Health and Social Care Bill 2011
RCS Second Reading Briefing

Introduction
This briefing document outlines the Royal College of Surgeons' response to the Health and Social Care Bill, published on 19th January 2011. It covers the items of legislation which are relevant to NHS surgical services and patients.

Commissioning of surgical services
The NHS Commissioning Board has responsibility "for the provision of services for the purposes of the health service in England" (Clause 5). In addition they are responsible for "securing continuous improvement in the outcomes that are achieved from the provision of the services" (Clause 13D). In particular these improvements are expected to come from "effectiveness of service", "safety of service" and "quality of the experience undergone by patients".

Given the overarching powers of the NHS Commissioning Board to oversee commissioning in the NHS, the RCS is surprised and concerned that there is no requirement for clinical representation on the Board. In view of the Secretary of State's repeated reassurances that the NHS will be clinician led, this is a fundamental flaw.

The RCS welcomes the role and powers of the Board and commissioning consortia in respect of emergencies (Clause 38). Again the RCS believes that the involvement of practising clinicians, particularly those in hospital-based care, is necessary and would strengthen the effectiveness of this section of the legislation. We remain concerned about the commissioning of regional services, such as trauma, children's surgery and acute emergency surgical services. We would like to see a defined regional role for the NHS Commissioning Board in order that regional based commissioning is not lost entirely, as it is the appropriate model for many services, with collaboration and coordination across a wide geographical area.

The RCS welcomes the duties of the NHS Commissioning Board to provide incentives for innovation and research in the NHS (Clause 13H and 13I) and believe that this will help to improve patient access to innovative surgical research and technology.

Engagement between commissioning consortia and surgeons
Procedures of Limited Clinical Value are surgical procedures that are deemed by commissioners to have limited or no benefit to patients despite evidence showing that these procedures enhance health and improve quality of life. Within the NHS many current Primary Care Trusts (PCTs) have policies on procedures of limited clinical value and accordingly reserve the right not to commission procedures. Regrettably our members report that certain surgical procedures are no longer being commissioned since they are being incorrectly deemed to be of 'limited clinical value' – e.g. hernia surgery, hip and knee operations. This is due to decisions being made without clinical engagement, denying treatment on the grounds of cost. As well as detriment to the quality of life of the patient, this approach will lead to long term damage to the health of the population, as well as building up a backlog that will have to dealt with at great cost at some time in the future.

As such, given the responsibilities of commissioning consortia (Clause 14A), we are concerned that there is no mention of engagement between these consortia and their

respective local hospital-based clinicians, including surgeons. Specifically there is no mention of a minimum level of engagement, which would act as a key safeguard for the standards of patient care.

The RCS welcomes the legislation acknowledging the need to reduce and eliminate health inequalities (Clause 13F and 14N). However we are concerned that the structure of commissioning consortia may lead to health inequalities being exacerbated, because of variation in clinical input. The legislation should seek to prevent this.

Monitor and competition in the NHS

The RCS is concerned that Monitor is not stated to be an independent body (Clause 51) unlike other truly independent non-Departmental public bodies such as the National Institute for Health and Care Excellence (NICE). We feel that genuine independence is essential to allow Monitor to function as a competent economic regulator.

We are also concerned by the lack of detail on competition (Clauses 60-62) and the promotion of competition (Clause 63). We believe that a defined standard of treatment and care should drive commissioning and not the lowest price. Without detailed information on how standards of care and outcome requirements are incorporated into the decision-making process for tendering services, the RCS is concerned that standards of patient care may be compromised.

These concerns are particularly relevant to procedures deemed to be of 'limited clinical value'. A non-surgical treatment option may be commissioned for the patient on the grounds of cost, despite the surgical option being of greater or equal clinical benefit, or being the choice of the patient. Short term apparent economies are likely to cost the public purse more in the long term.

National Institute for Health and Care Excellence (NICE)

The RCS welcomes the intention to continue NICE's role in assessing the benefits and costs of the provision of health services in England (Clause 217). However with regard to NICE's production of quality standards, it is clearly wrong that there is no clinical voice in the selection of topics for quality standards produced by NICE (Clause 218). In addition we would like to see the legalisation support surgeons being given time to work with NICE on the development of clinical standards and guidance.

The RCS is also concerned by the lack of a timescale for the implementation of NICE recommendations and guidance. We urge retention of the current three month deadline. Any further delay will deny patients the benefits of new treatments and health technologies (Clause 221).

HealthWatch England

The RCS welcomes the creation of HealthWatch England and of Local HealthWatch organisations (Clause 166), and awaits further detail on the membership of these bodies and their powers. We also welcome the introduction of legislation giving HealthWatch England the power to make recommendations to the Care Quality Commission on conducting special reviews or investigations (Clause 168).

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