Lincolnshire COUNTY COUNCIL Working for a better future		**THE HEALTH SCRUTINY COMMITTEE FOR LINCOLNSHIRE**	
Boston Borough Council	East Lindsey District Council	City of Lincoln Council	Lincolnshire County Council
North Kesteven District Council	South Holland District Council	South Kesteven District Council	West Lindsey District Council

Open Report on behalf of Andrew Crookham,
Deputy Chief Executive and Executive Director of Resources

Report to	**Health Scrutiny Committee for Lincolnshire**
Date:	**21 February 2024**
Subject:	**Health Overview and Scrutiny: Regulations and Guidance**

Summary

Amendments to the health scrutiny regulations and parts of a new schedule to the National Health Service Act 2006 came into force on 31 January 2024, together with revised guidance for health overview and scrutiny committees, and new statutory guidance for the NHS.

The key amendment to the regulations is the removal of powers of health overview and scrutiny committees to refer matters to the Secretary of State for Health and Social Care. Schedule 10A of the National Health Service Act 2006 requires commissioners of NHS services to notify the Secretary of State of proposals for substantial change. In addition, there are new ministerial intervention powers on proposed reconfigurations.

Actions Requested

(1) To note that the following came into effect on 31 January 2024:
   (a) Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provisions) Regulations 2024;
   (b) Local Authority Scrutiny – Guidance from the Secretary of State for Health and Social Care;
   (c) Schedule 10A of the National Health Service Act 2006 (in part); and
   (d) Reconfiguring NHS Services – Ministerial Intervention Powers – Statutory Guidance from the Secretary of State for Health and Social Care

(2) To agree in principle to a revised protocol being developed between the Health Scrutiny Committee for Lincolnshire and NHS Lincolnshire Integrated Care Board, with a view to an initial draft being submitted to the Committee's next meeting on 20 March 2024.

1. Summary of Main Changes

Removal of Power of Referral to Secretary of State

The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provisions) Regulations 2024 were laid in Parliament and came into force on 31 January 2024.

The effect of these amendment regulations is that the power of referral to the Secretary of State by health overview and scrutiny committees ceased with effect from 31 January 2024. This power had applied in instances where a commissioner or provider of NHS funded services was considering a proposal for a local substantial development of the health service or for a local substantial variation in the provision of a such a service, and the local health overview and scrutiny committee disagreed with the proposal, on certain defined grounds. The transitional arrangements in the regulations are limited to instances where a health overview and scrutiny committee had made a referral prior to 31 January 2024.

New Duties on NHS Commissioners

Part of a new Schedule 10A to the National Health Service Act 2006 came into force on 31 January 2024 and places a duty on any commissioner of NHS services to notify the Secretary of State when they propose a 'notifiable' reconfiguration of local services. This new schedule is supported by statutory guidance entitled *Reconfiguring NHS Services – Ministerial Intervention Powers*, which also came into for on 31 January 2024. This guidance is set out in Appendix A to this report.

A 'notifiable' reconfiguration is not defined in either Schedule 10A or the statutory guidance, but the guidance states that the legal test aligns with when a reconfiguration would trigger a consultation under the Health Scrutiny regulations. Thus a 'notifiable' reconfiguration is likely to be a reconfiguration comprising a proposal for a local substantial development of the health service or for a local substantial variation in the provision of a such a service.

Secretary of State Call-in Powers

Schedule 10A to the National Health Service Act 2006 also provides a new 'call-in' power to the Secretary of State, who may issue a direction to an NHS commissioning body to call in any proposal for reconfiguration, whether it is notifiable or otherwise. The Secretary of State's powers are wide-ranging, as detailed in appendix A, and include making a final decision on any proposal.

Health overview and scrutiny committees and other interested parties may request that the Secretary of State consider calling in a proposal. The Department of Health and Social Care expects that requests for call-in would only to be used in exceptional situations where local resolution has been attempted and not reached.

