Purpose of Report

1. The purpose of this report is to provide Cabinet with an update on NHS Reforms: ‘The Health and Social Care Bill’, which was introduced to Parliament on 19th January 2011 and the Public Health White Paper ‘Healthy Lives Healthy People: Our strategy for public health in England’ which was published on the 30th November 2010 by HM Government.

The report includes an update of developments in County Durham in response to proposed NHS reforms and a timetable of key milestones (Appendix 2).

Background

2. The White Paper ‘Equity and excellence: Liberating the NHS’ was published on 12th July 2010 and outlines Government plans for a new direction for the NHS. A presentation and report on this paper were provided to AWH Overview and Scrutiny on 9th September 2010 and a report was presented to Cabinet on 15th September 2010.

‘Liberating the NHS: Legislative framework and next steps’, published on 15th December 2010 sets out the Government’s ‘thinking’ on the White Paper proposals following consultation. It also details how the Government plans to put the reforms into practice, starting with the introduction of the Health and Social Care Bill.

The Health and Social Care Bill

3. The main aims of the Bill are:-
   • to change how NHS care is commissioned through the greater involvement of GPs and a new Commissioning Board;
   • to improve accountability and patient voice;
• to give NHS providers new freedoms to improve quality of care;
• to establish an economic regulator to promote efficiency.

In addition, the Bill will underpin the creation of Public Health England which will strengthen the national response on emergency preparedness and health protection, and take forward measures to reform health public bodies.

The Government has established a commission on funding of long-term care and support which is due to report in July 2011. A White Paper on Social Care Reform, which contains the outcomes from the commission and legislative reform, is anticipated to be published in December 2011.

3.1 Secretary of State
The Bill provides that the Secretary of State will continue to be under a duty to promote the health service designed to secure improvement in the physical and mental health of the people of England, and in the prevention, diagnosis and treatment of illness. The Secretary of State will be responsible, with Local Authorities, to protect and improve public health.

Direct responsibility therefore, for providing or securing the provision of health services will be conferred to the National Health Service Commissioning Board (NHSCB) and Commissioning Consortia (statutory bodies responsible for commissioning the majority of health services).

The Secretary of State will also have a duty to improve the quality of health care services provided to individuals and to reduce inequalities in access to health services and the outcomes achieved for individuals.

3.2 Commissioning
The Bill establishes a new non-departmental public body to be known as the National Health Service Commissioning Board (NHSCB), accountable to the Secretary of State. The NHSCB will have overarching duties to promote the health service (other than in relation to the public health functions falling within the remit of the Secretary of State or Local Authorities) and to exercise its functions with a view to securing the provision of services for the purposes of that service.

3.2.1 The Bill sets out the additional duties of the NHSCB, which include the requirement to have regard to the need to reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services. The NHSCB will also be required to promote patient involvement and encourage integrated working, particularly between GP Consortia and Local Authorities.

3.2.2 The NHSCB will be responsible for commissioning primary medical, dental, ophthalmic and community pharmaceutical services. The NHSCB will also be required to commission certain health services, those which can be more effectively commissioned at a national level for example, services for members of the armed forces or their families and for those persons who are detained in prison.
3.2.3 The NHSCB will hold commissioning consortia to account for the quality of services they commission, the outcomes they achieve for patients and for their financial performance. The NHSCB is required to conduct a performance assessment of each commissioning consortium each financial year and must publish a report on the summary of results from that assessment.

3.2.4 The Bill makes further provisions about the NHSCB including that the Secretary of State is required to publish ‘the mandate’ at the start of each financial year which will set out the objectives that the NHSCB should achieve during that year. The NHSCB resource allocation in respect of that year and how the NHSCB performance will be assessed during that year should also be included.

3.2.5 Additional provisions set out include the membership of the NHSCB which should consist of a chair appointed by the Secretary of State, and a number of executive and non-executive members. The financial arrangements of the NHSCB are also given in the Bill including an outline of how the Secretary of State would fund the NHSCB in its activities and restrict its annual use of resources.

3.3 Commissioning Consortia
The Bill allows for the establishment of Commissioning Consortia which will commission most NHS services, supported by and accountable to the NHSCB. All providers of primary medical services (for instance GP practices) must be members of a consortium and any applications for the establishment of Consortia should be made to the NHSCB. Commissioning Consortia are required to cover the whole of England and should not coincide of overlap geographically.

3.3.1 Commissioning Consortia will have the function of arranging for the provision of health services in England within their given geographical area. Further provisions about the establishment of Commissioning Consortia, duties and financial arrangements are also detailed within the Bill.

