

Item 5: Overview of Health Scrutiny Regulations.

By: Peter Sass, Head of Democratic Services

To: Health Overview and Scrutiny Committee, 3 February 2012

Subject: Overview of Health Scrutiny Regulations

1. Summary

Box 1. Key Powers of HOSC:

Health Overview and Scrutiny Committees may:

- examine any matter relating to the health services within the local authority area;
- make reports and recommendations;
- request information and attendance at meetings from local NHS bodies;
- establish joint committees with other local authorities;
- delegate functions to other local authority committees;
- co-opt Borough/City/District Councillors onto the Committee;
- respond to formal referrals of issues from LINK; and
- refer matters relating to substantial variations of service to the Secretary of State on two grounds:
 - inadequate consultation; and/or
 - the Committee does not consider that the proposals are in the best interest of the local health service.

2. Background

- (a) The current legal framework for health scrutiny in England was established through the *Health and Social Care Act 2001*¹ which put in place proposals contained in the *NHS Plan* of 2000.

¹ *Health and Social Care Act 2001*,
<http://www.legislation.gov.uk/ukpga/2001/15/part/1/crossheading/local-authority-scrutiny-of-health-service-provision>

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- (b) Under the *Local Government Act 2000*², each upper-tier local authority is required to have a committee to carry out the health scrutiny function.
- (c) The term HOSC is used in this paper for convenience and to fit the current usage of Kent County Council. Committees have different names in different local authorities and operate in a variety of ways.
- (d) The Kent HOSC has considered a wide range of subjects relating to the health service in the County. This has included a number of substantial variations of service including trauma and orthopaedics services, women's and children's services at Maidstone and Tunbridge Wells NHS Trust and the current East Kent Maternity Services Review.
- (e) As well as the regular meetings of the Committee, the HOSC forms part of the South East Health Scrutiny Network consisting of the Chairman and lead Officers of the equivalent Committees from Kent, Medway, Surrey, Brighton and Hove, East Sussex and West Sussex. As well as meeting with the Strategic Health Authority and discussing issues that affect the whole region, the Network provides an opportunity to share best practice and work of improving and refining health scrutiny. The Chairman and Committee Researcher also attend the regular Health Accountability Forum hosted by the Centre for Public Scrutiny.

3. *The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (S.I. 2002/3048)*³: Key Features

- (a) The remit of HOSC is broad as it "may review and scrutinise any matter relating to the planning, provision and operation of health services in the area of its local authority."
- (b) In the context of the regulations, 'NHS bodies' refers to Primary Care Trusts, Strategic Health Authorities and NHS provider Trusts (including Foundation Trusts) which are part of the local health economy.
- (c) The HOSC may require information from NHS bodies, subject to certain exemptions. It may also require attendance by officers of local NHS bodies at its meetings, having given reasonable notice.
- (d) The HOSC is able to make reports and recommendations to local NHS bodies and to its local authority on any matter which it has reviewed and scrutinised. Where a response has been requested from a local NHS body, it must do so within 28 days.

² *Local Government Act 2000*, <http://www.legislation.gov.uk/ukpga/2000/22/section/21>

³ *The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (S.I. 2002/3048)*,
<http://www.legislation.gov.uk/uksi/2002/3048/contents/made>

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- (e) Local NHS bodies must consult the HOSC over any proposals “for a substantial development of the health service in the area of a local authority, or for a substantial variation in the provision of such services.”
- (f) There is an exception where there is a “risk to the safety or welfare of patients or staff,” in which case the local NHS body must inform the HOSC as to why no consultation took place. In addition, the requirement to consult does not apply to pilot schemes and proposals to establish or dissolve a Trust, except where this involves a substantial variation of service.
- (g) Where a HOSC feels that a consultation has been inadequate, that the reasons for not having a consultation were inadequate, or where they consider the proposals would “not be in the interests of the health service in the area of the committee’s local authority,” then the matter may be referred to the Secretary of State.
- (h) The regulations allow for the co-option of district councillors onto the HOSC and for the delegation of its authority to an overview and scrutiny committee of another local authority.
- (i) A joint Committee with another local authority may also be established which will exercise those HOSC functions the authorities deem appropriate. The subsequent *Directions to Local Authorities (Overview and Scrutiny Committees, Health Scrutiny Functions) 2003*⁴ from the Department of Health stated that when an NHS body consulted two or more local authority health scrutiny committees a joint committee “shall” be established. It is only this joint committee which may exercise the health scrutiny powers over the specific issue being consulted on, including that of referral.