2. New Roles for the Health Scrutiny Committee

There are several new roles for the Health Scrutiny Committee, arising from *Reconfiguring NHS Services – Ministerial Intervention Powers*, which could include:

(a) providing advice to the relevant NHS commissioner on whether in the Committee's view a proposed reconfiguration is 'notifiable' (in effect 'substantial') or not;
(b) reaching a view on any matter raised by a member of the public or an organisation, prior to the submission by the member of the public or the organisation of their request for a call-in of a proposed reconfiguration to the Secretary of State;
(c) working with the relevant NHS commissioner or NHS provider to seek local resolution;
(d) responding to requests for information from the Secretary of State in respect of live call-ins; and
(e) making a request to the Secretary of State for the call-in of a proposed reconfiguration, in circumstances where all attempts at local resolutions had been made and local resolution has not been reached.

Impact on Committee Workload

In terms of (a) above, there are several examples in recent years where the Committee has given its advice to the local NHS whether in its view a proposed reconfiguration is substantial. It should be noted that there has been no need for the NHS to approach the Committee in circumstances where it has been clear to all that the proposed reconfiguration represented a substantial change, such as the Lincolnshire Acute Services Review. The Humber Acute Services Review programme is in the same category.

As stated in the guidance, the Department of Health and Social Care expects that requests for call-in would only to be used in exceptional situations where local resolution has not been attempted and reached. This could mean that (b), (c), (d) and (e) may be rare.

3. Other Changes in the New Scrutiny Guidance

Most of the significant changes between the previous 2014 guidance and the 2024 guidance relate to consultation arrangements for reconfiguration, where whole sections have been rewritten or removed. However, there are other minor changes. One example is noteworthy: the 2014 guidance made several references to the Francis Report on Mid-Staffordshire NHS Foundation Trust[1] and stated (in line with the Francis Report recommendation) that the Care Quality Commission (CQC) 'should expand its work with overview and scrutiny committees'. All references to the Francis Report and the CQC have been removed from the 2024 guidance, which indicates that the CQC is no longer recommended to develop relationships with health overview and scrutiny committees.

[1] The Francis Report (Report of the Mid-Staffordshire NHS Foundation Trust Public Inquiry) and the Government's Response are found at: The Francis Report (Report of the Mid-Staffordshire NHS Foundation Trust public inquiry) and the Government's response - House of Commons Library (parliament.uk)

4. Conclusion and Next Steps

The Health Scrutiny Committee has developed a strong relationship with the NHS Lincolnshire Integrated Care Board (and the NHS Lincolnshire Clinical Commissioning Group before this). This has been underpinned by a protocol, which has meant that the Committee has been advised in almost all instances in advance of reconfigurations in 'borderline' cases. It is proposed that the protocol is revised, with a view to an initial draft being considered at the next meeting on 20 March 2024.

5. Appendices

These are listed below and attached to the report

Appendix A	Reconfiguring NHS Services – Ministerial Intervention Powers *(Department of Health and Social Care – 9 January 2024)*

6. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Simon Evans, Health Scrutiny Officer, who can be contacted on 07717 868930 or by e-mail at Simon.Evans@lincolnshire.gov.uk

APPENDIX A

New Ministerial Intervention Powers from 31 January 2024

This guidance sets out the new process for ministerial intervention in reconfiguration of NHS services, which came into force on 31 January 2024.

Under the new process:

- a new call-in power allows the Secretary of State to intervene in NHS service reconfigurations at any stage where a proposal exists and take or re-take any decision that previously could have been taken by the NHS commissioning body;

- call-in requests can be submitted to the Secretary of State - the Department of Health and Social Care (DHSC) expects these only to be used in exceptional situations where local resolution has not been reached;

- NHS commissioning bodies have a duty to notify the Secretary of State of notifiable reconfigurations - this duty does not apply to reconfiguration proposals where before 31 January 2024 a consultation has commenced with the local authority in accordance with regulation 23(1)(a) of the 2013 regulations;

- local authorities are no longer be able to make new referrals to the Secretary of State under the 2013 regulations.

