-line at -
www.wales.gov.uk/consultations/healthsocialcare/healthservices

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Data Protection:

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Assembly Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Assembly Government staff to help them plan future consultations.

The Welsh Assembly Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Assembly Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

 F4481011 ISBN 978 0 7504 5819 1 WAG10-10539

Overview

The Minister for Health and Social Services is clear that the NHS must change the way in which it works if it is to remain capable of providing safe and sustainable services into the future. Citizens need to be properly engaged in understanding issues around their health and how the NHS is going to meet their needs within available resources.

Purpose of the document

The purpose of the current consultation is to seek views on new draft guidance on promoting continual high quality engagement by the NHS with local citizens. It also addresses consultation on service changes.

The guidance replaces the existing Interim Revised NHS Consultation Guidance which was issued pending completion of the NHS reforms. The previous guidance is available here:

http://wales.gov.uk/topics/health/publications/health/ministerial/letter01608/?lang=en

The proposed new guidance has been drafted in light of the NHS reforms and associated changes to the Community Health Councils. It would replace the existing interim guidance.

In due course, this work will fit together with the Patient and Public Engagement Workstream being taken forward by Hywel Dda LHB, and the Board of Community Health Councils in Wales's Public and Patient Engagement Strategy for CHCs in Wales.

Your response

Please give the following information in your reply.

- Your name
- Organisation (if applicable)
- Email / telephone number
- Your address

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here: ☐

Thank you for taking time to respond.

DRAFT GUIDANCE FOR ENGAGEMENT AND CONSULTATION ON CHANGES TO HEALTH SERVICES

SECTION 1: INTRODUCTION

1. This guidance replaces the interim guidance on NHS changes and consultation issued under Ministerial Letter EH/ML/016/08 *Shaping Service Locally*, which itself replaced WHC(2004)084). That guidance was prepared to reflect changes since 2004 but was issued on an interim basis, pending the conclusion of the NHS reforms.

2. The most important point in the interim guidance was the emphasis on the need for a new approach to change based on continuous public engagement, rather than perfunctory involvement around specific proposals. It indicated that the Welsh Assembly Government would expect organisations in the reconfigured NHS to pay considerably more attention to continuous engagement to ensure that all organisations are responsive to the needs and views of their citizens. That expectation remains.

3. A new phase for the NHS in Wales is beginning and it is clearer than ever that the status quo in the NHS is not an option. A number of studies and policy initiatives presented below make it clear that change is needed if Wales is to have safe and sustainable services that meet modern standards at a time when resources are severely constrained. The NHS structures now in place should make that easier. The new integrated Local Health Boards (LHBs) will be expected to break down traditional barriers and move decisively in the direction of fully integrated health and social care services. There must be active partnership working with citizens, stakeholders and partner organisations in developing innovative services for citizens.

4. This new guidance reflects a further rebalancing between engagement and more formal consultation, with an even stronger emphasis on the former. The new NHS bodies and reformed Community Health Councils (CHCs) must work together to develop continuous methods of engagement which promote and deliver service transformation for their populations. It is not necessary to consult formally on every change that is required. Some changes can be taken forward as a result of effective engagement and widespread agreement.

5. However, where substantial change is required, the NHS should use a two-stage process where effective engagement with citizens, stakeholders and partner organisations is followed by a focused consultation on a fully evaluated proposal emerging from the engagement phase.

Note for readers on terminology: Although the words “involve and consult” appear together frequently in the legislation, the question of when **formal** public consultation is required needs further explanation and this is provided later in the document. This document uses the terms “engagement/engage” to mean the continuous involvement of, or informal consultation or discussions with citizens, stakeholders and partner organisations regarding plans or changes. The terms “consultation/consult” are used to describe the more formal, focussed consultation which is to be employed if substantial changes are under consideration.

SECTION 2: CONTEXT OF THIS GUIDANCE

The legal background

6. Section 183 of the *National Health Services (Wales) Act 2006* requires LHBs, with regard to services they provide or procure, to involve and consult citizens in:

- planning to provide services for which they are responsible;
- developing and considering proposals for changes in the way those services are provided; and
- making decisions that affect how those services operate.

