

Chief Executives and Chairs, NHS Boards
COSLA & Chief Executives, Local Authorities
Presidents, Royal Colleges
Equality and Human Rights Commission
Scottish Public Services Ombudsman
Scottish Health Council
Chairs of Community Health Partnerships
Scottish Consumer Council
Citizen's Advice Scotland
Voluntary Health Scotland
Scottish Council for Voluntary Organisations
Chartered Institute of Public Finance and Accountancy
Institute of Chartered Accountants of Scotland

October 2007

Dear Sir/Madam

We are inviting written responses to the attached consultation document - on the Scottish Government's intention of introducing independent, external scrutiny of proposals for major changes in NHS services - by Friday 25 January 2008.

Consultation

We would be grateful if you would use the consultation questionnaire provided or could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/Consultations/Current>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government has an email alert system for consultations ([SEconsult: http://www.scotland.gov.uk/consultations/seconsult.aspx](http://www.scotland.gov.uk/consultations/seconsult.aspx)). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** enclosed with this consultation paper as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Completed information

The completed Respondent Information Form and any written response to the Consultation Paper Questions should be returned to: NHS Independent Scrutiny Consultation, Freepost NATN452, Healthcare Policy and Strategy Directorate, St Andrew's House, Edinburgh EH1 0BR or NHSindependentsrutiny@scotland.gsi.gov.uk by 25 January 2008.

Next steps in the process

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library by 1 March 2008 and on the Scottish Government consultation web pages by 8 March 2008. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SG Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the content of these regulations. We aim to issue a report on this consultation process by 11 April 2008.

Comments and complaints

If you have any comments or queries about how this consultation exercise has been conducted, please submit these to NHS Independent Scrutiny Consultation, Freepost NATN452, Healthcare Policy and Strategy Directorate, St Andrew's House, Edinburgh EH1 0BR or e-mail to NHSindependentsrutiny@scotland.gsi.gov.uk.

Yours faithfully

DAN ISAAC
Patients and Quality Division

Independent scrutiny

The independent examination of proposals for major change in NHS services

A Public Consultation

Independent scrutiny

The independent examination of proposals for major change in NHS services

A Public Consultation

Responses to this consultation paper are invited by

Friday, 25 January 2008

**Healthcare Policy and Strategy Directorate
Scottish Government**

October 2007

Electronic publication and additional copies

This consultation paper is available via the internet at:

<http://www.scotland.gov.uk/Consultations/Current>

You can use this to find out more about the consultation; ask questions; submit your views; and view submitted responses. Or if you want additional paper copies of the consultation paper, or you or someone you care for requires this paper in a different format or language. Alternatively you can contact us at:

NHS Independent Scrutiny Consultation
FREEPOST NATN452
Mailpoint 1
Healthcare Policy and Strategy Directorate
St Andrew's House
EDINBURGH
EH1 0BR

Or e-mail to NHSindependentscrutiny@scotland.gsi.gov.uk

Copies of the documents mentioned in this paper can also be obtained from these addresses.

This consultation is being conducted in line with the Scottish Government's consultation process Consultation: Good Practice Guidance¹

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is. There will be no charge for this call.

¹ <http://www.scotland.gov.uk/Resource/Doc/1066/0006061.pdf>

This consultation paper is in two parts:

- Part one considers three options for introducing independent scrutiny of proposals for major changes in local NHS services.
- Part two explains how you can respond to the consultation.

Annex 1 is background information which may assist you consider your response

Annex 2: explains how the preferred option - an independent scrutiny panel - might operate

Annex 3 is the current national guidance on *informing, engaging and consulting the public in developing health and community care services*

Independent scrutiny

The independent examination of proposals for major change in NHS services

Part 1: The Consultation Paper

Independent scrutiny: The independent examination of proposals for major change in NHS services

Introduction

1. The Scottish Government has announced its intention of:
 - introducing independent, external scrutiny of proposals for major changes in NHS services before full public consultation takes place;
 - consulting on what form the independent scrutiny should take.

The Government wants to know the views of the people who use NHS services on what form this independent, external scrutiny should take, and has said its final decision will be informed by the responses to this consultation exercise.

2. Because of the need to take early decisions and reduce uncertainty, specific arrangements for independent scrutiny have been announced separately about Accident and Emergency services at Ayr and Monklands Hospitals, and on NHS Greater Glasgow and Clyde's proposals for services across the Clyde area. The consultation proposals build on these arrangements but the Government is also open to consider other ideas and approaches.