Valid local authority referral to the Secretary of State made in accordance with The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 ('2013 regulations'), where a letter has been received by the Secretary of State dated prior to 31 January 2024, will continue to be managed under the current 2013 arrangements.

Summary

Powers for the Secretary of State to intervene in reconfiguration of NHS services were introduced by the Health and Care Act 2022 ('the 2022 Act') by inserting schedule 10A into the National Health Service Act 2006 ('the NHS Act 2006').

The new provisions, which came into force on 31 January 2024, put in place a new Secretary of State call-in power to intervene in NHS reconfigurations while placing duties on NHS commissioning bodies to notify substantial reconfigurations and for NHS commissioning bodies and NHS trusts and foundation trusts to provide ministers with information and assistance.

Most reconfigurations will continue to be managed at a local level and will not require ministerial intervention. Local organisations are best placed to manage challenges related to NHS reconfiguration. If organisations or individuals have concerns about a proposed reconfiguration of NHS services, they should seek to resolve any concerns through their local NHS commissioning body or raise concerns with their local health overview and scrutiny committee (HOSC). We expect NHS commissioning bodies and local authorities to take all reasonable steps to try and resolve any issues concerning local proposals.

It will be possible for organisations or individuals to write (via a call-in request form) to ask the Secretary of State to consider using their call-in power. DHSC expects this only to be used in exceptional situations where local resolution has not been reached.

This request could come from a HOSC as well, and we would encourage local organisations and individuals to continue to engage with their HOSCs where they have concerns. For any given case, the Independent Reconfiguration Panel (IRP) will be able to advise organisations or individuals on whether a request is an appropriate means of resolution.

A call-in request is highly unlikely to be considered before:

- NHS commissioning bodies and local authorities have taken all reasonable steps to try and resolve any issues
- those making a request or others have tried to resolve any concerns through their local NHS commissioning body or have raised concerns with their local HOSC

A notification or call-in request will not lead automatically to a Secretary of State intervention. Any call-in requester should provide evidence that they have tried to resolve concerns with their local NHS commissioning body or raise concerns with their HOSC. Whether or not to use the call-in power is ultimately a decision for the Secretary of State.

Paragraph 5 of schedule 10A to the NHS Act 2006 is a new power which gives the Secretary of State power to direct an NHS commissioning body to consider a reconfiguration of NHS services. This provision has not yet been commenced and timescales for commencement will be reviewed after the most recent changes have been embedded into the system.

Introduction

This statutory guidance is intended to provide NHS commissioning bodies (integrated care boards (ICBs) and NHS England) and NHS providers (NHS trusts and NHS foundation trusts) with practical guidance on the new process for ministerial intervention in reconfiguration of NHS services. The terms 'NHS service change' or 'reconfiguration' will be used interchangeably throughout the guidance.

This guidance has been issued under paragraph 7, schedule 10A to the NHS Act 2006. Accordingly, it aims to provide NHS commissioning bodies, NHS trusts and NHS foundation trusts with information about the exercise of the Secretary of State's functions and how the Secretary of State proposes to exercise their functions under the act.

This guidance may also be of interest to:

- local authorities and combined authorities
- health partners within integrated care systems and integrated care partnerships
- relevant providers of health and care services
- members of the public

This guidance will be relevant when NHS services change in a way that impacts on how services are delivered to patients, or the range of health services available. Reconfigurations should be clinically led local decisions following appropriate engagement with patients and stakeholders. NHS commissioning bodies lead decisions relating to substantial changes in the reconfiguration of NHS services.

This guidance should be read alongside:

- NHS England's Planning Service Change Guidance
- the updated Local Authority Health Scrutiny guidance
- the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 ('the 2013 regulations'), amended by the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provision) Regulations 2024.

Statutory NHS transactions will continue be carried out in accordance with the relevant statutory processes set out in the NHS Act 2006 and NHS England's statutory transactions guidance - any necessary approvals from the Secretary of State will be sought through those separate processes. However, any reconfiguration proposal linked to or resulting from a transaction should be considered in line with this guidance.