3.4 Local Authorities and Public Health
A Local Authority will be required to take steps to improve the health of the people in its area. Steps include the provision of information and advice and making services available, designed to promote healthy living and for the prevention, diagnosis or treatment of illness. Local Authorities are also expected to have regard to the Department of Health proposed Public Health Outcomes Framework when undertaking their public health functions.

3.4.1 Appointment of Directors of Public Health
Local Authorities, primarily County Councils, London Borough Councils and Unitary Authorities must, acting jointly with the Secretary of State appoint a Director of Public Health who will be an officer of the Local Authority. The intention is that the Director of Public Health role will become integral to the new duties for health improvement and health protection that the Bill proposes for Local Authorities.

3.5 Monitor
Monitor will continue to be the Independent Regulator of NHS Foundation Trusts.
The main duty of Monitor is to promote and protect the interests of people who use healthcare services by promoting competition, where appropriate and through regulation, where necessary. Monitor should also have regard in particular to the likely future demand for health care services.

3.5.1 The Health and Social Care Bill allows for the extension of Monitor’s duties to include adult social care. It is anticipated that the regulations relating to adult social care services will be limited to potential anti-competitive practice and/or provider failure.

3.5.2 The Bill confers that any person who provides a health care service for the purpose of the NHS must hold a licence, this does not include services provided for public health purposes. Applications for licences must be made to Monitor who will grant or refuse a licence. Monitor will also be given the power to revoke a licence if the licence holder has failed to comply with a condition of the licence. Monitor and the Care Quality Commission are expected to co-operate and share information and provide for a joint licensing process.

3.5.3 In order to promote competition and maximise productivity Monitor will be given powers to set prices for NHS Services, subject to the agreement of the NHSCB. Monitor must also publish a ‘national tariff’ which specifies certain health care services provided, the method used for determining prices, the price payable for the provision of each of those services and provides rules for determining the price payable for the provision of those services. Monitor must consult on proposals for a national tariff with Commissioning Consortia, each licence holder and any other appropriate person.

3.6 The Bill gives provisions for the abolition of NHS Trusts in England and the repeal of provisions on authorisation for NHS Foundation Trusts. It also provides powers to Monitor to authorise new Foundation Trusts, from 1st April 2014.

3.7 HealthWatch England and Local HealthWatch
The Bill establishes HealthWatch England as a committee of the Care Quality Commission. HealthWatch England will provide advice and guidance to Local Healthwatch organisations and to the Secretary of State, the NHSCB, Monitor and Local Authorities on the views of people who use health or social care services.

3.7.1 HealthWatch England must produce a report to the Care Quality Commission as soon as possible after the end of each financial year. The report should contain the views of people who use health and social care services, the views of Local HealthWatch and how it has exercised its functions during the year.

3.7.2 Local HealthWatch will be based in Local Authority areas and funded by Local Authorities. Local Involvement Networks (LINks) will cease to exist and Local HealthWatch will take over the functions of LINks, as well as gaining additional functions.

3.7.3 Local HealthWatch is expected to:
• Provide advice and information about access to local care services about choices that may be made with respect to those services
• Make recommendations to HealthWatch England to advise about special reviews or investigations to conduct
• Give HealthWatch England assistance to enable it to carry out its functions effectively, efficiently and economically.

3.7.4 Further details are provided in the Bill about Local HealthWatch, its organisational structure, membership and accounts.

3.8 Independent advocacy services
Each Local Authority is required to make arrangements for the provision of independent advocacy services for complaints relating to the provision of health services, transferring this duty from the Secretary of State. Local Authorities may commission either Local HealthWatch or other providers to deliver such services.

3.9 Scrutiny functions of Local Authorities
The Bill provides that health overview and scrutiny functions are assigned to Local Authorities. Local Authority’s powers are extended to enable scrutiny of NHS bodies, GP Consortia, relevant NHS providers, their members and employees. Local Authorities will no longer be required to have health overview and scrutiny committees, but will continue to have oversight and scrutiny power, which they may discharge how they see fit.

3.9.1 Provisions are also made in the Bill for the circumstances in which Local Authorities can refer matters to the Secretary of State, Monitor or the NHSCB.

3.10 Joint Strategic Needs Assessments (JSNA)
The Bill states that partner Commissioning Consortia will collaborate with the Local Authority in developing the JSNA. Partner Commissioning Consortium are any Consortium established for an area which coincides with or falls wholly or partly within the area of the Authority.
In preparing the JSNA the responsible Local Authority or a partner Commissioning Consortium may consult any person it thinks appropriate. The Bill also widens the scope of the JSNA to require it to cover both the current and future needs of the local population, and not only current needs. The JSNA may also address needs around wider determinants of health, though this would be a local decision.