Section 242 of the *National Health Service Act 2006* extends this requirement to NHS Trusts.

7. Under the *Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010*, CHCs are allocated a particular role regarding NHS planning, in essence comprising the right to –

- be involved by the relevant LHB in the planning of services, the development and consideration of proposals for service changes, and decisions affecting the operation of services and be consulted at the inception of and throughout any planning, development, consideration or decision-making process in accordance with government guidance (Reg. 27(1));
- be consulted at inception and through the process on any proposal for a substantial development of the health service or for a substantial variation in service (except in creating a new body or where delay might cause harm; in the latter case this must be explained – see section 6 below) (Reg. 27(3,4,5));
- comment on any proposal consulted on (Reg. 27(6));
- report to the Welsh Ministers if dissatisfied about the content or time allowed in a consultation, about not being consulted at the inception, about the frequency of involvement throughout the proposal and decision-making process, or about the adequacy of the explanation for not being involved (Reg. 27(7));
- refer a proposal it believes not be in the interests of the health service in its district to the Welsh Ministers for a final decision (Reg. 27(9));
- receive information on planning matters from NHS bodies (Reg. 28).

8. The LHBs have strategic responsibility for ensuring safe and sustainable services and it is vital that LHBs and CHCs work together to achieve this position across the whole of their area within the resources available. The Regulations establish a framework to help CHCs and the NHS work together in the management of planning issues –

- each CHC must appoint local committees for each local authority area with responsibility for monitoring and keeping under review the planning and provision of NHS services in their district (Reg. 17);
- each CHC has to appoint a services planning committee to liaise with the relevant LHB on the planning and development of, or proposals for changes to, the delivery of health services within the Council's district (Reg. 18);
- the membership of the services planning committee must include the director or directors who have responsibility for the planning of services for the LHB (Reg. 18(c));
- the LHBs and CHCs are required to meet each other on a regular basis (Reg. 30);
- the CHC has to consider any proposed new service or service change within the context of current priorities, resources and governance structures as notified to it by the Welsh Ministers (reg. 26(2)(b)); this will help ensure that consideration takes place in the light of the broader background.

The policy context

9. A number of studies and policy initiatives have reinforced the conclusion that the status quo in the NHS is not an option:

- work done on preparing a Five-Year Service, Workforce and Financial Strategic Framework for NHS Wales clearly indicated the need to shift the balance from secondary to community and primary care and develop integrated models of health and social care;
- this was strongly reinforced by the strategy document '*Setting the Direction'*, which set out the Primary and Community Services Strategic Delivery Programme for Wales;
- responding to a wide spectrum of evidence and issues, the *Rural Health Plan* signals the need for fundamental change to the approach to providing healthcare in rural parts of Wales;
- work already done by LHBs on "regionalisation" of health service provision in the interests of safety and sustainability should be taken into account;
- services will need to reflect developing requirements around the training of clinical staff and emerging evidence on what constitutes best practice;
- the *1,000 Lives Plus* initiative puts quality of care at the top of the agenda and the need to root out harm, waste and unjustified variation across the NHS;
- the financial outlook re-emphasizes the need to accelerate the development of partnership working particularly in the public sector and the importance of harnessing the First Minister's challenge to 'adopt or justify' (accepting best practice or proving its irrelevance) as the basis for driving innovative service improvement and change.

10. In the light of these challenges, a new approach is necessary.

SECTION 3: GENERAL PRINCIPLES IN MANAGING SERVICE CHANGES

The interlocking responsibilities of the NHS and CHCs

11. The NHS is responsible for ensuring that safe and sustainable services are available for the citizens of Wales, within the resources made available by Government.

12. In a number of areas, the NHS has struggled to maintain safe and sustainable services, even with resources which grew year on year. This task will become much more difficult in the years ahead. This is not just a financial issue; junior doctor recruitment, demographic change, new drugs, rising expectations and a range of other factors all combine to present significant challenges for the NHS.