This guidance does not extend to social care provision as there are separate arrangements in place for ministerial intervention.

Local authorities' powers of referral to the Secretary of State have been removed from the 2013 regulations. This allows room for the new Secretary of State call-in power and a call-in request process, which is open to anyone to operate, including HOSCs. DHSC expects this only to be used in exceptional situations where local resolution has not been reached.

Local authorities' scrutiny responsibilities for service change (and wider scrutiny responsibilities) have not changed. NHS commissioning bodies' duties to involve and consult the HOSC and the public remain in place. Further, although the guidance seeks to set out important legal requirements, it does not seek to replicate the legislation (for more detail, see schedule 10A to the NHS Act 2006). This guidance will be updated no later than January 2025.

Definition of Terms

Throughout this guidance, the following definitions apply to the terms set out below:

Call-in Power – This refers to the Secretary of State's statutory power to consider a proposed reconfiguration of NHS services developed by an NHS commissioning body and take a decision.

Call-In Request – This refers to a non-statutory means for any group or individual to request that the Secretary of State consider their use of intervention powers for a proposed reconfiguration of NHS services.

NHS Commissioning Body – This means NHS England or an NHS integrated care board.

NHS Services – This means services provided as part of the health service in England.

NHS Provider - This refers to both NHS trusts and NHS foundation trusts

Reconfiguration of NHS Services - This means a change in the arrangements made by an NHS commissioning body for the provision of NHS services where that change has an impact on either of the following:

the manner in which a service is delivered t individuals (at the point when the service is received by users), or
the range of health services available to individuals.

Health overview and scrutiny committees (HOSCs) - This refers to committees set up by local authorities to discharge their functions to provide overview and scrutiny of local health services as provided for by the 2013 regulations. While these committees are most likely to be exercising health scrutiny functions in local authorities, we are aware that there are a variety of such bodies with different names and remits, including joint health overview and scrutiny committees.

Integrated Care System - Integrated care systems are partnerships of organisations (including ICBs, local authorities and their system partners) that come together to plan and deliver joined-up health and care services.

Duty to Notify the Secretary of State of Reconfiguration Proposals

Purpose

Paragraph 2 of schedule 10A to the NHS Act 2006 places a duty on the NHS commissioning body to notify the Secretary of State when they propose a notifiable reconfiguration of NHS services.

The National Health Service (Notifiable Reconfigurations and Transitional Provision) Regulations 2024 ('the notification regulations') set out when reconfiguration proposals will be notifiable (as further explained below). T he intended purpose of notification is to support ministerial decision-making in the event of a call-in request (for more details on the new call-in power, see 'The power to call in a reconfiguration proposal' below). Information provided in a notification form can support ministers to decide whether intervention is appropriate.

Most notifications submitted to DHSC will not require any follow-up or result in ministerial intervention. Notification will not lead automatically to a ministerial call-in.

Submitting a Notification

A notification is made by the NHS commissioning body – either the relevant ICB or NHS England – to the department by:

- completing the notification form published alongside this document
- emailing it to us at dhscreconfiguration@dhsc.gov.uk, cc-ing the relevant HOSC and NHS England regional contact

If an NHS provider is leading the reconfiguration proposal, DHSC expects the NHS commissioning body to submit a notification form on their behalf.

Where multiple NHS commissioning bodies are commissioning a service, the bodies should submit a joint notification approved by all the relevant commissioners but sent by a nominated lead commissioner.

After submitting a notification, the NHS commissioning body will receive a reply confirming receipt of their email. Where multiple bodies are submitting a joint notification, the nominated lead commissioning body will receive a reply. DHSC will contact the NHS commissioning body if further information is required or there are plans to consider the proposal in further detail.