3.11 Joint Health and Wellbeing Strategies
The Bill provides a duty that a responsible Local Authority and each of its partner Commissioning Consortia must prepare a Joint Health and Wellbeing Strategy for meeting the needs included in the JSNA. The Local Authority must publish this Strategy.
A statement from the Local Authority and each of its partner Commissioning Consortia may be included in the Strategy which gives their views on how arrangements for health-related services could be more closely integrated with health services and social care services in that area.
3.11.1 Local Authorities and Commissioning Consortia are expected to, when exercising functions, have regard to the most recent JSNA and joint Health and Wellbeing Strategy.

3.12 **Health and Wellbeing Boards**
All upper tier Local Authorities are required to establish a Health and Wellbeing Board for their areas.
The membership of the Health and Wellbeing Board is to consist of:
  o At least 1 Councillor of the Local Authority
  o The Director of Adult Social Services for the Local Authority
  o The Director of Children’s Services for the Local Authority
  o The Director of Public Health for the Local Authority
  o A representative of the Local Healthwatch Organisation for the area of the Local Authority
  o A representative of each relevant Commissioning Consortium
  o Other persons or representatives that the Local Authority thinks appropriate.

3.12.1 The NHSCB must appoint a representative to join the Health and Wellbeing Board for the purpose of participating in its preparation of the JSNA or the Joint Health and Wellbeing Strategy.

3.12.2 A Health and Wellbeing Board is given the duty to encourage integrated working between health and social care providers for the purpose of advancing the health and wellbeing of the people in its area. A Health and Wellbeing Board must, in particular, provide advice, assistance or other support as it thinks appropriate to encourage the use of section 75 of the National Health Service Act 2006 (Section 75 of the National Health Service Act 2006 enables health and Local Authority partners to work together more effectively by joining together to design and deliver services around the needs of users).

3.12.3 Health and Wellbeing Boards will also be responsible for developing, updating and publishing local Pharmaceutical Needs Assessments.

3.13 **Care Trusts**
The Bill makes it possible for NHS Foundation Trusts or Commissioning Consortia and Local Authorities to form Care Trusts if they decide locally that this is the best way to meet the needs of local populations.

3.14 **Strategic Health Authorities and Primary Care Trusts**
The Abolition of Strategic Health Authorities and Primary Care Trusts is noted in the Bill. The commissioning functions currently undertaken by Primary Care Trusts are intended to fall to other health bodies, such as the Commissioning Consortia, the NHSCB or Local Authorities.

3.15 **The Health and Social Care Information Centre**
The Bill provides that the Health and Social Care Information Centre must have regard to information standards published by or guidance from the Secretary of State or NHSCB. The Health and Social Care Information Centre must seek to
use its resources effectively, efficiently and economically and minimise the burdens it imposes on others through its collection of information.

3.15.1 The Secretary of State or the NHSCB may direct the Health and Social Care Information Centre to establish and operate a system for the collection, analysis and publication or other dissemination of information. This may also include a system for the collection of specified information.

3.15.2 Where requested a health or social care body must comply with a requirement to provide the Health and Social Care Information Centre with information. The Health and Social Care Information Centre is then expected to publish the majority of information that it collects and to maintain and publish a register considering a description of the information which is has collected.

3.15.3 Regulations make the provision on the Health and Social Care Information Centre in connection with the establishment, maintenance and publication of a database of quality indicators in relation to the provision of health services and adult social care in England.

3.16 Regulation of Health and Social Care Workers
The General Social Care Council will be abolished; instead the Health and Care Professions Council (formerly the Health Professions Council) will regulate social work and the provision, supervision or management of social workers in England. The education and training of approved mental health professionals in England will also pass to the Health and Care Professions Council. This transfer to the Health and Care Professions Council will take place no earlier than 2012.

Healthy Lives Healthy People: Strategy for public health in England

4. In addition to the provisions for public health within the Health and Social Care Bill noted above, the Public Health White Paper sets out the Government’s long-term vision for the future of public health in England. Key proposals are given below.

4.1 Ring – fencing of public health funds
There will be ring fenced funds for public health within the NHS Budget. Funds will be allocated by Public Health England to Local Authorities from April 2013; however there will be shadow allocations for each local area from April 2012.

4.2 Health premium
To incentivise action to reduce health inequalities, a new health premium, funded from the overall public health budget, will apply to the part of the local public health budget for health improvement. Local Authorities will receive an incentive payment, or premium, for these services that depends on the progress made in improving the health of the local population. This will be based on the elements of the proposed public health outcomes framework.