4. Further developments

- (a) The *National Health Service Act 2006*⁵ replaced various relevant sections of the *Health and Social Care Act 2001*. It included enabling sections for further regulations and updated the parts on exempt information as well as providing further regulations about joint overview and scrutiny committees. Section 242 placed a duty on NHS bodies to involve local people in decision making. The definition of “the health service” was extended to cover “health-related functions of a local authority” (i.e. those arrangements pursued under section 75 of the Act⁶).

⁴ *Directions to Local Authorities (Overview and Scrutiny Committees, Health Scrutiny Functions) 2003*, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalassets/dh_4066609.pdf

⁵ *National Health Service Act 2006*, <http://www.legislation.gov.uk/ukpga/2006/41/section/244>

⁶ *Ibid.*, <http://www.legislation.gov.uk/ukpga/2006/41/section/75>

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- (b) The *Local Government and Public Involvement in Health Act 2007*⁷ established Local Involvement Networks (LINKs) and subsequent regulations updated the 2002 regulations around the HOSC needing to take into account information from a “Patients’ Forum.” The LINKs have the ability to refer matters to the relevant overview and scrutiny committee (on health or social care issues) and receive an acknowledgment within 20 days and be kept informed of any action taken by the Committee⁸.
- (c) There is also a requirement for certain provider Trusts to send a copy of their annual Quality Account to their local HOSC by 30 April each year. HOSCs have 30 days to provide a statement of no more than 1000 words for inclusion in the final published version. The guidance states this is a voluntary role for HOSCs, depending on resources, capacity and priorities⁹.

5. Joint Health Scrutiny Committee with Medway Council

- (a) Pursuant to the 2001 Act, a Joint Committee with Medway Council was established at the meeting of the County Council of 25 March 2004. The arrangements were updated at County Council on 14 September 2006¹⁰.
- (b) The Joint Committee consists of 12 Members: 8 from Kent County Council and 4 from Medway Council.

6. Health and Social Care Bill: Health Scrutiny in the Future

- (a) Subject to Parliamentary approval and subsequent guidance, the *Health and Social Care Bill*¹¹ contains changes to the health scrutiny legislation as follows:
 - i. From April 2013, the functions of the current Health Overview and Scrutiny Committee will be conferred on the local authority directly. The exercise of this function could be through a specific health scrutiny committee or through a different arrangement. The scrutiny function will not be able to be exercised by the Health and Wellbeing Board or the local authority executive.
 - ii. The powers of health scrutiny will expand to include any local NHS funded provider and any local NHS commissioner. As

⁷ *Local Government and Public Involvement in Health Act 2007*,
<http://www.legislation.gov.uk/ukpga/2007/28/section/226>

⁸ *The Local Involvement Network Regulations 2008 (S.I. 2008/528)*,
<http://www.legislation.gov.uk/uksi/2008/528/contents/made>

⁹ Department of Health, *Quality Accounts: a Guide for Overview and Scrutiny Committees*,
http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_125167.pdf

¹⁰ <http://democracy.kent.gov.uk/Data/County%20Council/20060914/Agenda/sep06-item7.pdf>

¹¹ *Health and Social Care Bill*, <http://services.parliament.uk/bills/2010-11/healthandsocialcare.html>

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things stand, the NHS Commissioning Board, being a Special Health Authority, will not be subject to local authority health scrutiny, but it is likely reports and recommendations will be able to be made to it.

- iii. The ability to challenge substantial service change will remain, though it is possible that the decision to refer will require a vote of the full Council. As is the case currently, the details around health scrutiny will be contained in official guidance and Statutory Instruments. There is likely to be a consultation specifically on health scrutiny regulations at a later date.

7. Recommendation

That the Committee note the report.