What is Notifiable

The notifiable regulations set out the legal test for when a reconfiguration is notifiable. In essence, the test aligns with when a reconfiguration would trigger a consultation with the local authority under regulation 23(1)(a) of the 2013 regulations, namely when an NHS

commissioning body or NHS provider has a proposal for a substantial development of the health service in the area of a local authority or for a substantial variation in the provision of a such a service.

Making a notification to DHSC is the sole responsibility of the NHS commissioning body when they have a substantial change or variation in NHS services under consideration. However, the NHS commissioning body should consider the local authority's HOSC's views on a proposal when deciding when to notify and should (in the notification form) make it clear to the Secretary of State of the HOSC's view of whether this reconfiguration is notifiable.

NHS Reconfigurations Not Covered by the Duty to Notify

The duty to notify does not apply to all reconfigurations of NHS services. Regulation 24 of the 2013 regulations sets out exemptions from NHS commissioning bodies' and NHS providers' duty to consult the HOSC. These exemptions also apply to NHS commissioning bodies' duty to notify the Secretary of State and include:

- proposals for the establishment or dissolution of an NHS trust or ICB or any other variation to the constitution of such bodies
- where proposals relate to:
  - a trust special administrator's report or draft report under section 65F or 65I of the NHS Act 2006 (trust special administrators: reports and draft reports);
  - recommendations by a health special administrator on the action which should be taken in relation to a company subject to a health special administration order under section 128 of the Health and Social Care Act 2012 (health special administration orders).

Temporary Reconfigurations

In addition, in some scenarios the NHS provider may need to make a temporary service change due to a risk to safety or welfare of patients or staff. Under regulation 23(2) of the 2013 regulations, if the NHS commissioning body is satisfied that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff it is not necessary to consult with the HOSC.

This means that in such scenarios those proposals will also not be considered notifiable to the Secretary of State. These temporary changes do not represent a permanent or irreversible decision about an NHS service. Permanent changes would only be possible by following the due process, including appropriate engagement with people and communities.

While there is no set length for a 'temporary' service change to be in place, ministers would expect NHS commissioning bodies to develop clear plans for reverting temporary service changes or developing plans for the permanent reconfiguration of the service, following the appropriate process. Where those plans are likely to require substantial service change, those reconfigurations will need to be notified to the Secretary of State.

The NHS commissioning body and NHS provider should continue to meet their legal duty under the 2013 regulations to notify the relevant HOSC in cases where they are satisfied that a decision had to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff.

The Power to Call in a Reconfiguration Proposal

Background

Schedule 10A to the NHS Act 2006 provides a new call-in power to allow the Secretary of State to intervene in NHS service reconfigurations at any stage where a proposal exists and take or re-take any decision that could have been taken by the NHS commissioning body.

The call-in power allows for Secretary of State interventions to help unblock issues at any stage in the reconfiguration process. The aim of a ministerial intervention is to support local partners to find a way forward, to enable improvement to happen faster and produce sustainable solutions to NHS services facing challenges.

Previously, the Secretary of State could only determine the outcome of a reconfiguration following a referral from a local authority HOSC. The local authority power of referral has been removed from the 2013 regulations to allow for the operation of the call-in power and the call-in request process.

Role of the NHS

Local Solutions First - Importance of Local Resolution and Support Available

Most reconfigurations will continue to be managed at a local level and will not require ministerial intervention. This is in line with the government's commitment to ensure integrated care systems operate with a high degree of autonomy in making decisions in the interests of their populations. While this guidance focuses on what has changed in relation to ministerial intervention, the processes and principles for developing and implementing reconfiguration of NHS services remain in place.

Local organisations are best placed to manage challenges related to NHS reconfiguration. Decisions on a proposed change should be clinically led and follow appropriate engagement with people and communities.

We expect NHS commissioning bodies and local authorities to take all reasonable steps to try to resolve any issues concerning local proposals.

Those making a request or others should seek to resolve any concerns about a proposal through the relevant NHS commissioning body or raise concerns with their local HOSC.

Informal advice continues to be available to any interested party from the IRP, who can be contacted by email at irpinfo@dhsc.gov.uk.

