

TRANSCRIPT

Bonus episode – New service change regulations in England



Paul Parsons - Hello everybody and welcome to this impromptu Not a Consultation extra, our Podcast about all things public and patient involvement and NHS service change. I'm Paul Parsons.

Caroline Latta - I'm Caroline Latta...

Jonny Williams - and I'm Jonny Williams.

Paul Parsons - It's been quite an exciting week for us, hasn't it?

Caroline Latta - It certainly has.

Paul Parsons - On Tuesday afternoon, the Department for Health and Social Care published guidance on the process for ministers to intervene in NHS service change programmes. That guidance goes with new regulations that bring those powers into force and we got updates to the scrutiny regulations with new guidance on that too. All are set to come into force on the 31st of January, so not much time to prepare. And these are the biggest changes in this area for 20 years. So naturally, clients and colleagues have been asking questions.

Jonny, I wonder, could you just tell us what we've got in that package from the department?

Jonny Williams - Yeah, absolutely. So helpful to, I guess, start with a reminder. There are two main new changes that are coming as a result of these new regulations. The first one is the notification duty. That's going to require NHS commissioning bodies like Integrated Care Boards, or even NHS England to formally notify the Secretary of State about any plans for substantial service reconfiguration.

The second is a new power for the Secretary of State called the 'Call-in Power', which gives the Secretary of State the ability to call in any proposals that are notified and make recommendations as a result of that call in. And the detail of these regulations has answered, I guess, quite a lot of questions that we had about the scope of that power in particular.

Paul Parsons - These have been badged as the Secretary of State's new intervention powers. Let's look, if we can, to start with, at the Call-in Power.

Caroline, 10 working days from the receipt of a Call-in request from the Secretary of State to provide information to the IRP. What do you think about that timescale?

Caroline Latta - These short timescales are probably quite welcome but there's no doubt local systems are going to have to absolutely work together and make sure they've got really good plans and paperwork in place. A 10 day turnaround is not going to work if you're then, looking around trying to find all the records and the paperwork. So, hopefully, the positive news is that we might see service change programmes being properly resourced and programmes hastily putting together quick changes will be exposed, because they won't be able to deliver on that 10 day turnaround.

Paul Parsons - Jonny, it was mentioned in 2021, when we first had the white paper, that the IRP was going to cease to exist. So what are your thoughts on the role of the IRP in this and its continued presence.

Jonny Williams - I'm really happy to see that the IRP has a really large part to play in these Call-in processes because we know from past referrals that recommendations from the IRP are really well evidenced, really well investigated and there's a really strong benefit to having that independent voice especially if there's dissent or a different opinion during a service change programme.

There's lots for the IRP to do when it comes to providing advice informally about requesting a Call-in. Really, really good to see that the department is encouraging people to contact the IRP. Opportunities to make representations to the IRP once a Call-in has been made, again, I think a really, really good opportunity for all stakeholders involved in a service change to be able to get advice, but also contribute to the work of the IRP. And also having them remain the independent function for the

Secretary of State to make decisions, really supports the value of this new regulation, I think, because there's a transparency there that's really helpful, I think, to anyone involved in a service change programme.

Caroline Latta - I'm really pleased to see the IRP role continuing and being strengthened. Let's face it, they're a really well respected body and they're sitting on a huge wealth of evidence and information that they've collected over the years. Past IRP reviews have always been a go to place for key learning and making sure that, you know, that mistakes of the past aren't being repeated.

Paul Parsons - We now know who can request a Call-in. That's anybody with an interest. They are required, as under the scrutiny regulations previously, to go through local channels to seek agreement. And the request for Call-in to the Secretary of State, really seen as an action of last resort. And the form looks really simple. Very user friendly.

If the Secretary of State agrees to call the programme in, the programme has to pause, unless the Secretary of State says, no, carry on while we're doing this. The Secretary of State has to make a decision within 6 months. That is shorter than perhaps we would expect from the courts. Here, this set timescale for responding might lead to some conflict between the view of the Secretary of State and the view of the courts as to what's appropriate.

And I mention that because one of the key things for us in this has been that for the first time, the people requesting a Call-in can do so on the basis of process: the efficacy of a public consultation, how options have been developed, all of those things, have previously been in the purview of the courts and not IRP.