4.3 Development of a public health outcomes framework
The public health outcomes framework will sit alongside the proposed NHS outcomes framework and adult social care outcomes framework. It will set out a
high-level vision and outcomes, along with a number of possible indicators across the following domains:

- Health protection and resilience;
- Tackling the wider determinants of health;
- Health improvement;
- Prevention of ill-health;
- Health life expectancy and preventable mortality.

4.4 Consultation

The Department of Health are consulting on 5 key areas of the Public Health White Paper. These are:

- Role of GPs and GP Practices in public health
- Public Health evidence
  - Public Health Information and intelligence
  - Public Health England
  - Improving the use of Public Health Evidence
- Regulation of public health professionals

Consultations are also taking place on the proposed public health outcomes framework, and funding and commissioning arrangements for public health. The closing date for all three consultations is 31st March 2011.

AWH are co-ordinating responses to each of these consultations and AWH Overview and Scrutiny Committee will be asked to consider the consultation on Public Health.

Portfolio Holders for Adult Social Care and Healthier Communities will be asked to ‘sign off’ consultation responses prior to the submission to the Department of Health.

Developments in County Durham

5

Durham County Council has adopted a phased project approach to implementing the proposals contained in the NHS White Paper ‘Equity and excellence: Liberating the NHS’. A Project Board has been established, led by the Corporate Director Adults, Wellbeing and Health.

Regular policy briefings are provided to Portfolio Holders for Adult Social Care and Healthier Communities and to Overview and Scrutiny. It is also the intention to provide quarterly reports to Cabinet in June 2011, September 2011, December 2011 and March 2012 on the progress of DCC in response to the requirements in the Health and Social Care Bill and the Public Health White Paper.

In line with proposals set out in the NHS White Paper ‘Equity and Excellence: Liberating the NHS’ 7 GP clusters have been established in County Durham and Darlington, these are:

- Durham Dales
- Darlington
- Durham and Chester-le-Street
- Derwentside
- Easington
- Sedgefield
- Intrahealth (private company supplying general practitioner services).

Heads of Service from AWH and CYPS will now be representing Durham County Council on GP commissioning Board meetings.

The Corporate Director Adults, Wellbeing and Health is the Durham County Council representative on the NHS County Durham and Darlington GP led Commissioning Partnership Board.

The Head of Service Adult Care attends Transforming Community Services Service Transformation Workstream Group. This group is addressing the implication of changes in structure from an operational perspective in NHS County Durham and County Durham and Darlington Foundation Trust.

The Corporate Director Adults, Wellbeing and Health attends the North East Advisory Group for GP Commissioning.

The Director General for Social Care, Local Government and Care Partnerships David Behan has written to Leaders and Chief Executives of Local Authorities to invite Councils to join a network of early implementers for Health and Wellbeing Boards. The network will be a way for Councils to develop their approach with other local areas, to share experiences and to learn from each other before Health and Wellbeing Boards will are established in upper tier Local Authorities from 2013, running in shadow form from 2012. Local Authorities interested in becoming an early implementer were expected to write to the Department of Health by 1st March 2011.

Although there is no formal selection process Local Authorities were requested to have sign-up and commitment from the Leader and Chief Executive prior to their expression of interest to join the Health and Wellbeing Board Network of early implementers.

Additional expectations are that Local Authorities will take early implementer projects forward with emerging GP Consortia. These discussions have taken place at the February NHS County Durham and Darlington GP led Commissioning Partnership Board.

**Summary and Conclusions**

6. The Health and Social Care Bill takes forward Equity and Excellence: Liberating the NHS and the subsequent Government response Liberating the NHS: legislative framework and next steps which require primary legislation. It also includes provision to strengthen public health services.
The first reading of the Health and Social Care Bill was on 19th January 2011 and there was no debate on the Bill at this stage. The second reading of the Bill took place on 31st January. The Health and Social Care Bill passed this Second Reading in the House of Commons therefore it will be sent to a Public Bill Committee for scrutiny.

Recommendations and reasons

7 Cabinet are requested to:

(i) note the content of this report.

(ii) note that Durham County Council has submitted an expression of interest in becoming an early implementer for Health and Wellbeing Boards.

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Tel: 0191 383 3628

Background Papers

Liberating the NHS, Legislative framework and next steps.

Healthy lives healthy people; strategy for Public Health in England.

Health and Social Care Bill.