NHS England's planning service change guidance encourages integrated working with local authorities and sets out how NHS commissioning bodies should consider the impacts of their NHS reconfiguration proposals on inequalities, health outcomes of the local population and social care.

NHS commissioning bodies and NHS providers will need to continue to meet their statutory and legal duties with respect to NHS reconfigurations, including part 4 of the 2013 regulations.

It remains the case that NHS commissioning bodies and NHS providers should be actively engaged with their HOSC from the outset and duration of a reconfiguration proposal.

Assuring Proposed Changes

NHS England is responsible for assuring substantial NHS service changes pre-public consultation. NHS commissioning bodies and NHS providers have a duty to involve the public in planned service change, including public engagement and consultation (as appropriate), and must meet NHS England's tests for service change.

The tests for service change will be agreed as part of an NHS England assurance process that will be proportionate to the proposals in question, as detailed in NHS England's planning service change guidance.

Role of the Secretary of State

How the Powers will be Used

The NHS Act 2006 gives the Secretary of State a general power to direct a call-in for any reconfiguration proposal. However, this is only intended to be used in certain circumstances, taking into account the considerations set out in 'Considerations for use of the powers' below.

The Independent Reconfiguration Panel

The IRP is sponsored by DHSC to provide independent expert advice to ministers about NHS reconfigurations. The Secretary of State has retained the IRP under the new process for ministerial intervention in NHS service change to support effective and timely decision-making. The role of the panel is to provide the highest quality independent advice to local authorities, NHS commissioning bodies, the Secretary of State and any other interested parties. The panel can provide support as follows:

- advice of the panel can be sought informally by anyone to determine if a call-in request is appropriate or to seek support to resolve issues with a proposal locally
- the panel can provide independent advice to help the Secretary of State to determine whether to use their call-in power
- in cases where Secretary of State has chosen to use their call-in power, the panel will be available to formally support the Secretary of State's decision-making by providing impartial expert advice

Requests for Use of the Powers

Most reconfigurations will continue to be managed at a local level and will not require ministerial intervention.

If organisations or individuals have concerns about a proposed reconfiguration of NHS services, they should seek to resolve any concerns through the relevant NHS commissioning body or raise concerns with their local HOSC.

In exceptional situations where local resolution has not been reached, some organisations or individuals may choose to write in to request that the Secretary of State consider using the call-in power to take a decision on a reconfiguration proposal.

To formally request that the Secretary of State consider using their power to call in a reconfiguration proposal, organisations or individuals can complete the call-in request form.

Email and letter requests for a potential Secretary of State intervention will also be considered. However, we ask that any email or letter provides the information asked for in the call-in request form. Please email requests to dhscreconfiguration@gov.uk, or write to:

DHSC Reconfiguration
Department of Health and Social Care
39 Victoria Street
London
SW1H 0EU

Each call-in request will be considered upon its own merits, and will take into account the considerations set out in 'Considerations for use of the powers' below.

All written requests should state clearly how the request meets one of the following criteria:

a) there are concerns with the process that has been followed by the NHS commissioning body or NHS provider (for example, the adequacy of the content of consultation with the public or the time allowed for consultation with the public; how options have been developed);

b) a decision[2] has been made and there are concerns that a proposal is not in the best interests of the health service in the area[3].

The requester should provide evidence that they have tried to resolve concerns with their local NHS commissioning body or raise concerns with their HOSC. Whether or not to use the call-in power is ultimately a decision for the Secretary of State.

[2] That is, the point at which a decision-making business case has been approved.
[3] This may encompass wider implications than NHS services as health services should be designed in an integrated way with social care services and population healthcare outcomes as the core focus.

How a Request is Handled

All requests will receive a response confirming receipt and will be reviewed by DHSC. A call-in request will not lead automatically to the Secretary of State using their call-in power. To support ministers in deciding whether a proposed reconfiguration warrants use of their call-in power, DHSC or the IRP may ask for further information from any relevant party, including:

- call-in requesters
- the ICB
- NHS providers
- NHS England
- the local authority

DHSC and the IRP will ensure that any recommendation for use of the call-in power is separate to any future advice on the substantive issues of the proposal. Where a ministerial intervention is not taken forward, requesters may be signposted to available resources or other options to support local resolution.

