

Legislation on NHS Consultation and Patient Involvement

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Legislation on Patient Involvement



- NHS Act 2006, s.242
- NHS Act 2006, s.14Z2

Section 242 – Bodies Subject



- Applies to NHS trusts and NHS foundation trusts
- No duty upon SSH: *R (Fudge) v South West SHA* [2007] EWCA Civ 803

Section 242 – who are ‘users’?

- ‘Users’ of services are most obviously patients
- *R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts* [2012] EWCA Civ 472 – ‘users’ of paediatric cardiac services include the parents of child patients

Section 242 – Application of the Duty



- s.242(1C): arrangements for involvement in development and consideration of proposals for changes in the way services are provided
- Applies only where proposal to have impact upon:
 - Manner of delivery of services to users
 - Range of health services available to users
- Would not apply to purely internal administrative changes if no impact upon users

Section 242 – Application of the Duty (2)



- s.242(1B) applies to decisions to be made by an NHS trust/foundation trust affecting the operation of services
- Applies only where proposal to have impact upon:
 - Manner of delivery of services to users
 - Range of health services available to users
- Again, would not apply to entirely ‘back of house’ changes

Section 242 – Content of Duty (1)



- Duty to make arrangements for involvement of users in:
 - Planning of provision of services
 - Development and consideration of proposals for change in the way services are provided
 - Decisions affecting operation of services

Section 242 – Content of Duty (2)



- Not necessarily consultation: *Fudge*, paragraph 51 (on s.11 Health and Social Care Act 2001)
- Requires *user involvement*
- No obligation arises in relation to non-viable proposals: *R (Enfield BC) v SSH* [2009] EWHC 743 (Admin)

Section 242 – use of representatives



- Allows engagement of users through focus groups or a patient representative group
- Different to s.14Z2 (see below)

Section 14Z2



- Many similarities with s.242

Section 14Z2 – Bodies Subject



- Section 14Z2 applies to clinical commissioning groups

Section 14Z2 – Content of Duty (1)



- Duty to make arrangements to those to whom services are provided or may be provided:
 - In planning of commissioning arrangements
 - In development and consideration of proposals for change in commissioning arrangements
 - In decisions regarding the operation of commissioning arrangements

Section 14Z2 – Content of Duty (2)



- Not so far as a duty to consult:
 - Consultation
 - provision of information
 - “other ways” of involvement

Section 14Z2 – Representative bodies



- Unlike s.242, no reference to “whether directly or through representatives”
- Cannot comply with s.14Z2 by involvement of representative bodies
- Involvement has to be direct

Section 14Z2 - Guidance



- Statutory duty to have regard to guidance from NHS Commissioning Board
- Current version entitled '*Transforming Participation in Health and Care: the NHS Belongs to us all*'

The CCG's Constitution

- s.14Z2(3) imposes requirements on a CCG's constitution:
 - Description of arrangements made under s.14Z2(2)
 - Statement of principles to be followed in implementing arrangements

Annual Commissioning Plan



- s.14Z11 provides that the Annual Commissioning Plan must explain the arrangements made under s.14Z2

Part 2, Chapter 5A

- Different consultation requirements where SSH makes direction under Part 2, Chapter 5A of the 2006 Act
- Consultation more limited in these circumstances
- See *R (Lewisham Borough Council) v Secretary of State for Health* [2013] EWCA 1409, paragraph 16

What are 'Arrangements'

- Currently no case law on the meaning of 'arrangements' in ss.242 and 14Z2
- Suggest involves:
 - Generic planning
 - Sufficient specificity rather than expressions of intent
 - *ad hoc* approach not sufficient

Importance of Patient Involvement

- Significance of patient involvement: NHS Commissioning Board's Guidance
- Statements in parliamentary debates on the Health and Social Care Bill 2012