13. The NHS must be more innovative and be able to transform services quickly. Service change must be evidence-based, aim to achieve the best levels of performance and be supported and led by clinicians.

14. CHCs represent the interests of the public in the health service in Wales. The need to secure safe and sustainable services and access for all to best practice within available resources is equally of concern to the NHS and its users and something which CHCs must work with the NHS in Wales to achieve.

15. CHCs must therefore work with LHBs and Trusts to develop continuous methods of engagement which promote and deliver service transformation for citizens.

Overarching Principles for the NHS and CHCs

16. When considering service changes, therefore, a number of principles should apply. Some are the primary responsibility of the NHS, others of the CHCs.

17. When managing service changes, an NHS body should:

- engage with citizens, staff, stakeholders and partner organisations at the earliest opportunity when it is considering service changes;
- ensure safe and sustainable services can be provided/maintained within available resources;
- communicate, explain and listen to views from across the LHB area;
- set out a clear rationale for change, supported by a clinical case which demonstrates the benefits of change and the risks of remaining the same and where possible, identify and seek views on options which could deliver the required outcomes;
- consider alternative courses of action proposed by the CHC, citizens, stakeholder groups, advisory forums or partner organisations which could deliver the required outcomes;

- ensure a reasonable timescale for comments;
- take urgent action if services are unsafe/unsustainable and present a risk to patients, and explain why it needs to act rapidly and the consequences of failing to do so.

18. In dealing with service changes, a CHC should:

- carefully consider service change proposals and assess their benefits and risks to the community as a whole as well as particular groups;
- work with the NHS body to seek views and foster debate;
- take a strategic and "whole system" view of change proposals, and consider whether they are in the best interests of health services;
- work with the NHS to address major and immediate concerns about safety and sustainability where urgent action is needed;
- ensure that objections to change proposals are based on sound arguments in terms of how safe and sustainable services can be provided from within available resources;
- propose alternative solutions for providing/maintaining safe and sustainable services within available resources;
- recognise that maintaining status quo is not an acceptable response if safe and sustainable services cannot be maintained within the available resources;
- in its dealings with NHS bodies on such issues of sensitivity, recognise the importance of due governance, including maintaining confidentiality, in line with the requirements set out in the CHC Member Code of Conduct.

SECTION 4: CONTINUOUS ENGAGEMENT

19. Continuous engagement on services must be part of the core business of the NHS in Wales. The NHS must establish and sustain continuing engagement with citizens, stakeholders and partner organisations not only when changes are at issue, but also on a routine basis. It should give people the opportunity to understand its aspirations and achievements, and the challenges it faces, and to influence decisions about changes in direction and specific services developments. This should help it to provide relevant, high quality services, services that the public want and value.

20. The NHS should only seek to implement planned changes when it is satisfied that they have explored the issues first through effective engagement. This approach should be central to the development of health services. Resourcing and supporting this process along the various stages should be viewed as an integral part of the work of the NHS in Wales. A key aim must be to ensure the promotion of equality of opportunity of involvement, and NHS bodies must apply their efforts to achieve this.

21. All NHS bodies should develop a strong public information and engagement approach, based on transparency, evidence, and positive leadership. As paragraphs 7 and 8 above make clear, there is a strong requirement for the NHS and CHCs to work closely together in promoting effective engagement. A lead officer for citizen engagement should be identified by each LHB and Trust. LHBs and Trusts dealing with cross-border services will need to consider how best to manage issues relating to neighbouring areas including England.

22. Services will be better designed and more acceptable to citizens if their views are understood and taken into account. Listening and responding is the key to improving and developing healthcare services. NHS bodies should routinely:

- listen to citizens' views;
- work with citizens, stakeholders and partner organisations to plan and frame any changes;
- explain and communicate effectively issues and opportunities; and
- produce a full range of easily accessible information on services and possible future developments, in a range of formats, taking into account the opportunities offered by new media and also utilising engagement avenues provided by other agencies.

