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# Key COVID-19 legal developments in the health sector: Patient engagement, equalities and target duties

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## **Do NHS organisations still need to comply with duties around patient engagement, equalities, and for CCGs target duties under section 14P to 14Z1 of the NHS Act 2006?**

NHS organisations do still need to comply with duties around patient engagement, equalities, and - for CCGs - target duties under section 14P to 14Z1 of the NHS Act 2006. They can't be ignored, however urgent the circumstances. However the urgency and circumstances of the decision you are taking will determine what you need to do in order to meet those duties.

It remains important to record your consideration of the duties and the reasons for the approach you take - particular if the approach is to take a very light-touch approach, for reasons of extreme urgency.

If, for example, an acute hospital Trust needs to urgently reconfigure a ward to accommodate Covid-19 patients, and move the existing patients from that ward to somewhere else, then the Trust's duty to involve patients under s242 will be engaged. However that duty can be met, where circumstances permit, by informing the patients what is happening, rather than consulting with them. This is likely to be a situation in which informing the patients is sufficient.

Similarly, the urgent reconfiguration might be a substantial development that engages the duty to consult with a local authority overview and scrutiny committee under s244 and its accompanying regulations. However, the duty to consult does not apply to any proposals that have to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff. Again, that may well be the case here. In that case you must notify the authority immediately of the decision taken and the reason why no consultation has taken place.

Lastly, the duties to assess equality impacts and comply with target duties do not disappear. But the energy and time devoted to assessing the equality impacts of the proposal must be proportionate to the circumstances and time available. Note that implementation of the latest NICE guidance on critical care in Covid-19 pandemic, requires assessment and implementation of the guidance to still address the duty to have regard to elimination of discrimination in decision making. It is important to keep this under review as frequently as possible.

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