Considerations for Use of the Powers

Whether to call in a proposal is ultimately at the discretion of the Secretary of State. It is not anticipated that the call-in power will need to be used on a regular basis. The Secretary of State and DHSC will need to consider the use of the call-in power on the merits of each case. It is, however, likely that a reconfiguration will not be called in before:

- NHS commissioning bodies and local authorities have taken all reasonable steps to try to resolve any issues;
- those making a request or others have tried to resolve any concerns through their local NHS commissioning body or have raised concerns with their local HOSC.

To inform whether a call-in should take place, ministers may consider whether the proposed change meets at least one of the following criteria:

- there are concerns with the process that has been followed by the NHS commissioning body or NHS provider (for example, adequacy of the content of consultation or the time allowed for public consultation; how options have been developed);
- a decision[4] has been made and there are concerns that a proposal is not in the best interests of the health service in the area[5].

In addition, ministers may consider:

- whether the reconfiguration proposal is considered to be substantial;
- the regional or national significance of an NHS service reconfiguration and the impact on the quality, safety or effectiveness of services.

[4] That is, the point at which a decision-making business case has been approved.

[5] This may encompass wider implications than NHS services as health services should be designed in an integrated way with social care services and population healthcare outcomes as the core focus.

Process for a Live Call-in

A call-in intervention starts at the point the Secretary of State issues a direction letter to the NHS commissioning body which communicates that a ministerial decision to call in the proposal has been made.

Certain stakeholders, such as the relevant local authorities, will be copied into the direction letter if it is considered helpful for the stakeholder to have sight of the information included. Where a request has been made, the requester will be informed if the Secretary of State has decided to call in the proposal for consideration.

The Secretary of State may formally seek advice from the IRP on a called-in reconfiguration proposal. Where applicable, the NHS commissioning body will be given 10 working days to provide the evidence requested by the IRP.

Under paragraph 4(2) of schedule 10A to the NHS Act 2006, once a call-in has been made, the NHS commissioning body must not take any further steps in relation to a proposal except to such extent (if any) as may be permitted by the direction.

The direction letter will set out, among other matters, the steps the NHS commissioning body is permitted to take which will include the expectations around consulting the HOSC and meeting their duties to involve the public during a live call-in. Typically, the NHS commissioning body's consultation with the local authority will be paused (unless specified otherwise in the direction letter). However, it will often be important, in order to assist the Secretary of State in carrying out their call-in functions, for the NHS commissioning body to share information on the call-in with the HOSC during a live call-in to support local authorities to make representations to the Secretary of State.

The direction letter may allow the NHS commissioning body to continue to involve the public and progress proposals in some cases, but not to do anything irreversible or commence a formal public consultation (if that stage has not yet been reached).

Secretary of State Decision Following a Call-in

Before making a decision on a called-in reconfiguration proposal, the Secretary of State must provide interested parties with the opportunity to make representations in relation to the proposal, including:

- the NHS commissioning body;
- NHS England (if the NHS commissioning body is an ICB);
- the local authority whose area the proposed reconfiguration relates to
- any other person that the Secretary of State considers appropriate.

Where multiple organisations or local authority scrutiny committees are involved in making representations, it is strongly encouraged that they take a collaborative approach.

Where the Secretary of State has asked the IRP for advice following a call-in, the IRP will be responsible for writing to the individuals or organisations to seek representations and will set out timeframes for receiving these representations. During the call-in process, the Secretary of State or DHSC may also seek further information from the NHS commissioning body and NHS providers, NHS England or local authorities in advance of their decision.

When formulating a decision on a called-in proposal, the Secretary of State will consider a range of evidence collected, including any representations received. In addition, they will consider value for money and their legal duties including those that concern the need to have regard to reducing health inequalities and seeking to secure continuous improvement in the quality of health services.