Independent scrutiny

3. A key message of the Kerr Report² - *Building a Health Service Fit for the Future* - was that the NHS needs to change. But decisions on the delivery of health services are frequently difficult, and change to local services can often be controversial, and at times hard to accept. A complex range of factors – clinical needs, patient safety, workforce issues, finance, and the views of patients and the public – have to be considered. We need consultation and decision processes which allow necessary change to take place, but ensure that it is based on robust evidence and that the views of the public are heard and taken into account.

4. This is why a key principle of Kerr is that the NHS needs to develop options for change with people, not for them. Independent

² <http://www.scotland.gov.uk/Publications/2005/05/23141307/13135>

scrutiny is a way of improving existing processes to ensure that there is comprehensive information and advice available to inform public debate.

5. The starting point for making decisions on the delivery of health services has to be that the NHS is a public service – a service that is used for and paid for by the public. This means that NHS Boards must take full account of local circumstances in reaching decisions, and must have regard to the views of local people and organisations.

6. The Scottish Health Council³ was established in 2005 to ensure that the public engagement processes of Boards are conducted thoroughly and openly. This has led to some important lessons, and has had a positive effect on communication and engagement practice in the NHS.

7. It remains the case, however, that in some instances there has been controversy and disagreement. This has included questioning of the information and evidence base on which decisions are taken. It is important to find ways of addressing these concerns as far as possible: ensuring that decisions are based on the best available clinical and financial evidence, and robust assessment and appraisal of options.

8. The Government believes that the public and Ministers require stronger and more comprehensive reassurance and advice than is available at present. The purpose of independent scrutiny will be to provide more rigorous examination of the information and evidence, and an independent assessment for the public and Ministers, while retaining the responsibility and accountability of NHS Boards and Ministers for decisions.

9. The Scottish Government supports the general principles set out for the future of healthcare services in Scotland in the Kerr Report. This includes a clear policy presumption against centralisation:

“Future decisions about the concentration of services on fewer sites should be limited on the grounds of resource or workforce constraints to services which:

- are highly specialised and a clinical benefit can be demonstrated, or
- receive seriously ill patients 24 hours per day, or

³ http://www.scottishhealthcouncil.org/shcp/CCC_FirstPage.jsp

- care for medically unstable patients through the night, and for which
- it can be demonstrated that service redesign will not achieve a sustainable outcome.”

In order to meet these conditions it is essential that any proposals for service change should be robust; all alternatives for service redesign must have been considered; and the NHS board should be able to demonstrate that due weight has been given to public opinion.

10. Independent scrutiny will be required where there are proposals for significant service change which will have a major impact on the way services are delivered⁴. In most cases it will be reasonably clear whether the issues involved for the public locally are such that independent scrutiny is needed, but there may sometimes be uncertainty. The final decision on this will be a matter for Ministers, taking into account the impact of the proposed changes on different groups and communities, and any concerns expressed by patient or carer groups, communities or stakeholders locally. Often a major service change will involve changes and developments in a number of services across the area of an NHS Board to meet the needs of patients, and independent scrutiny should consider the overall plan for change and alternative options.

11. It is proposed that independent scrutiny will take place before full public consultation. It will aim to ensure that plans for service change deliver safe, sustainable, evidence-based and value for money services, and that all options which meet these criteria have been fully taken into account.

12. Having independent scrutiny at the early stages of the decision-making process should ensure that there is an agreed and accepted information and evidence base for decisions, although there may still be debate on the assessment and interpretation of evidence and the right choices. There can be no illusions that independent scrutiny will avoid difficult choices having to be made. But it has the potential to improve the quality of evidence, debate and decision-making, and to make this process more transparent and understandable to the public.

⁴ A significant service change is one which will have a **major** impact on a patient or carer group or on a geographical community, see annex 3

Options for an independent scrutiny approach

13. There are a range of options for carrying out independent scrutiny and three possible options are set out below. It is suggested that the preferred option is an independent expert panel to examine and scrutinise proposals for major change to local NHS services.

Option 1: Decision conference

14. A decision conference would involve an independent moderator supporting a widely-based representative group of local people to hear the clinical, financial and patient evidence for, and implications of, the Board's proposed options. Local groups would also be invited to present alternative evidence-based perspectives to the conference. The moderator would advise and support the conference, and identify appropriate clinical, financial and public/patient criteria to enable it to determine which options should go forward to the wider public consultation stage.

15. This approach builds on existing local involvement processes to develop a publicly endorsed, evidence-based option, or options, for consultation. It has recently been used successfully in Scotland⁵ as a way of publicly validating the evidence for a proposed service change.

