

The White Paper overview [Part 4] - Integration and innovation: working together to improve health and social care for all - additional proposals

We set out and consider each legal proposal in the section on working together and supporting integration and innovation. The Government has put forward an additional series of targeted proposals to improve social care, public health, and quality and safety.

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In the Foreword to the White Paper it is stated that:

At its heart, however, this Bill is about backing our health and care system and everyone who works in it. Our proposals build on the NHS's own – those in the Long Term Plan. We're also outlining steps to support everyone who works to meet people's health and care needs. Taken together, they will help us build back better after Covid.

Below, each legal proposal in the section on Additional proposals is set out and considered. The other sections have been considered in separate articles and we have also published more detailed articles on specific topics. However, overall, it is apparent that the proposals do enable the development of an integrated care system which is not possible under the current legislative framework.

In setting out a brief overview of the proposals for legislation, the headings in the White Paper have been adopted.

Additional proposals

The Government has put forward an additional series of targeted proposals to improve social care, public health, and quality and safety. These proposals are not intended to form a coherent reform package in themselves (detailed reforms to social care and public health will be dealt with outside this bill), but are intended to address specific problems or remove barriers to delivery, maximise opportunities for improvement, and have in some cases been informed by the experience of the pandemic.

Social Care

The Government intends to bring forward proposals to reflect the themes of supporting integration, reducing bureaucracy and improving accountability in a manner that addresses the specific needs of the social care sector.

1. Integrated care systems and adult social care (ASC)

The proposed legislation will give ICSs a statutory basis to ensure that they effectively promote integration between health and care, as well as improving integration within the NHS. This will be supported by published guidance that will offer support for how ICS Health and Care Partnerships can be used to align operating practices and culture, with the legislative framework to ensure ICSs deliver for the ASC sector. There will also be a more clearly defined role for social care within the structure of an Integrated Care System NHS Board, giving ASC a greater voice in NHS planning and allocation.

ICS NHS Bodies and Health and Care Partnerships will have formal duties to have regard to Health and Wellbeing Boards' (HWBs) plans, with continuing support from the centre to prioritise meaningful integration that makes patient and user journeys smoother. The Government's view is that the active involvement of the ASC sector in this work going forward will be hugely important in ensuring that ICSs deliver for adult social care.

2. Improving the quality and availability of data across the health and social care sector

The Government recognises that changes need to be made to the way the NHS collects and uses data, not just for central Government assurance and oversight, but also to allow local authorities, providers and consumers better access to the data they need, while minimising the burden on data providers. One specific area mentioned in the White Paper is the current lack of data from local authorities around services provided to those who self-fund their care. The collection of such data will allow the Government to better understand this aspect of the system and make links with health data, to improve understanding of lifetime cost of care.

Overall, the aim of the Government is that, with more and better data, it can plan the future care of the population and have the potential to generate significant health benefits. Further, improved data on the sector workforce could also benefit recruitment, retention and equality policies.

3. A new assurance framework for social care

The proposal is to introduce a new duty for the Care Quality Commission (CQC) to assess local authorities' delivery of their adult social care duties. Linked to this new duty will be a power for the Secretary of State to intervene where, following assessment by the CQC, it is considered that a local authority is failing to meet their duties. Any intervention by the Secretary of State is intended to be proportionate to the issues identified and taken as a final step, in exceptional circumstances, when help and support options have been exhausted. It is anticipated that these powers will be at a high level, with more detailed guidance to follow.

It is the Government's intention to initially focus on improving the quality, timeliness and accessibility of adult social care data, with the assessment and intervention elements to be introduced over time as the final element of the assurance framework.

4. Provide a power for the Secretary of State for Health and Social Care (SSHSC) to make payments directly to providers

The Health and Social Care Act 2008 currently allows the SSHSC to make payments to not-for-profit bodies engaged in the provision of health or social care services in England. The Government is proposing to amend this legislation to widen this power to allow direct payments to be made to any bodies which are engaged in the provision of social care services in England. The bill will not prescribe in what circumstances the power can be used or how it should be provided; instead, this power will act as a legal foundation for future policy proposals.

The type of payment will be determined on a case-by-case basis, and it is not intended to replace the existing system of funding adult social care where funding for state provision is provided via local authorities, largely through local income, and supplemented by Government grant funding. The purpose of this power is to address an issue which has become apparent during the response to the coronavirus, which has clearly demonstrated how unforeseen and quickly-changing circumstances may require fast intervention.

5. Discharge to assess

The proposed bill will update the approach to hospital discharge by putting in place a legal framework for a 'Discharge to Assess' model, whereby NHS continuing healthcare and NHS Funded Nursing Care assessments, and Care Act assessments, can take place after an individual has been discharged from acute care. This will replace the existing legal requirement for all assessments to take place prior to discharge. This will not change the thresholds of eligibility for CHC, or support through the Care Act, or increase financial burdens on local authorities. The existing system of discharge notices and associated financial penalties will be removed.

This change will help to embed good practice guidelines which have been followed over the past few years.

6. A standalone power for the Better Care Fund

The process for setting the NHS Mandate will be amended so that it is no longer set on a rolling annual basis. Given that the allocation of the Better Care Fund (BCF) is tied to this annual process, a new stand-alone power to support the BCF will be created to separate it from the Mandate setting process. This will be a technical change and will not have any impact on the function, purpose or policy intention for the BCF.

Public Health

Alongside the Government's proposals for the future design of the public health system, including the creation of the National Institute for Health Protection (NIHP) and the closure of Public Health England, there are a range of targeted proposals in primary legislation relating to public health.

