



Full Council
24 June 2013

**Report from Director of Legal and
Procurement**

For Action

Wards Affected: ALL

Changes to Health Scrutiny

1.0 Summary

- 1.1 The Health and Social Care Act 2012 and the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 which came into force on 1 April 2013 make some changes to the Council's health scrutiny role and the Council now has a choice about how those functions are carried out by the Council.

2.0 Recommendation

- 2.1 That members agree the recommendations in paragraphs 3.2 and 3.9 and that the Director of Legal and Procurement make the consequential changes to the Constitution.

3.0 Detail

- 3.1 Health Overview & Scrutiny Committees were set up by the Health and Social Care Act 2001 and those committees were given the power to scrutinise and review any matter relating to the planning, provision and operation of health services in their area, and make reports and recommendations to NHS bodies and local authorities.
- 3.2 The Health & Social Care Act 2012 and Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 ('the Regulations') now provide that the health scrutiny functions to review and scrutinise any matter relating to the planning, provision and operation of the health service in its areas are conferred directly on the local authority and not directly to the overview and scrutiny committee. This means that each local authority can decide how it discharges these health scrutiny functions including through Full Council, an Overview and Scrutiny Committee of the Council, or another committee or sub-committee of the Council. The local authority cannot discharge its health scrutiny function through the Health and

Wellbeing Board. Having regard to the nature of the functions it is recommended that these continue to be carried out by the Health Partnerships Overview and Scrutiny Committee.

- 3.3 The scope of health scrutiny and those who can be required to attend meetings has been extended to:
- The NHS Commissioning Board,
 - Clinical Commissioning Groups,
 - NHS trusts or foundations trusts
 - Other relevant health service providers providing NHS services in the area
 - Providers of NHS and Public Health Services
- 3.4 Special rules apply to the involvement of Local Health Watch in terms of referrals they may make for scrutiny and the committee taking into account information provided by it.
- 3.5 The powers relating to consultation, and the referral of proposals for substantial variation of the health service in the local authority's area to the Secretary of State, are given to the Local Authority. This power can be delegated by the Council to an overview and scrutiny committee but cannot be delegated to other committees.
- 3.6 The Regulations provide that an NHS body or relevant health service provider must consult the Council where it is considering any proposal for a substantial development of the health service in the Council's area. The Council may make comments on the proposals and where those comments include a recommendation that the NHS or health body disagrees with, the Council and that body must take such steps as are reasonably practicable to reach agreement.
- 3.7 The Regulations also provide that the Council may report a matter to the Secretary of State in certain circumstances, which includes where the Council is not satisfied with the consultation arrangements, or it considers that the proposal would not be in the interests of the health service in its area. However, such a report may not be made where the Council has engaged with the consultation unless the Council is satisfied that resolving differences has been attempted in accordance with the Regulations, but agreement has not been reached within a reasonable period of time. Other rules apply where the Council wishes to refer the matter to the Secretary of State, but the Council has not sought to make comments on the proposal.
- 3.8 As explained above, under the legislation it is the Council that must be consulted and is given the power to respond, and it is the Council that is given the power to refer matters to the Secretary of State. It is therefore for the Council to decide whether, and if so on what basis, these functions are delegate to an overview and scrutiny committee. The Health Partnerships Overview and Scrutiny Committee is likely to have detailed knowledge of the relevant matters and the time to give detailed attention to the consultation response. However, the implications of any proposals for substantial

development of the health service are such that consultation feedback, and decisions as to whether a matter should be referred to the Secretary of State, are likely to be such that the Council as a whole has a significant contribution to make.

- 3.9 It is therefore recommended that consultation responses to an NHS proposal for a substantial development of the health service in the Council's area be delegated to the Health Partnerships Overview and Scrutiny Committee, but that the Committee's comments and recommendations be referred to Full Council for final consideration. Likewise, where agreement has not been reached with the NHS body on any substantial change, or there are other reasons why the Council may wish to refer a matter to the Secretary of State, such steps should be reserved to Full Council. The Health Partnerships Overview and Scrutiny Committee may make recommendations to Full Council to refer, or not refer, a matter but the final decision will be a matter for Full Council.

4.0 Financial Implications

- 4.1 There are none arising directly from this report.

5.0 Legal Implications

- 5.1 These are contained in the body of this report

6.0 Diversity Implications

- 6.1 There are no diversity issues arising from this report.

Background Papers

The Brent Constitution

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