Letter from Director General for Social Care – Department of Health inviting expressions of interest become early implementers for health and wellbeing boards.
Appendix 1: Implications

**Finance** - There will be ring fenced funds for public health within the NHS Budget. Funds will be allocated by Public Health England to Local Authorities from April 2013; however there will be shadow allocations for each local area from April 2012.

To incentivise action to reduce health inequalities, a new health premium, funded from the overall public health budget, will apply to the part of the local public health budget for health improvement. Local Authorities will receive an incentive payment, or premium, for these services that depends on the progress made in improving the health of the local population. This will be based on the elements of the proposed public health outcomes framework.

Collaborative working will be required with emerging GP consortia to ensure that joint commissioning strategies and investment priorities are resourced.

**Staffing** – The additional duties for Local Authorities in relation to Public Health will have implications for staffing.

**Risk** – The NHS reforms presented in the Health and Social Care Bill are ambitious. The NHS White Paper Project Board has developed a schedule of risks which will be updated quarterly.

**Equality and Diversity** – Under provisions in the Health and Social Care Bill the Secretary of State, NHS Commissioning Board and Commissioning Consortia will have a duty to reduce health inequalities. The Department of Health published an initial equality impact assessment to accompany the NHS White Paper ‘Equity and excellence: Liberating the NHS’ in July 2010.

**Accommodation** – Proposals to transfer health improvement to Local Authorities may have implications for accommodation.

**Crime and Disorder** – No direct implications

**Human Rights** – No direct implications

**Consultation** – Completed consultations in respect of the NHS White Paper include:

- Transparency in Outcomes
- Regulating Healthcare Providers
- Commissioning for Patients
- Local Democratic Legitimacy in Health
- Information Revolution
- Greater Choice and Control

Consultation is underway on several aspects of the Public Health White Paper including:

- Funding and Commissioning Routes for Public Health
- Proposals for a Public Health Outcomes Framework
**Procurement** – Local Authorities are required to build new relationships with Commissioning Consortia when commissioning joint services.

**Disability Discrimination Act** – No direct implications

**Legal Implications** – The Health and Social Care Bill is at the start of its parliamentary journey and will enshrine, in legislation, proposals for NHS reform.
## Appendix 2 Key Milestones

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<td><strong>July 2010</strong></td>
<td>NHS White Paper 'Equity and Excellence: liberating the NHS published</td>
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| **Nov 2010** | White Paper on Public Health published  
Vision for Adult Social Care and Transparency of Outcomes consultation published.                                                               |
| **Dec 2010** | Liberating the NHS: Legislative framework and next steps published  
Initial GP consortia pathfinders identified  
Government response to Transparency in outcomes and the NHS Outcomes Framework published  
The Operating Framework for the NHS in England 2011/12 published |
| **During 2011** | Public Health England to be set up in shadow form within the Department of Health.  
Start to set up working arrangements with local authorities, including the matching of PCT directors of public health to local authorities |
| **Jan 2011** | Health and Social Care Bill introduced to Parliament  
Launch of Public Health Responsibility Deal |
| **April 2011** | Begin to establish GP consortia in shadow form  
Review of independent commission on the funding of care and support published |
| **July 2011** | White Paper on Social Care Reform Published |
| **Dec 2011** | Lesson sharing from GP Pathfinder Programme  
New arrangements for health and wellbeing boards to be tested via early implementer boards  
Shadow NHS Commissioning Board established as a special health authority |
| **During 2011/12** | Second NHS Outcomes Framework for 2012/13 published. |
| **Jan 2012** | Strategic Health Authorities abolished  
Formally establish GP consortia.  
NHS Commissioning Board Fully established  
GP consortia have shadow allocations  
HealthWatch launched nationally  
Public Health England in place  
Introduce enhanced role for Local Authorities to promote integration  
Monitor established as economic regulator  
Shadow allocations of public health ring-fenced budgets to local authorities to allow for planning before allocations are introduced in 2013/14 |
| **April 2013** | PCTs to be abolished from April 2013  
Health and Wellbeing boards to make preparations to carry out JSNAs and develop JHWS (to be undertaken by local authorities and GP consortia) from April 2013.  
Full responsibility for commissioning given to GP consortia  
Formal commissioning arrangements implemented between Public Health England, NHSCB, GP Consortia and local authorities  
Public Health England to provide ring-fenced public health allocations to local authorities  
Health and Well-Being Boards assume statutory responsibilities  
Local authorities will have a duty to improve the health of their populations from 1st April 2013.  
Local Authorities responsible for NHS complaints advocacy  
Local Public Health budgets allocated  
Personal budgets for ongoing social care granted  
Monitor's licensing regime is fully operational |
| **April 2014** | All NHS trusts to become Foundation Trusts |