Dear CCG Chief Accountable Officer

LEGISLATIVE REFORM ORDER (LRO) – CONSULTATION

We are writing to draw your attention to the consultation that the Department of Health is launching on proposals to use a LRO to amend the National Health Service Act 2006, as amended by the Health and Social Care Act 2012. A LRO is a statutory instrument which can amend primary legislation made under the powers of the Legislative and Regulatory Reform Act 2006 (LRRA), which can amend primary legislation independently of a Parliamentary Bill.

The proposed LRO will enable (a) two or more Clinical Commissioning Groups (CCGs) to form joint committees when jointly exercising their functions or (b) for one or more CCGs and NHS England to jointly exercise the functions of a CCG and to form a joint committee when doing so.

The consultation is targeted at all 211 CCGs in England, NHS England, NHS Clinical Commissioners and the Local Government Association. We would also welcome comments from other interested parties. The consultation will run for eight weeks, and will close on Thursday 7 January 2014. The intention is for the LRO to commence in October 2014, so that CCGs are able to form joint committees (as set out in proposals a and b) in time to fit with the NHS planning round for 2015-16.

The purpose of making a LRO is to reduce the administrative burdens resulting from the current legislation. For example, without express provision in legislation to allow two or more CCGs to exercise functions by way of a joint committee many CCGs face practical challenges in working together on issues that cut across boundaries, such as continuing healthcare and patient specific funding requests, due to an inability to fully share resource.

We are aware that, as an interim measure, some CCGs are forming “committees in common”, but we understand that this process can be overly bureaucratic and time consuming.

Similarly, the current legislation does not allow for a CCG (or CCGs) and NHS England to carry out a CCG’s function jointly. In practice, this means that it is difficult to design services that cut across both CCG and NHS commissioned service because it not possible to form a binding joint decision making body.

The Department is therefore proposing to make a LRO under section 1 of the LRRA to remove the administrative burdens caused by the omission of proposals (a) and (b). The Department expects that the proposals will proceed under an Affirmative Resolution Procedure because the proposed amendments are policy changes rather than technical
ones to legislation. Under this resolution procedure Parliament has 40 days to scrutinise the draft LRO during which Parliamentary scrutiny committees may recommend that the LRO is not made. After 40 days and provided there is no such recommendation the LRO is made if approved by a resolution of each House of Parliament. Further details about the LROs and the parliamentary scrutiny procedures can be found at:


In taking forward the LRO, the Department’s role will be an advisory one and ultimately it will be for Parliament to approve the LRO.

In your capacity as a commissioner of NHS services, we are asking that you please respond to the consultation. The consultation questions seek to ensure that the proposals meet the preconditions that a LRO requires, as set out in section 3 of the LRRA 2006. These are:

- There are no non-legislative means that will achieve the intended outcome of the provision;
- The effect of the provision is proportionate to the policy objective;
- The provision strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- The provision does not remove any necessary protection;
- The provision does not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- The provision is not constitutionally significant; and
- Where a provision will restate an enactment, it makes the law more accessible or more easily understood.

The Parliamentary Committees will be scrutinising the draft LRO to ensure that it meets the preconditions of the LRRA 2006. The consultation responses form a key part of the evidence for the Committees decision on a draft LRO, and it would therefore be helpful to include evidence that you are aware of that support these proposals.

We would also like to draw to your attention to the fact that consultation responses will be disclosed to the scrutiny Committees. The consultation response form explains this in full, and sets out the criteria for the non-disclosure of responses.

A copy of the consultation document is attached setting out the detail of our proposals. Please send consultation responses to the mailbox: CCGjointcommittees@dh.gsi.gov.uk

If you have any queries about the LRO, please contact Abigail Merrett (020 7210 4918) or Rachel Morton (020 7210 5537).

Yours sincerely,

Commissioning Policy Team
Department of Health