16. However, the choice of moderator, and the selection of the 'representative' group of local people, are critical to the effectiveness of this approach. It is not clear that this process would be able to provide sufficient rigour or independence of scrutiny, or that it would have the ability to assess and evaluate evidence thoroughly and in-depth.

Option 2: A scrutiny body

17. An independent body, such as a local authority, could potentially be asked to scrutinise the evidence and the merits of proposals for a major change in local NHS services. Such a system operates in England⁶.

18. Local authorities could be given a statutory right to be informed when an NHS Board was planning a major service change, and to be

⁵ NHS Grampian's consultation on *Older People's Services, Maternity Services and Diagnostic and Treatment Services*

⁶ Local authority Overview and Scrutiny Committees scrutinise local health services in England - http://www.dh.gov.uk/en/Policyandguidance/Organisationpolicy/PatientAndPublicinvolvement/DH_4093409

provided with the necessary information and support to enable them to decide if the proposed change was in the best interests of the local population. If the local authority was not satisfied, or felt that it had not been adequately consulted, it would refer the proposal to Ministers for decision. Ministers could then either invite the NHS body to reconsider its proposals, or refer the matter to an Independent Panel for further advice – see option 3.

19. This option could potentially introduce a strong locally-based element to the independent scrutiny of service change, and would allow health service change to be considered in the wider context of the delivery of public services at a local level. However, in Scotland there is already close partnership working between local authorities and the NHS, and involvement of councillors in the governance of NHS Boards. It is not clear that this approach would add significantly to current decision-making and scrutiny processes. There is also the risk, compared with other options, that it could add time and complexity to the process.

Option 3: An Expert Panel

20. The NHS has used the approach of an independent, expert panel a number of times in the past⁷. It could involve a panel led by a non-clinical person with the skills and experience to chair a scrutiny process. In order to ensure their independence and expertise, the chair would be selected through the public appointments process, and would be accountable to Ministers.

21. The panel would have a majority of lay (non-clinical members) in order to ensure public confidence that it would take a fully independent view. The members of the panel would be nominated on the basis of their knowledge and expertise by appropriate organisations, and would have the necessary expertise to consider the clinical, financial and patient evidence for service change and the options developed by the NHS Board. The panel would also encourage the submission of alternative evidence-based perspectives from community and patient groups.

22. A suitable panel, composed of people with no direct interest or involvement in local NHS services, would be set up to examine each

⁷A relatively recent example was the review led by Professor Andrew Calder on maternity services in NHS Greater Glasgow and Clyde.

proposal for major service change brought forward by NHS Boards. The panel would operate from the early stages of the process of public engagement and development of options by the NHS Board, as evidence and options are being pulled together. It would assess the information and evidence available, and seek to ensure that the full range of safe and sustainable options was being identified and evaluated in a clear and transparent way. Each panel would focus primarily on the local circumstances of the area concerned, but would be expected also to reflect a consistent policy approach to the design and delivery of services across Scotland.

23. The panel would provide a commentary on the evidence presented in support of the proposed change and the options considered. This would be published before the formal consultation stage, and would be made available to Ministers as an input to the final decision-making and approval process. The NHS Board would be able to reflect their conclusions in the final proposal for public consultation. If there was significant change in circumstances, or in the options being considered during the consultation stage, then the Panel might be invited to review their assessment. It is unlikely, however, that the evidence or options available would change substantially at this stage.

24. Overall, this would add rigour and robust scrutiny to the process of option development and appraisal, and represents the preferred approach of the Scottish Government. It would fit well with existing processes and practices of public engagement and development of options, and ensure clear lines of accountability for scrutiny and decision-making. The aim would be to ensure that the panel was able to provide effective independent scrutiny, without adding unnecessary delay or complexity to the decision-making process.

Conclusions

25. Delivering a modern health service involves complex clinical, workforce, financial and other issues that can be difficult to communicate and understand, and sometimes involves making difficult choices. It will not always be possible to reach decisions that all sections of the public agree with. However, it is essential that the NHS is able to demonstrate that it has listened to the views of the public, and that decisions are made on the basis of comprehensive information and evidence. Independent scrutiny can ensure that there is rigorous assessment of the evidence and options, and that public views are reflected in this process.

26. In considering the options for independent scrutiny, the third option, to establish a national panel of experts, offers the best way of ensuring that there is rigorous and robust assessment of the evidence, and that all options are fully considered and taken into account.

Questions

27. We would welcome your comments on the following questions:

(please complete the form at page 20 and the template for answer at pages 21-24)

Question 1: Do you agree that an expert panel is the most effective way to provide independent scrutiny? If not, what would be your preferred choice?

