

From: Ben Watts, Director of Governance, Law and Democracy

To: County Council, 28 March 2024

Subject: **Revisions to the Terms of Reference of the Health Overview and Scrutiny Committee (HOSC)**

Previous Pathway: Health Overview and Scrutiny Committee, 29 February 2024;  
Selection and Member Services Committee, 14 March 2024

Status: Unrestricted

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## 1. Introduction

- a) Using powers introduced by the Health and Care Act 2022, two sets of regulations were introduced by the government on 9 January 2024<sup>1</sup>. The cumulative impact is to:
1. Remove the power from local authority health scrutiny to refer substantial variations of service being proposed by the NHS to the Secretary of State.
  2. Introduce new powers of ministerial intervention in proposed variations of service by local NHS organisations.
- b) These changes came into effect on 31 January 2024. The terms of reference of the Health Overview and Scrutiny Committee (HOSC) needs to be amended to take these changes into account.
- c) In addition, the government set out five principles for health overview and scrutiny committees in July 2022<sup>2</sup>. This provides an opportunity to incorporate these into the terms of reference (the new section 17.138). At its meeting of 29 February 2024, the HOSC agreed to amend the proposed Terms of Reference with three additional principles. These are set out at 17.138f-h – Transparency, Accountability, Delivery. This was the only amendment made by the HOSC and has been incorporated to the proposed changes as set out in the Appendix.
- d) The proposed wording in 17.134 was revised at the meeting of the Selection and Member Services Committee to make it clear the membership rules applied to ordinary and substitute Members on HOSC. The Committee also agreed to recommend to County Council that the terms of reference be agreed and the Constitution updated accordingly.

## 2. Proposed Changes

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<sup>1</sup> The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provision) Regulations 2024 and The National Health Service (Notifiable Reconfigurations and Transitional Provision) Regulations 2024.

<sup>2</sup> <https://www.gov.uk/government/publications/health-overview-and-scrutiny-committee-principles/health-overview-and-scrutiny-committee-principles>

- a) While the power of referral has been removed, the duty on NHS organisations to consult with HOSC on substantial variations to services impacting the population of Kent remains. The powers to obtain information and have NHS officers attend meetings of HOSC remain to support the Committee in its work scrutinising the planning, provision, and operation of health services. HOSC will also continue to have a mechanism to receive referrals from Healthwatch.
- b) It continues being the case that there is a requirement to form a Joint Health Overview and Scrutiny Committee (JHOSC) where more than one local authority has deemed a proposal a substantial variation of service. However, there is a need to amend the current generic rules on JHOSCs in the constitution to take account of the other changes (the revised sections are 17.159-161 as shown in the Appendix).
- c) There is also a terms of reference in place for the occasions when a JHOSC needs to be formed with Medway Council. This will be reviewed in consultation with Medway Council and proposed changes, if necessary, will be presented at a future date.
- d) Along with the changes brought by legislation, the opportunity has been taken to update a few sections of the terms of reference for clarity. The proposed changes are set out in the Appendix.

### **3. The Call-in Power**

- a) The Health and Care Act 2022 introduced a new call-in power which allows the Secretary of State to intervene in local NHS service reconfigurations at any stage. Statutory guidance has been released which covers the use of these intervention powers<sup>3</sup>. This guidance sets out the rationale for the change to the legislation.
- b) In sum, NHS organisations are required to notify the Secretary of State when they are proposing a significant change to services. It is expected that only a small number of proposals will be subject to a ministerial call-in and possible intervention. Making a notification to the Secretary of State is the sole responsibility of the relevant NHS organisation (usually the NHS commissioner); however, the HOSC's views on whether a proposal has been judged a substantial variation of service will be taken into account by the NHS body and will be reported to the Secretary of State.
- c) Under the previous regulations, it was only local authority health scrutiny committees which could make a referral to the Secretary of State. Ministerial intervention powers are different and the ability to submit call-in requests that these powers be used are open to any interested individual or organisation.

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<sup>3</sup> <https://www.gov.uk/government/publications/reconfiguring-nhs-services-ministerial-intervention-powers/reconfiguring-nhs-services-ministerial-intervention-powers#the-power-to-call-in-a-reconfiguration-proposal>

- d) HOSC will be able to submit a formal call-in request. The expectation from government is that a call-in request is only made as a last resort and only when all attempts at local resolution have failed. The revised terms of reference reflect and build on the statutory guidance to set a framework for how the Committee will approach making call-in requests so there is clarity for Members and for the NHS.
- e) Where the Secretary of State is considering a call-in request, the HOSC may be asked for information. Where a decision has been made by the Secretary of State to intervene, a decision letter will be issued. This letter may require that the consultation underway with the HOSC is paused pending the outcome of the intervention. This is also covered by the draft revised terms of reference.
- f) It is unclear how the ministerial intervention powers will be used in practice, and what the experience of health scrutiny committees in making call-in requests will be. The terms of reference will be reviewed periodically to ensure that they remain fit for purpose and in line with any updated guidance from the government.

#### **4. Membership and Conflicts of Interest**

- a) The section setting out that no HOSC member can be an Executive Member of KCC, or on the Kent Health and Wellbeing Board has been made clearer.
- b) Using the examples set out in the government guidance on health scrutiny, some examples of potential conflicts of interest are set out as a reminder to members.

#### **5. Recommendation**

County Council is asked to agree the revised Terms of Reference as set out in the Appendix and ask the Monitoring Officer to update the Constitution accordingly.

#### **6. Appendix**

Proposed changes to the terms of reference of the Health Overview and Scrutiny Committee.

#### **7. Background Documents**

Department of Health and Social Care, Guidance – Local authority health scrutiny, as updated 9 January 2024: <https://www.gov.uk/government/publications/advice-to-local-authorities-on-scrutinising-health-services/local-authority-health-scrutiny>

Department of Health and Social Care, Statutory guidance – Reconfiguring NHS services – ministerial intervention powers, as published 9 January 2024: <https://www.gov.uk/government/publications/reconfiguring-nhs-services-ministerial-intervention-powers>

Department of Health and Social Care, Guidance – Health overview and scrutiny committee principles, as published 29 July 2022:

<https://www.gov.uk/government/publications/health-overview-and-scrutiny-committee-principles/health-overview-and-scrutiny-committee-principles>

The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013,

<https://www.legislation.gov.uk/ukxi/2013/218/contents/made>

The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provision) Regulations 2024,

<https://www.legislation.gov.uk/ukxi/2024/16/contents/made>

The National Health Service (Notifiable Reconfigurations and Transitional Provision) Regulations 2024, <https://www.legislation.gov.uk/ukxi/2024/15/contents/made>

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