So, it will be interesting to see how they deal with that and I'm hopeful that that will lead to NHS England offering more guidance on how options should actually be developed so that there is something to judge those processes against.

Jonny, let's look at that notification duty.

Jonny Williams - It's really heartening to see it's another thing that The Department of Health and Social Care are promoting as being a locally agreed decision. So the

guidance suggests that it should be agreed with local authority health scrutiny committees that this is a substantial variation, which is what we do already.

But then kind of aligning that to regulation 23, you know, the formal consultation with the local authority as being the point of notification, I think is really good for local stakeholder relationships because there's a kind of joint ownership of that notification.

Of course, legally speaking, the NHS commissioning body is going to be the person that has to make the notification.

But having it at that stage, is a really positive sign of the department's desire to keep this as local decision making in spite of the fact that potentially there might be interventions from outside of local contexts. What, I guess, the question is for me about the notification, is, how systems are going to manage that in more risk averse settings. So we know, from our experience, that major service changes can be contentious. They're really long. They take a lot of involvement. It means talking to a lot of people and sometimes it's quite difficult to make decisions public and a notification is public. So how systems are going to feel about making that notification at that point will be really interesting to see.

Caroline Latta - I think it's really great news that there'll need to be a conversation about whether something is substantial or not. What will happen if commissioners and scrutiny committees have disagreements about whether proposals constitute a substantial variation?

Paul Parsons - I can't see any way that it's going to work other than as the IRP said, on various occasions, that the view of the local authority takes precedence in this. That's practicality. The regulations as they're written say, it's for the NHS to decide when it notifies. So there's an argument in there that it's the NHS's decision and nothing to do with the local authority. But this is all about relationships and having that really good relationship locally, which means you can discuss those things and discuss them for months and even years out. As we're talking about scrutiny committees, a key feature of these changes is that those committees will no longer be able to refer service change to the Secretary of State. They go into the same request, a Call-in process, that any other interested party would go to. It would be quite a

strong request, I imagine, but Caroline, what were your thoughts about how this is going to affect the scrutiny committees and the operation of them locally?

Caroline Latta - Well, I'm really fascinated to observe some of the early ones that will go through after this starts in February and how local authority scrutiny committees are reacting. Does it feel like the Call-in has teeth? I think that'll be a key question, but I can't help wondering that local authority scrutiny committees will feel like a sense of loss here. I think we'll have to just wait and see how local scrutiny committees react and it may depend on a range of matters, what the local political landscape is like and what's the issue that's being consulted on, how contentious, or not, that might be.

Jonny Williams - I agree, Caroline. One of the things I find really interesting about these new regulations and the impact it has on the now, or soon to be defunct referral power, is the fact that we don't yet know how seriously the Secretary of State will take requests for a Call-in from local authorities.

So previously, a referral was a referral. It wasn't the choice of the Secretary of State to just deny the referral. It might well have been that the IRP, you know, did an original assessment of the referral and found very little ground to validate it, but that still had to be done. It was still a legal responsibility. Whereas now, there's quite a lot of grey space, even in the detail of these new regs that have come out, around what the Secretary of State can and can't do with those requests. It's going to be really interesting when they start to come in to see, kind of, what the measure is, for the department and for the IRP to validate those requests to Call-in.

It's been really heartening to speak to Commissioners and providers about how much they value that relationship between Commissioners and local authority scrutiny committees and how important it is to them when they're making decisions about long term reconfigurations.

I really hope that that emphasis on the positive working relationship stays in spite of the fact that health overview scrutiny committees will no longer have that referral power. I think that's going to be really, really fundamental to navigating this new world of service change processes.

One of the things we do know from these new regulations is that temporary changes aren't going to be notifiable and that was something we weren't quite sure about when we were hearing about the development of these regulations. And I guess, in a sense, for some systems, that's probably going to be a massive relief, because sometimes that's how we navigate really short term, crisis driven incidents in healthcare, so not having that additional requirement might be quite helpful.

Paul Parsons - Some systems out there have temporary changes in place, which stretch the dictionary definition of temporary to anything other than something which is officially permanent.

It's going to be interesting to see how the Secretary of State reacts to requests for calling those long standing temporary changes in.

There are loads of questions here. We are going to be watching this really closely over the next few weeks and months and seeing how it develops.

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