Question 2: Do you agree that the role of the panel should be to assess the safety, sustainability, evidence-base and value for money of proposals for major changes to local NHS services?

Question 3: Do you agree that the chair should be a lay person appointed by Scottish Ministers?

Question 4: Do you agree that the panel should have a lay majority among its members?

Question 5: Do you agree that the panel should assess the evidence and options during the process of public engagement prior to consultation, and provide a commentary on these that would be available to the Board and to Ministers in reaching decisions?

Question 6: Do you have any other comments on how independent scrutiny should be carried out, or on the guidance on “Informing, engaging and consulting the public in developing health and community care services” at Annex 3?

Question 7: Do you have any other comments on either the consultation process or your preferred choice?

28. You can submit your response to these questions online using the form at www.scotland.gov.uk/consultations/health/IndependentScrutiny.asp or you can use the form in part 2.

Will my comments be made public?

29. Copies of the written responses received to a consultation exercise, where permission is given by the respondent, are placed in the Library at:

K Spur
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

30. If you do not wish your response to be made public, please ensure that you indicate clearly that all or part of your response is to be treated as confidential. Confidentiality will be strictly respected. Confidential responses will still count in any analysis and your views will of course be taken into account in the same way as non-confidential responses.

What happens next?

31. NHS Boards have been asked to pass this consultation paper to local community and patient groups in their area.

32. When this consultation is concluded, the responses will be analysed and the views expressed will be summarised. Direct quotes from individual respondents will only be used where respondents have given their permission for publication of their response.

33. A report will be published and the Cabinet Secretary will consider the views expressed and the issues raised before coming to an informed decision on the form of independent scrutiny to be introduced. The Cabinet Secretary will consider all other information available to her and all representations made to her before coming to a final view.

34. The Scottish Government will then issue guidance to the NHS on the implementation of the preferred approach.

How will I know what the Cabinet Secretary decides?

35. The Cabinet Secretary's decision and a report on the consultation will be published on www.scotland.gov.uk/Consultations/Closed. A copy will also be sent to the address provided by each respondent.

Comments

36. If you have any comments about how this consultation exercise has been conducted, please send these to:

Independent Scrutiny Consultation
FREEPOST NATN452
Mailpoint 1
Healthcare Policy and Strategy Directorate
St Andrew's House
EDINBURGH
EH1 0BR

Independent scrutiny

The independent examination of proposals for major change in NHS services

Part 2: How you can respond to the consultation

Independent scrutiny: The independent examination of proposals for major change in NHS services

Please complete your response online using the form at:

www.scotland.gov.uk/consultations/health/IndependentScrutiny.asp

or use the forms on pages 20-24 which should be sent to

Independent Scrutiny Consultation
FREEPOST NATN452
Healthcare Policy and Strategy Directorate
Mailpoint 1
EDINBURGH
EH1 0BR

by Friday 25 January 2008

Confidentiality

Copies of responses received are normally made available to the public. The views expressed by respondents may also be quoted or referred to in any future review of responses.

Please complete the form overleaf to indicate how you wish your response to be handled.

If you do not wish your response to be made public, please ensure that you indicate clearly that all or part of your response is to be treated as confidential. Confidentiality will be strictly respected. Confidential responses will still count in any analysis and your views will of course be taken into account in the same way as for non-confidential responses.

Your Details

Please complete the details below.

Name (required)

.....

Organisation: (if applicable)

.....

Postal Address, including post code (required):

.....

.....

.....

E-mail:

Are you responding: (please tick one of the boxes)	as an individual	
	on behalf of a group or organisation	

Individuals

Do you agree to your response being made available to the public? (Please delete Yes/No as appropriate)	YES	
	NO	Your response will be treated as confidential
Where confidentiality is not requested , how would you like us to make your response available to the public? (Please tick one of the boxes)		Make my response and my name and address available
		Make my response available, but not my name or address
		Make my response and name available but not my address

On Behalf of a Group or Organisation

The name and address of your organisation will be made available to the public.	
Are you content for your response to be made available?	YES/NO
Can we contact you again about your response?	YES/NO

Independent scrutiny of NHS Boards proposals for major changes in local NHS services

Please write your response here (please continue on a separate sheet of paper, if necessary.)

Question 1: Do you agree that an expert panel is the most effective way to provide independent scrutiny? If not, what would be your preferred choice?

Question 2: Do you agree that the role of the panel should be to assess the safety, sustainability, evidence-base and value for money of NHS Boards proposals for major changes to local NHS services?

Question 3: Do you agree that the chair should be a lay person appointed by Scottish Ministers?