7. Public health power of direction

The proposal is to create a new power for the SSHSC to require NHS England to discharge public health functions delegated by the SSHSC alongside the existing section 7A provisions. In common with the proposed power of direction in respect of NHS England's other functions, this includes scope to direct as to how those delegated functions are to be exercised. The aim is to enhance the ability to facilitate urgent updates or rapid service change when needed.

8. Obesity

The Government is proposing to make several changes to legislation to support its ambitions to halve childhood obesity by 2030, reduce the number of adults living with obesity and reduce health inequalities. This includes amending section 16 of the Food Safety Act 1990 to give ministers the power to amend the EU Food Information to Consumers (2011/1169) Regulations, already transposed into UK law, by introducing new labelling requirements. It is also the Government's intention to introduce further advertising restrictions to prohibit advertisements for products high in fat, sugar or salt (HFSS) being shown on TV before 9 pm.

9. Water Fluoridation

The Government is proposing to give the SSHSC the power to directly introduce, vary or terminate water fluoridation schemes, removing the burden from local authorities. Instead, the power will allow the Department of Health and Social Care to streamline processes and take responsibility for proposing any new fluoridation schemes, which will continue to be subject to public consultation.

Safety and Quality

The Government is also taking the opportunity to bring forward a range of proposals to support and enhance safety and quality in the provision of healthcare services.

10. Health Service Safety Investigations Body

The intention is to move the provisions from the Health Service Safety Investigations (HSSI) Bill introduced in October 2019 into the new bill. These provisions include the establishment of a new executive non-departmental public body, the Health Services Safety Investigations Body (HSSIB) to investigate incidents which have or may have implications for the safety of patients in the NHS. Investigation reports will make recommendations and require organisations to publicly respond to these measures within a specified timescale. Information held by the HSSIB will be prohibited from disclosure except in certain prescribed circumstances.

Significantly, the updated proposals extend the HSSIB's proposed remit to cover the independent sector in response to concerns raised during the HSSI Bill's first Parliamentary Passage. In addition, there will also be a new power to enable the SSHSC to require the HSSIB to investigate particular qualifying incidents or groups of qualifying incidents.

11. Professional regulation

The Government proposes to widen the scope of section 60 of the Health Act 1999 to enable the SSHSC to make further reforms to the system of professional regulation. The proposal includes giving the SSHSC powers to: (a) remove a profession from regulation; (b) abolish an individual health and care professional regulator; (c) remove restrictions regarding the power to delegate functions through legislation; and (d) include senior NHS managers and leaders and other groups of workers within the scope of section 60 (although it is said that there are no plans at this stage to do so).

It is worth noting that this proposed reform programme is being taken forward on a four-country basis and the devolved administrations are engaged in it. The aim is for there to be consultation on the broader reform proposals, which will be delivered through secondary legislation, shortly.

12. Medical examiners

This proposal will amend the Coroners and Justice Act 2009 to allow for NHS bodies, rather than local authorities, to appoint Medical Examiners so that every death in England and Wales is scrutinised either by a Coroner or a Medical Examiner.

13. Medicines and Healthcare products Regulatory Agency (MHRA) new national medicines registries

The Government wants to enable the MHRA to be able to establish and operate a comprehensive medicine information system, including data collection from private providers, which will support UK-wide medicine registries. Registries would be established for a medicine where the public need is clear and the benefits of a publicly-held national registry that can access routinely collected data, where it is available, are required.

It is anticipated that, where a safety issue has led to the introduction of measures to minimise risk to patients, statutory registries with mandated inclusion of data will facilitate the early identification and investigation of potential non-compliance, so that additional action can be taken by regulators in conjunction with health service providers at a national, local or individual patient level. Further, registries will also provide an opportunity for patients to actively contribute information on their experiences with specific medicines, bringing focus to the safety and clinical effectiveness issues that impact most on their lives.

14. Hospital food standards

The Government is proposing to put hospital food standards on a statutory footing by introducing mandatory minimum standards for the provision of good hydration and nutrition in the NHS. The Secretary of State will be granted powers to adopt secondary legislation that will implement the national standards for food across the NHS. This adopts the recommendation made by the Independent Review of NHS Hospital Food published on 26 October 2020.

15. Reciprocal healthcare agreements with Rest of World countries

Under the current legislation, the UK is limited to implementing reciprocal healthcare agreements with the EU, EEA, EFTA blocs or their Member States. The proposed legislation will enable the Government to implement more comprehensive reciprocal healthcare agreements with Rest of World countries, subject to negotiations. In addition, the proposed legislation will allow for: (a) the introduction of a reimbursement mechanism, so that no healthcare system will be left worse off; (b) the exchange of data between countries for the purposes of reimbursement; and (c) the responsibility for paying healthcare charges to lie with governments.

The scope for any new agreements will be agreed across relevant Government departments and will be tailored to meet the national interest, with input from the devolved administrations as well as relevant operational partners.

Comment

The key themes running through the Additional Proposals part of the White Paper are wide-ranging and intended to tidy up some existing issues, and also address some issues that have come to light during the response to the coronavirus pandemic. Whilst, as ever, the real impact will become apparent when the detail of the legislation is published, it is clear that the SSHSC will have greater powers to intervene in the delivery of health and social care services. That does mark a very different approach to that contained in the Health and Social Care Act 2012, and it will be interesting to see how these new powers interact with the new role for the merged NHS England.

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