23. The third sector can make a particularly important contribution to effective engagement. Services provided by illness/condition-specific organisations help people to engage with their care on a better-informed basis. Self-help groups, such as carers groups, and support groups for people who may have a rare condition and feel isolated from mainstream services, address health issues in communities. Many voluntary organisations are therefore able to identify and represent the views and priorities of users and carers and provide a direct link with service users across a range of conditions. In shaping services locally, it is important that the third sector is involved and engaged routinely and, when changes are considered, is enabled to

bring its contribution and to support an enhanced role for citizens in the decision-making process. The Welsh Assembly Government will expect that NHS bodies will link into the Building Strong Bridges Health and Social Care Facilitators, as well as local and national third sector health and social care networks. CHCs are also encouraged to make these important links to the third sector.

24. Both for continuous engagement and in regard to specific consultations, NHS bodies must ensure that all local interests are addressed, and that responsibilities with regard to equality and diversity and the Welsh Language are met, including impact assessment. Arrangements should address all geographical areas, cultural and linguistic needs and also ensure the involvement of children and young people. In addition, NHS bodies should also meet their responsibilities with regard to sustainable development and the Wales Spatial Plan.

25. Healthcare Inspectorate Wales will monitor the effectiveness of NHS bodies in light of the requirements set out above in taking forward their involvement and consultation responsibilities as part of its regular reviews, paying particular attention to equality of opportunity of involvement.

SECTION 5: SUBSTANTIAL CHANGE

Considering changes

26. Section 4 outlines the continuous engagement that must take place whether or not any changes are being proposed, and sets out the expectation that that this will be the normal mechanism through which service changes are taken forward.

27. Alongside this, NHS organisations must also manage the relationship with and pay due heed to the statutory right of CHCs to consider change proposals. This is particularly important in determining whether a change should proceed to more formal consultation – i.e. the second stage mentioned in paragraph 5. In considering change proposals, it will be important for CHCs to take into account the views expressed by the advisory mechanisms established by the NHS Reforms (Stakeholder Reference Group; Professional Forum and Partnership Forum).

28. Not all changes will automatically proceed to formal consultation. As indicated above, most issues should be dealt with through the process of continuous and effective engagement and every effort should be made to reach agreement resulting from that process.

Formal consultation

29. There may be some cases where, exceptionally, the view is that a more formal public consultation is required. The key issue to be determined in whether formal consultation is required is whether the change is substantial or not. LHBs, with their CHCs, should develop a local protocol for dealing with this. As part of this analysis, the CHC and other stakeholders, in assessing proposals and participating in discussions about consultation, should be conscious of the potential to compromise the LHB's ability to maintain a full service for the whole population it serves.

30. Where it appears likely that a public consultation might take place, it is proposed in future that this should be conducted on a two stage basis. The first stage is for NHS organisations to undertake extensive discussion with all the key stakeholders, to include:

- The Stakeholder Reference Group.
- The Professional Forum.
- The Partnership Forum.
- The Community Health Council.
- The Local Service Board.
- Other key partners as appropriate.

31. The purpose of these discussions will be to explore all the issues, to refine the options and to decide and agree on which questions will be set out in the

consultation. Only when it is satisfied that this first stage has been properly conducted, should the NHS organisation proceed to formal consultation.

32. Following the first stage described above, a formal consultation period of not less than 4 weeks should be sufficient in most cases if the issues have already been fully explored during the first stage.

33. A number of issues should be considered right at the start, because they will impact on decisions to be taken at various stages throughout the consultation process. These include:

- What is the respective responsibility of each of the local NHS organisations?
- Has there been any previous consultation carried out on the same or a previous related or similar issue, e.g. for local authority services?
- Who should be consulted, on what and how?
- Are there issues affecting other Welsh or English areas?
- What resources are needed and available?
- How will any conflict/complaints be dealt with?
- How will the outcome feed into the decision making process?
- When and how will decisions be made?
- How will results be fed back to patients and the public who have been involved, either directly or indirectly?
- What evaluation of the consultation is going to be undertaken, and how?
- What is the timetable for both the involvement and consultation process?
- What is the impact on associated services?