Question 4: Do you agree that the panel should have a lay majority among its members?

Question 5: Do you agree that the panel should assess the evidence and options during the process of public engagement prior to consultation, and provide a commentary on these that would be available to the Board and to Ministers in reaching decisions?

Question 6. Do you have any other comments on how independent scrutiny should be carried out, or on the guidance on “Informing, engaging and consulting the public in developing health and community care services” at Annex 3?

Question 7

Do you have any other comments on either the consultation process or your preferred choice?

Thank you for taking the time to participate in this consultation. We will acknowledge receipt of your response.

Independent scrutiny

The independent examination of proposals for major change in NHS services

Annexes

Annex 1 Background Information

Annex 2: The preferred option - an independent scrutiny panel

Annex 3 Guidance on informing, engaging and consulting the public in developing health and community care services

The independent examination of proposals for major change in NHS services

Background Information

The role of the Scottish Health Council

1. The Scottish Health Council⁸ (SHC) was established in April 2005 to ensure NHS Boards deliver their Patient Focus and Public Involvement (PFPI) commitments⁹. The Minister's annual review meeting with an NHS Board is informed by the Council's report on whether they have achieved year-on-year improvements in involving patients and the public in service developments and delivery, and in individual decisions about their personal health care.

2. More specifically, when an NHS Board proposes a major change in a local NHS service, its staff should work in partnership with the Council to ensure that potentially affected people and communities are provided with the information and support they need to play a full part in the consultation process. At the end of the consultation process the Council presents the Board with its assessment of the quality of the public involvement in the process.

What are the stages in the public consultation process?

3. The current guidance on *Informing, Engaging and Consulting the Public in Developing Health and Community Care Services*¹⁰ requires an NHS Board to involve potentially affected people and communities in:

- developing the initial plan for service change
- developing and appraising possible options to decide which should be the subject of a full public consultation
- a formal public consultation on agreed option(s)

Thereafter the Board considers the outcome of the consultation and the SHC's report on the quality of the public involvement. The Board's decision is then conveyed to Ministers. Ministers reserve the right to ask the Board to carry out the consultation again in whole or in part if the

⁸ http://www.scottishhealthcouncil.org/shcp/CCC_FirstPage.jsp

⁹ <http://www.scotland.gov.uk/Resource/Doc/158744/0043087.pdf>

¹⁰ See Annex 3

Council's assessment is that the involvement did not meet the requirements of the national guidance on public involvement.

What lessons can we learn from the Scottish Health Council's experience?

4. A number of lessons emerge from the Scottish Health Council reports on the involvement of the public in recent consultations on major changes in NHS services:

- proposals for service change should, as far as possible, emerge naturally from a Board's day-to-day engagement with the people and communities they serve
- the people and communities who use a service should be involved in developing and appraising the options for change
- the Board should not move to formal consultation until a robust and transparent option appraisal process has been completed satisfactorily.

And to be effective, the option appraisal stage must ensure that:

- clinical factors have been fully considered
- there are clear and robust costings of alternative options
- the public and local communities have been fully and proactively involved in the development and appraisal of options
- clinical and financial issues, and the views of the public, receive the same consideration.

5. The Council's experience suggests that where these criteria are met, the subsequent consultation process will have greater credibility and authority.

6. However, the Council has no remit to comment on the quality of the options presented, or whether all possible options have been considered. It focuses on the quality of a Board's public involvement, not on the quality of the evidence presented for that service change. The proposed arrangements for independent scrutiny would allow for robust and rigorous scrutiny of the information and evidence available, and ensure that decisions are informed by a strong and appropriate evidence base. The NHS, in proposing changes to services, needs to develop plans which are robust, evidence-based, patient-centred and consistent with clinical best practice and national policy, and to take account of local circumstances and the views of local communities.

7. The Scottish Government therefore wishes to complement the Scottish Health Council's assurance of the quality of Boards' public involvement, with a process which will assess the quality of the evidence in support of a Board's proposal(s) for a major service change.

What factors should be taken into account in establishing a system of independent, external scrutiny?

8. The purpose of an extra stage of independent scrutiny in considering proposals for changes to NHS services is to introduce a scrutiny element in the decision-making process that focuses on assessment of the information and evidence. This involves the capability to challenge and examine the available information and evidence impartially and to publish a commentary and conclusions. This will ensure that the subsequent consultation process has a transparent information base, and greater credibility and authority.

