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Department of
**Health, Social Services
and Public Safety**
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From the Permanent Secretary
and HSC Chief Executive

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To: Chief Executives of Arm's Length Bodies

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Dear Colleague

CHANGE OR WITHDRAWAL OF SERVICES – Guidance on Roles and Responsibilities

Circular HSS (OP1) 1/93 set out guidance for health and personal social services bodies on when the Department and Minister of Health and Social Services should become involved in decisions relating to substantive changes or withdrawal of services. This is particularly important where such changes are likely to prove controversial or have ramifications beyond a local area.

Many statutory changes have taken place since the original circular was issued, both in terms of the remit of the Department of Health, Social Services and Public Safety and the organisational structures in Health and Social Care and Public Safety organisational structures in Health and social Care and Public Safety. The attached revised guidance reflects those changes and establishes a wider set of principles that should be applied by all Arms Length Bodies (ALBs) sponsored by the Department. It is recognised, however, that it will apply, in the main, to those bodies directly involved in the planning and delivery of health and social care services.

The practical advice contained in this guidance reflects but does not supplant the proper operational arrangements set out in the Framework Document and individual Management Statements for ALBs. Similarly, it does not detract, in any way, from the statutory responsibilities of individual ALBs in terms of personal and public involvement or equality. The guidance makes appropriate references to the law and other relevant guidance.

The major programme of strategic service change faced by Health, Social Services and Public Safety over the coming months and years means there is likely to be increased public scrutiny of decision making processes. The application of this guidance will provide important assurance to the Minister that he is involved, as appropriate, in a properly constituted decision making process.

Yours sincerely

Andrew McCormick

ANDREW McCORMICK

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Introduction

1. The purpose of this circular is to update the guidance on change or withdrawal of services to reflect the new structural and governance arrangements that came into effect on 1 April 2009. Since the original guidance was issued in 1993, the advice on consultation has been superseded by the statutory duties imposed on Health and Social Care (HSC) bodies by section 75 of the Northern Ireland Act 1998 and sections 19 and 20 of the Health and Social Care (Reform) Act (Northern Ireland) 2009. Nothing in this circular affects those statutory duties or the associated guidance on compliance. Circular HSS (OP1) 1/93 is cancelled.
2. Against a backdrop of organisational and service change it is essential to maintain a clear line of accountability through the DHSSPS Minister to the Assembly for changes to the type or scale of services delivered and any associated closure or change of use of facilities. The respective roles and responsibilities of all organisations within the HSC system are set out in the HSC Framework Document and in Individual Management Statements. However, the Principal Accounting Officer and the Minister are ultimately responsible to the Assembly for the efficient and effective deployment of public money in health, social services and public safety. This means there are likely to be occasions when decisions about services, properly arrived at by the relevant Arms Length Body (ALB), will need the final approval of the Department/Minister because they are major or controversial in nature.

Role of Department

3. Under the Health and Social Care (Reform) Act (NI) 2009, the Department has an overall duty to promote an integrated system of health and social care designed to improve the health and social well-being of the people in Northern Ireland. In exercise of the powers conferred on it by section 8 (3) of the Reform Act, the Department sets out the Minister's instructions to commissioners in an annual commissioning plan direction. The commissioning plan direction sets the framework within which the Health and Social Care Board (including its Local Commissioning Groups), working in conjunction with the PHA, must commission health and social care.

Role of the Health and Social Care Board and the Public Health Agency

4. As the lead commissioner, the Health and Social Care Board, working with the Public Health Agency, has the primary responsibility for assessing the needs of the population at local and regional level and for setting the strategic direction for service provision in response to those needs.
5. Local Commissioning Groups are committees of the Health and Social Care Board, whose membership includes a range of local practitioners, political representatives and voluntary sector representatives. One of their principal roles is to engage with patients, clients, carers and local representatives about the appropriate service response to assessed needs and to explain, where necessary, the rationale behind the need for change so that people affected may have a genuine opportunity to influence the planning, delivery and evaluation of health and social care services.

Role of Health and Social Care Trusts

6. Health and Social Care Trusts, including the Northern Ireland Ambulance Service, are required to provide services in response to the commissioning plan and must meet the standards and targets set by the Minister. Service and Budget Agreements provide the administrative vehicle for demonstrating that these obligations will be met. SBAs are established between the HSCB and Trusts setting out the services to be provided and linking volumes and outcomes to cost. Health and Social Care Trusts are responsible for managing their facilities and ownership of their physical assets is vested in them.