34. In managing the process, the Welsh Assembly Government will expect that:

- Senior clinicians will take a lead role in presenting and supporting the proposed change.
- The NHS body leading the consultation will work in partnership with its counterparts in other local NHS bodies.
- NHS bodies will invest sufficient resources to manage the process from start to end effectively, openly and transparently.
- The Local Service Board partners will be fully involved to ensure that proposals are seen and addressed within the context of the “whole system” of public service provision.

35. Consultation documents should:

- explain why change is necessary;

- include a clear vision of the future service;
- in the case of changes relating to hospitals, demonstrate how services will in future be provided within an integrated service model;
- set out clearly evidence for any proposal to concentrate services on a single site;
- include the evidence of support from clinicians for any proposed change;
- in the case of changes prompted by clinical governance issues, show how these have been tested through independent review;
- show which options were considered during the engagement phase - the NHS needs to ensure that, if a preferred option is specified, this will not be seen as a 'fait accompli';
- give a clear picture of the financial implications of the different proposals;
- spell out who will be affected by the proposed changes and how their interests are being protected;
- be available in a range of formats, such as "Easy Read", large print or audio;
- be signed off by the Board.

36. The NHS body should develop media contacts and work with them to explain the changes and their impact in ways in which citizens will understand. The process of consultation should be genuine and transparent. There should be an open discussion with citizens, NHS staff, stakeholders and partner organisations right through the process.

37. The NHS body planning consultation should seek the views of opinion formers and the leaders within the community such as Assembly Members, Members of Parliament, local and community councillors, patient groups and relevant voluntary groups and those who may be affected by possible changes.

38. Individually and collectively, the primary task of CHCs is to assess the impact of proposed changes on health services not to take a partisan role. If a CHC considers that there are other options to the proposal to be consulted upon by the responsible NHS body it should inform the NHS body at the earliest stage.

39. At the end of the consultation period, the CHC should have the opportunity to consider all comments received and record its own observations on them.

40. If the CHC agrees to the proposals in the consultation, the NHS body may proceed to implement its proposals subject to any other approvals or consents that may be required. The Welsh Assembly Government, local Assembly Members, the local council(s) and local Members of Parliament should be informed of this and a notice inserted in the local press informing the public that the proposals are to be implemented following CHC agreement. In normal circumstances it is considered that this stage should be reached within 4-6 weeks after the end of the public consultation period.

41. Where a CHC is not satisfied that proposals for substantial changes to health services would be in the interests of health services in its area or believes that consultation on any such proposal has not been adequate in relation to content or time allowed, it may take further action as set out in Section 7 below.

42. NHS bodies should consider with CHCs how well the consultation process worked and whether it met the expectations of those who participated in it. They should also give feedback to stakeholders about the results of consultation.

SECTION 6: URGENT SERVICE CHANGES

43. As indicated in paragraph 7, special arrangements apply where an NHS body believes that a decision has to be taken on an issue immediately in the interests of the health service or because of a risk to the safety or welfare of patients or staff. In such a case, the relevant NHS body may not be able either to engage or consult but has to notify the CHC immediately of the decision taken and the reason why no consultation has taken place (Reg. 27(5,7(d)).

44. If this occurs, good practice is that:

- the NHS body should make every attempt to inform all relevant interests of the new arrangements prior to the change;
- the NHS body should provide information to the CHC about how patients and carers have been informed about the change to the service, and what alternative arrangements have been put in place to meet their needs as part of good practice; and
- the service provider must initially lead all discussion and action.

45. If dissatisfied with the reason given for not undertaking a formal consultation, a CHC may report in writing to the Welsh Assembly Government which may require the NHS body to carry out a consultation, or further consultation with the CHC, as it considers appropriate. These arrangements apply whether the case is one of substantial change or not. Where further consultation is then required, the relevant NHS body shall, having regard to the outcome of such consultation, reconsider any decision it has taken in relation to the proposal in question. Only CHCs have this right to refer matters to the Welsh Assembly Government; procedures to be adopted in such cases are set out in Section 7 below.