9. The Scottish Health Council's experience suggests that the credibility and authority of public consultation depends on a well planned, thorough and transparent process of option development and appraisal. This suggests that the extra stage of independent scrutiny should be undertaken before there is wider public consultation, and should focus on the quality of the evidence base for the options developed. The Scottish Government believes that this type of independent scrutiny of proposals would strengthen the ability of Boards to progress to the public consultation stage in the knowledge that a transparent and thorough exploration of options had been conducted.

10. This should result in greater public assurance about the quality of the consultation process. Equally, there will be cases where difficult choices are necessary which will not command complete public support.

Would independent Scrutiny be required for every service change proposal?

11. Independent scrutiny will be required where there are proposals for service change which will have a major impact on the way services are delivered. The national guidance on public involvement requires a formal public consultation process to be carried out in cases where a proposed service change will have a major impact on a patient or carer group or on a geographical community.

12. In the future, there will need to be independent scrutiny of the proposed options in these cases in advance of consultation. The Scottish Health Council is developing a set of criteria to help to judge whether a proposed service change is major. The final decision on whether independent scrutiny is required will be a matter for Ministers, taking into account the impact of the proposed changes on different groups and communities, and any concerns expressed by patient or carer groups, communities or stakeholders locally.

How would independent scrutiny work?

13. The independent scrutiny process would be required to:

- scrutinise, independently, proposals brought forward by NHS Boards to establish that all the possible service change options have been identified;
- assess the safety, sustainability, evidence-base and value for money of the proposals,
- ensure the proposals are robust, patient centred and consistent with clinical best practice and national policy.
- provide a clear, comprehensive and accessible commentary on the evidence presented in support of proposals for service change which the NHS Board would be able to reflect in the final proposal for public consultation.

The independent scrutiny process would not reach a view on a preferred option. This would remain a decision for the NHS Board to take as part of the option appraisal process.

The independent examination of proposals for major change in NHS services

The preferred option: an independent scrutiny panel

Selecting Panel Chairs

1. A small pool of people with the skills and experience to lead an independent scrutiny process would be selected through the public appointments process. Panel Chairs should have the ability to analyse and assess evidence rigorously and independently, and be able to devote sufficient time and effort to what will be a demanding task.
2. To ensure independence, they should not come from a clinical background and should not be a resident of, or have links with the geography of the affected NHS Board area. If in employment, the Chair and their panel members would be offered payment at the centrally set rate for tribunal etc members.

Establishing a panel

3. An individual with no geographic or other conflict of interest in a proposed service improvement in the pool of Chairs would be asked to lead a panel with the necessary expertise to consider the clinical, financial and patient evidence for, and implications of, the options being developed by the NHS Board.
4. The Chair, with the support of the Secretariat, would select a panel of experts with the necessary mix of clinical, financial and public/consumer expertise to address the service change proposal under consideration. The panel members would be drawn from nominations from organisations such as:
 - the Royal Colleges in Scotland
 - the Chartered Institute of Public Finance and Accountancy or the Institute of Chartered Accountants of Scotland
 - the Scottish Consumer Council.

The members selected would have no previous connection with the area or the issues involved. The panel should also have a majority of non-clinical members.

The Panel's remit

5. The panel would be asked to assess the safety, sustainability, evidence-base and value for money issues which emerged during the option development phase. The panel would examine the evidence from the NHS Board, and would also encourage the submission of alternative evidence-based perspectives from community and patient groups. Effectively the aim of this added 'challenge element' in the option development and appraisal process would be to ensure that local people and communities were satisfied with the quality of the evidence for a proposed change and that the full range of possible options were considered and tested.

The Panel's Report

6. The panel would provide a commentary on the evidence presented to them which would be published. The NHS Board would be able to reflect their conclusions in the final proposal for public consultation. The panel would be accountable to Ministers for its work, and the commentary would be available to Ministers in reaching decisions on service change.

Who should provide the central Secretariat?

7. The panel would require good quality support, to undertake research, prepare papers, undertake initial evaluation of material from Boards, and draft the panel's final report. We believe that the Scottish Health Council would be well placed to provide this support for the independent scrutiny process.

What would be the cost of introducing the Independent Scrutiny process?

8. The main costs of establishing an independent scrutiny process would lie in paying fees to panel members and in secretariat support costs. The total annual cost is difficult to determine, as this will depend on the frequency of referrals to scrutiny panels and the extent of their contribution.

9. Since it was established in April 2005 there have been 10 occasions when the Scottish Health Council has submitted a report on a major service change to Ministers. This suggests that there may be a

requirement for up to 5 panels in any one year. On the assumption that 5 panels of 5-6 people would sit for up to 20 days each year, then the annual costs of the members and secretariat could be of the order of £500,000.