From the date indicated on the direction letter, the Secretary of State must take a decision on any called-in proposal within six months or confirm that they have finished considering the proposal in cases where the Secretary of State determines that the proposal can continue.

The new power allows the Secretary of State to take decisions in relation to the called-in reconfiguration proposal. This includes deciding whether:

- a proposal should, or should not, proceed, or should proceed in a modified form
- particular results should be achieved by the NHS commissioning body in taking decisions in relation to the proposal
- procedural or other steps should, or should not, be taken in relation to the proposal
- to retake any decision previously taken by the NHS commissioning body

Communicating a Decision

Once the Secretary of State has finished considering the proposal, they will notify the NHS commissioning body, and copy the relevant local authority, and set out any decision made in respect of the proposal and the reasons for taking such a decision. This information will be published on GOV.UK. A summary of any representations received by the interested parties set out in 'Secretary of State decision following a call-in' will also be published.

There may be circumstances where it is not possible for the Secretary of State to publish a decision immediately - for example, during a pre-election period. Under these circumstances it will be communicated that the Secretary of State has finished considering the proposal and a timetable will be set for when the detail of the decision will be sent to the interested parties. A decision would then be published as soon as possible thereafter.

Follow-up After a Decision

Once the Secretary of State has made a decision on a reconfiguration proposal, the NHS commissioning body must give effect to that decision (including any outlined actions). The Secretary of State may request an update from the NHS commissioning body on progress in taking forward the decision.

The Secretary of State's decision is final. In limited circumstances, the Secretary of State may consider and intervene in the same reconfiguration more than once if there has been a change in circumstances that materially affects the original decision. Any new decision in that scenario would supersede the previous decision.

Continued Role of Local Authorities

Local authorities' powers of referral to the Secretary of State have been removed from the 2013 regulations. This allows room for the new call-in request process to operate, which is open to anyone (including HOSCs).

Local authorities retain an important role to play in integrated care systems, with membership on the ICB and as part of the integrated care partnerships. Together with other partners, they are tasked with developing an integrated care strategy to address the health, social care and public health needs of the integrated care system's population. Local authorities' scrutiny responsibilities for service change (and wider scrutiny responsibilities) have not changed. Further, NHS commissioning bodies' duties to involve and consult HOSCs and the public remain in place.

Where a reconfiguration has been called in, each local authority whose area the proposed reconfiguration of NHS services relates to will have an opportunity to make representations to the Secretary of State.

For further information please refer to the updated local authority health scrutiny guidance.

Power to Require Consideration of Reconfiguration Proposals

The powers included in schedule 6 to the 2022 Act also included a power for the Secretary of State to require an NHS commissioning body to consider proposals for a reconfiguration of NHS services.

However, this power is not currently available as that particular element of the 2022 Act has not been commenced at this time. The possibility of incorporating this new power into the regime will be considered once the transition to a system involving the call-in power has been fully embedded. This power is not part of the regime that came into force on 31 January 2024.

Duty for the NHS to Provide Information and Other Assistance

Outline of the Duty

The duty included in schedule 10A to the NHS Act 2006 requires NHS commissioning bodies, NHS trusts or NHS foundation trusts to provide the Secretary of State with any information or assistance that the Secretary of State requires for the purposes of carrying out any functions in relation to the new reconfiguration powers.

When the Duty is Applied

The duty to provide information and other assistance is available to support decisions related to ministerial interventions in NHS service reconfigurations. Requests for information will generally be made in order to collect more detailed information related to a reconfiguration proposal, such as:

- information about the NHS services impacted
- any clinical evidence base in relation to the proposals
- any useful documents or business cases that support the proposal development
- any plans for local involvement or consultation
- availability of alternative provision
- value for money considerations
- attempts to reach local resolution

After a Secretary of State intervention, an update on progress and the implementation of any relevant recommendations may also be requested.