46. To avoid difficulties arising over such emergency decisions, NHS bodies should take precautionary action as follows:

- contingency plans should be prepared for services viewed as at high risk and shared at an early date with relevant NHS organisations, the CHC (where such matters should be discussed at the Services Planning Committee on a “forward look” basis), the County Voluntary Council (for the third sector) and the local authority where relevant; all contingency plans should have a risk assessment undertaken for options; and
- information that services may be at “high risk” should be shared with the relevant CHC(s), LHB(s), County Voluntary Council and the local authority where relevant at the earliest possible stage; risk analysis should be comprehensive and weighted appropriately.

47. In responding to unforeseen service change the Trust and/or LHB should take urgent steps to bring the change process in line with the requirements that normally apply and put in place a comprehensive consultation strategy. The expectation would be that service changes should be dealt with as public business on the Board agenda of the relevant NHS body.

SECTION 7: OBJECTIONS BY CHCs

48. It is important to state at the outset that the power of referral to the Minister should not be used lightly. Local resolution must be sought wherever possible.

49. If the CHC is not satisfied that -

(a) engagement or consultation on any proposal has been adequate in relation to content or time allowed; or

(b) engagement or consultation on any proposal has been adequate with regard to a CHC being consulted at the inception of any such proposal; or

(c) engagement or consultation on any proposal has been adequate in relation to the frequency with which a CHC is consulted throughout the proposal and decision-making process; or

(d) in a case where an health body has, in the interests of the health service or because of a risk to safety or welfare of patients or staff, taken a decision without allowing for engagement or consultation, the reason given by the relevant health service body are adequate.

It may report to the Welsh Ministers in writing and the Welsh Ministers may require the relevant Welsh NHS body, and request the relevant English NHS body to carry out such engagement or consultation, or further engagement or consultation, with a CHC as they consider appropriate (reg. 27(7)).

50. If the CHC has an issue under paragraph 49 above, it should in the first instance submit a constructive and detailed response to the relevant NHS body. The NHS body should extend to the CHC all reasonable assistance in formulating a response. The NHS body should formally and fully consider the objections raised. **Only if no agreement can be reached, and the CHC maintains its objections, should the matter be referred to the Minister**.

51. Where further engagement or consultation has been required under paragraph 49, the relevant Welsh NHS body must, having regard to the outcome of such engagement or consultation, reconsider any decision it has taken in relation to the proposal in question.

52. In any case where a CHC considers that any proposal under consideration would not be in the interests of health services, it may report to the Welsh Ministers in writing and the Welsh Ministers may make a final decision on the proposal and require the relevant LHB to take such action, or desist from taking such action, as the Welsh Ministers may direct (reg. 27(9)).

53. In such a case, the CHC should in the first instance submit a constructive and detailed response to the relevant NHS body. The NHS body should extend to the CHC all reasonable assistance in formulating a response. The NHS body should formally and fully consider the objections raised. If the original proposals are modified to meet CHC objections, there is no need for the NHS body to engage or consult again on the modified proposals. The proposal may then be implemented.

Only if the matter remains unresolved and the CHC remains dissatisfied with the consulting body's response to its objections, should the matter be referred to the Minister.

54. In referring a matter to the Minister, the CHC should make clear the grounds on which it has reached its conclusion. Where an objection is made to the Minister by a CHC, a copy of the letter to the Minister must be provided by the CHC to the NHS body responsible for the consultation and to the Chief Executive of the NHS.

55. These referral powers relate only to engagement and consultation with CHCs by the NHS and not to engagement and consultation with other stakeholders. Section 183 of the *National Health Services (Wales) Act 2006* in relation to LHBs and section 242 of the *National Health Service Act 2006* in relation to NHS Trusts require more wide-ranging involvement and consultation, but there is no referral power in relation to that wider duty.