The independent examination of proposals for major change in NHS services

INFORMING, ENGAGING AND CONSULTING THE PUBLIC IN DEVELOPING HEALTH AND COMMUNITY CARE SERVICES

Background

1. NHS Boards are required to involve patients, carers and the public in designing, developing and delivering the health care services they provide for them. Boards' responsibilities in this area were initially set out in the document, *Patient Focus and Public Involvement (PFPI)*¹¹.
2. To reflect the importance of this agenda, duties of public involvement and equal opportunities were placed on NHS Boards in the *NHS Reform (Scotland) Act 2004*¹².
3. The Scottish Health Council¹³ was established in April 2005 to ensure NHS Boards deliver their patient focus and public involvement responsibilities.

Community Engagement

4. To fulfil their responsibilities for public involvement, NHS Boards should routinely communicate with and involve the people¹⁴ and communities they serve to inform them about their plans and performance. This everyday involvement should follow principles and practice endorsed by the Scottish Health Council¹⁵.
5. Public Partnership Forums¹⁶ provide an important way of promoting the routine involvement of local people in the design and delivery of the health services they use. NHS Boards should also work with their Community Planning partners to minimise duplication in their community engagement mechanisms.

¹¹ <http://www.scotland.gov.uk/library3/health/pfpi-00.asp>

¹² <http://www.opsi.gov.uk/legislation/scotland/acts2004/20040007.htm>

¹³ http://www.scottishhealthcouncil.org/shcp/CCC_FirstPage.jsp

¹⁴ in this guidance the word "people" should be interpreted to refer to health service users, patients, members of the public, carers, volunteers etc and the voluntary organisations which represent them.

¹⁵ The SHC have endorsed Communities Scotland's *National Standards for Community Engagement* - http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_010771.hcsp

¹⁶ <http://www.scotland.gov.uk/Publications/2004/11/20168/45831#6>

Consulting the Public

6. Proposals for service change should, as far as possible, emerge naturally from a Board's day-to-day engagement with the people and communities it serves.

7. However, where a proposed service change will have a major impact on a patient or carer group, or on a geographical community, a formal public consultation process must be carried out. The scale of the public consultation should be proportionate to the scale of the proposed service development or change.

8. Boards should involve potentially affected people and communities in assessing and agreeing the scale of the consultation process required. The Scottish Health Council should be involved in these discussions and can advise on what was considered appropriate in similar cases.

9. It is also good practice to inform patients, carers and the public about changes to management or organisational structures, even if they do not directly affect service users.

Ministerial Approval

10. Where a Board's judgement is that a service change will have a major impact, for example where it involves closure or re-provisioning of a service, they should seek advice from Healthcare Policy and Strategy Directorate on whether Ministerial approval will be required for their decision.

NHS Board responsibilities

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

- informing potentially affected people, staff¹⁷ and communities of their proposal and the timetable for:
 - involving them in the development and appraisal of options.
 - involving them in a proportionate consultation on the agreed options.
 - reaching a decision.

¹⁷ in this guidance the word 'staff' should be interpreted widely to include those who are employed or contracted to work in or with the affected service.

- ensuring that the process is subject to an *Equality and Diversity Impact Assessment*¹⁸.
- ensuring that any potentially adverse impact of the proposed service change on, for example, the travel arrangements of patients, carers, visitors and staff have been taken account of in the final proposal.
- providing evidence of the impact of this public involvement on the final agreed service development or change.

12. Where a proposed service change would impact on the public in another area, the Boards concerned must ensure that all affected individuals and communities are involved in the process. Proposed changes to regional or national services must similarly be the subject of a co-ordinated engagement process.

The Process of Informing, Engaging and Consulting the Public

13. A public consultation about a service change should grow naturally out of a Board's everyday communication and dialogue with the people it serves. It should offer potentially affected people and communities a real opportunity to influence the Board's decision-making about the design and delivery of the service through their involvement in:

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

14. The public involvement process outlined below should be applied in a realistic, manageable and proportionate way to any service development or change which will have an impact on the way in which people access or use NHS services.

Planning

15. As soon as a Board is aware of a need to consider a change to a service they should develop an involvement and communication plan which details how the engagement process will be carried out.

16. This plan should be developed with advice from the Scottish Health Council, and should ensure that potentially affected people and communities are provided with the information and support they need to play a full part in

¹⁸ <http://www.scotland.gov.uk/Publications/2005/02/20687/52421>

the consultation process. Boards should seek from the Scottish Health Council:

- views on the type of involvement they would expect to see for the proposed service development or change.
- views on similar work and good practice elsewhere.
- co-operation in quality assuring each step of the process as it develops.

