

### Referrals to Secretary of State

1. The relevant extract from the Guidance states that a health scrutiny body may report to the Secretary of State in writing if:

- It is not satisfied with the adequacy of content of the consultation [*nb. the reference to inadequate consultation refers to consultation with the local authority, not the public and other stakeholders*]
- It is not satisfied that sufficient time has been allowed for consultation.
- It considers that the proposal would not be in the interests of the health service in its area.
- It has not been consulted, and it is not satisfied that the reasons given for not carrying out consultation are adequate.

However, there are certain limits on the circumstances in which a health scrutiny bodies may refer a proposal to the Secretary of State.

In particular, where a health scrutiny body has made a recommendation and the relevant NHS body or health service provider has disagreed with the recommendation, the health scrutiny body may not refer a proposal unless:

- it is satisfied that reasonably practicable steps have been taken to try to reach agreement (with steps taken to involve the provider where NHS England or a CCG is acting on the provider's behalf) but agreement has not been reached within a reasonable time; or
- it is satisfied that the relevant NHS body or health service provider has failed to take reasonably practicable steps to try to reach agreement within a reasonable period.'

2. It should be noted that, under the new Regulations, any referral must now contain clear evidence based reasons, as follows:

- An explanation of the proposal to which the report relates.
- An explanation of the reasons for making the referral.
- Evidence in support of these reasons.
- Where the proposal is referred because of inadequate consultation, the reasons why the health scrutiny body is not satisfied of its adequacy.
- Where the proposal is referred because there was no consultation for reasons relating to safety or welfare of patients or staff, reasons why the health scrutiny body is not satisfied that the reasons given for lack of consultation are adequate.
- Where the health scrutiny body believes that proposals are not in the interests of the health service in its area, a summary of the evidence considered, including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area.
- An explanation of any steps that the health scrutiny body has taken to try to reach agreement with the relevant NHS body or health service provider.
- Evidence that the health scrutiny body has complied with the requirements which apply where a recommendation has been made.
- Evidence that the health scrutiny body has complied with the requirements which apply where a recommendation has not been made, or where no comments have been provided on the proposal.'

3. Any referral that meets the requirements of the Guidance, may then be passed to the Independent Reconfiguration Panel (IRP) in order for the Panel to provide advice to

## **Appendix 4**

the Secretary of State. The IRP would consider whether proposals provide safe, sustainable, and accessible services for the local population.