

## Can They Do That?

Whenever people hear that there might be changes going to be made to health or care services, we get asked “Can they do that?”

In fact, both the NHS and local councils do have legal duties to involve local people in plans for changes to services. We’ve put together this note to outline what those duties are in relation to NHS services.

These are just the headlines – followed by a list of places online where you can find out more detail. The detail of the law is complicated and this note shouldn’t be taken in any way as definitive guidance.



The spirit of the law is clear. Significant changes to services mustn’t happen without people being involved. And that involvement should be from the beginning - meaning people are involved in developing the proposals for change, not only in commenting on proposals that have already been drawn up.

## Legal Duties - The Short Version

1. NHS organisations have a legal duty to involve the public in developing and considering proposals for changes to services.
2. CCGs (Clinical Commissioning Groups) are required to set out in the written Constitution of their organisation what arrangements they've made to meet that legal duty, and a statement of the principles they'll follow in doing that.
3. There can be exemptions from that duty in certain circumstances, for instance where a decision needs to be made without consultation because of a risk to the safety or welfare of patients or staff.
4. NHS organisations are also subject to the "public sector equality duty", which prohibits unlawful discrimination in providing services. To effectively meet that duty, they need to be able to show how they've consulted and engaged with people with what the Equality Act calls "protected characteristics" (see below).
5. Local councils have a role in reviewing and scrutinising how health services in their area are planned and provided. That role is carried out by a council committee called an "Overview and Scrutiny Committee".
6. The NHS must consult the local council(s) whenever they are considering making any "substantial development or variation" to health services in the area
7. Organisations which fail to meet their legal duty to involve could be open to challenge by way of something called a "Judicial Review", which could prevent them making changes until they have met their legal duty.



## Legal Duties - The Short Version

Health and Social Care Act 2012. Section 14Z2. Public involvement and consultation by Clinical Commissioning Groups:

<http://www.legislation.gov.uk/ukpga/2012/7/part/1/crossheading/further-provision-about-clinical-commissioning-groups/enacted>

National Health Service Act 2006: Section 242 – Public Involvement and Consultation:

<http://www.legislation.gov.uk/ukpga/2006/41/section/242>

National Health Service Act 2006: Part 12, Chapter 3. Local Authority (Public Health, Health and

Wellbeing Boards and Health Scrutiny) Regulations 2013: Part 4.

<http://www.legislation.gov.uk/uksi/2013/218/part/4/made>

Equality Act 2010: section 149

<http://www.legislation.gov.uk/ukpga/2010/15/section/149>

## NHS Guidance for NHS organisations

NHS England Statement of Arrangements and Guidance on Patient and Public Participation in

Commissioning:

<https://www.england.nhs.uk/wp-content/uploads/2015/11/ppp-policy-statement.pdf>

Planning, assuring and delivering service change for patients:

<https://www.england.nhs.uk/wp-content/uploads/2015/10/plan-ass-deliv-serv-chge.pdf>