Personal and Public Involvement

7. Patients, clients, carers and communities should be at the centre of decision making in health and social care. This means that they must be meaningfully involved in the planning, delivery and evaluation of their services. HSC bodies are accountable to people and communities for the quality, accessibility and responsiveness of the services they plan and provide. Sections 19 and 20 of the Reform Act place a statutory requirement on specified¹ organisations to involve and consult the public about proposals and decisions in the planning, commissioning and delivery of health and social care services. The organisations affected, including the Department, are required to set out in a consultation scheme how patients, clients and carers will be involved in the planning of their care. Detailed guidance on public involvement in health and social care, including the development of consultation schemes, is set out in Circulars HSC (SQSD) 29/07, 1/12 and 3/12.
8. Similarly, section 75 of the Northern Ireland Act places a range of statutory duties on public authorities, including the requirement to produce an equality scheme. Detailed guidance on compliance with section 75 is set out in the Equality Commission's Guide for Public Authorities.
9. In accordance with the relevant guidance described above and their equality and consultation schemes, HSC bodies aim to provide a minimum consultation period of twelve weeks to allow adequate time for groups to consult among themselves as part of the process of forming a view. However, in the following exceptional situations, this timescale may not be feasible:
 - Changes (either permanent or temporary) which must be implemented immediately to protect public health and/or safety;
 - Changes (either permanent or temporary) which must be implemented urgently to comply with a court judgement, or legislative obligations.
10. In such instances, a decision may need to be taken to shorten timescales for consultation to eight weeks or less. HSC bodies should seek to outline the reasons for a shorter timescale in the consultation document, or in correspondence relating to the changes, as appropriate. However, having considered the need to consult, the organisation may decide that it is imperative, in the interests of patient safety for example, to implement the change immediately.

¹ Section 17(8) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 specifies the Department, the HSCB, the PHA, HSC Trusts and Special Agencies as the organisation to which the statutory requirement in Section 19 applies.

Involvement of the Department in operational decisions

11. Individual proposals about change or withdrawal of services from the HSCB/PHA, HSC Trusts or other ALBs will not normally require departmental approval unless they are judged by the Department to be major and/or controversial. Since it would not be practicable to develop definitive criteria for these terms, the Department should be notified before consultation begins on proposals for closure or change that are likely to be regarded by the local community as major and/or controversial. In cases where this only becomes apparent during the consultation process, the Department should be notified at that point. When proposals may have an impact on the wider system, the ALB concerned should also provide the Department with details of its engagement with the other affected organisation(s). The Department will indicate, at that point, whether the proposals are likely to require its approval following the consultation process.
12. All referrals to the Department from HSC Trusts on these issues must be made through the HSCB/PHA, who, as the lead commissioners, will have a key role to play in determining what is major and/or controversial. Referrals from other HSC bodies may be made directly to the Department in accordance with established accountability arrangements.
13. In considering whether to approve a proposal to change or withdraw a service, the Department will take account of the following factors:
 - the extent to which the proposal is consistent with the Minister's priorities as set out in the commissioning plan direction;
 - the impact of the proposal on the quality, sustainability and accessibility of services, and assurance in relation to adherence to established standards of service;
 - the views of public and local community representatives.

These factors must, therefore, be at the heart of any decision to refer to the Department for approval in the first place. However, ALBs are expected to exercise judgement about what is major and/or controversial. As was the case under the previous structures, it is not the Department's aim to take upon itself final approval for all operational decisions about service provision.

Temporary changes

14. The Department must be informed in advance of major temporary withdrawals or changes to service provision under the terms of paragraph 9, particularly where these are likely to prove controversial. Temporary changes must not be used either to avoid the requirement for proper consultation or the necessary impact assessments. HSC Trusts must secure commissioner support for any proposed closures or change of use, whether temporary or permanent.
15. Where changes are temporary in nature and may be considered as part of the day to day management of services and non-contentious, the requirements for consultation and referral to the Department do not apply.

16. Any enquiries about this guidance should be addressed in the first instance to the relevant departmental sponsor director for the body involved and copied to Ray Martin, Strategic Management Directorate, DHSSPS, tel: 028 90523398, e-mail: ray.martin@dhsspsni.gov.uk.