Informing

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

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

Engaging

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

Option development

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

20. Clinical and professional staff who work in the service should be involved in developing the options and can have an important role in presenting them at meetings and other public involvement events.

21. Although every effort should be made to develop more than one option, there will be occasions where options are limited, for example, by requirements to comply with national policy or legislation, and there may only be one feasible course of action. If so, the option development process should still be used to involve potentially affected people and communities, and to seek to achieve a consensus that there are no other viable options.

Option appraisal

22. The Scottish Health Council's advice should be sought about establishing an open and transparent process to determine which options should proceed to the public consultation stage.

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

- ensure they accurately incorporate clinical views, financial implications and the views of patients and the public; and
- clearly explain why each option is considered viable, particularly so if a 'preferred' option has emerged from the option appraisal process.

Consulting

24. Boards should not move to the formal consultation stage until they have the Scottish Health Council's confirmation that public involvement in the option development and appraisal process has been satisfactory.

The consultation document

25. A consultation document will need to be produced. This must:

- be easy to understand.
- be readily available and accessible.
- outline how the options offered for consultation were developed and agreed.
- balance any argument offered in support of an option with any relevant counter argument.
- contain sufficient information for the reader to be able to understand the reasons for the proposal(s) and come to an informed conclusion.
- outline the factors which will be taken into account in arriving at a formal decision.

- contain information about contacts for further information or clarification and direct consultees to public access points in libraries etc.
- allow sufficient time, normally 3 months, for those consulted to consider and respond to the proposal.

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

The consultation process

27. Potentially affected people and communities should be consulted on the agreed option(s) for the proposed service development or change. The advice of the Scottish Health Council should be sought about the consultation methodologies¹⁹ to be used in the consultation process.

28. An inclusive process should encourage and stimulate discussion and debate. While it may not result in agreement and support for a proposal from all individuals and groups, it should demonstrate that the NHS listens, is supportive and genuinely takes account of views and suggestions.

29. It may not be possible to obtain agreement from all stakeholders about a proposed service development or change. In these cases, the support of the Scottish Health Council in confirming that there has been a wide ranging consultation, which has taken all reasonable steps to take account of differences of view, will be essential.

Seeking Ministerial approval

30. In submitting a final proposal to the Minister for approval, the Board must enclose a report from the Scottish Health Council which confirms that potentially affected people and communities have been appropriately supported and involved in the consultation process.

31. It should be noted that Ministers:

- will not consider a Board's submission unless it gives evidence of how potentially adverse impacts for the affected people and communities will be taken into account.

⁹ <http://www.sehd.scot.nhs.uk/involvingpeople/bsftoolkit.htm>

- reserve the right to ask a Board to carry out a consultation process again in whole or in part if the Council's assessment is that the public involvement did not meet the required standard.

Feedback

32. NHS Boards must provide feedback to the stakeholders who took part in a consultation to:

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

The feedback stage is of vital importance in maintaining public confidence and trust in the integrity of the involvement process.

Evaluation

33. Evaluation is an appraisal of how the informing, engaging and consulting activities undertaken worked; the impact they had on the service change; and the lessons to be learned for future involvement work to be carried out by the organisation.

34. The evaluation process should be a positive and constructive one designed to highlight areas which may need to be strengthened or developed. It need not be a lengthy or time-consuming process. Its purpose is to help the Board communicate to the public on how their involvement influenced and supported the development of the service. The Scottish Health Council can provide information and guidance on how to evaluate the consultation process.

35. The evaluation report should be made available to interested parties.

The Scottish Health Council's role

36. The Scottish Health Council was established to ensure NHS Boards deliver their PFPI responsibilities. The Minister's annual review meeting is informed by the Council's report on whether the Board has demonstrated year-on-year improvements in involving patients and the public in service developments and delivery, and in individual decisions about their personal health care²⁰.

37. More specifically, when an NHS Board proposes a major change in a local NHS service, its staff should work in partnership with the Council to ensure that potentially affected people and communities have the information and support they need to play a full part in the consultation process.

38. As the Council is required to quality assure the process as it develops, Boards should engage with it at the earliest possible stage and ensure any issues identified by it are acted upon.

39. The Council will look to the Board to provide evidence that the views of potentially affected people and communities have been "actively sought, listened to and acted on; and treated with the same priority as clinical standards and financial performance"²¹.

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²⁰ <http://www.scotland.gov.uk/Publications/2005/11/02102635/26382>

²¹ <http://www.scotland.gov.uk/Publications/2003/02/16476/18730>