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To: Selection and Member Services Committee – 14 March 2013

Subject: Revision of Terms of Reference and Protocols for the Health Overview and Scrutiny Committee.

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Summary: This report invites the Committee to recommend to the County Council changes to the Terms of Reference and Protocols for Health Overview and Scrutiny in Kent contained within the Constitution to reflect changes introduced by the Health and Social Care Act 2012.

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## **1. Introduction**

- (a) The current Protocol for Health Overview and Scrutiny assumes that the legislation underpinning health scrutiny established in the Health and Social Care Act 2001 and consolidated in the National Health Service Act 2006 would continue to operate.
- (b) The Health and Social Care Act 2012 established a new framework for local health scrutiny. The details are contained in The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (the Regulations) published on 8 February 2013. The regulations come into effect on 1 April 2013. These need to be reflected in revised Terms of Reference and Protocols.
- (c) The Health and Social Care Act 2012 has also led to the formal introduction of the Health and Wellbeing Board and the transfer of significant public health responsibilities to Kent County Council, along with broader changes to the structure of the health economy. These also need to be reflected in the Constitution.
- (d) The Health and Social Care Act 2012 preserved health scrutiny as a function of local authorities with social services responsibilities, but conveyed the powers to the whole County Council, rather than to a specific committee. It remains a non-executive function and can be delegated to a committee (under section 102 of the Local Government Act 1972), an overview and scrutiny committee, or joint overview and scrutiny committee. It cannot be delegated to an officer of the authority or to the Health and Wellbeing Board.
- (e) The core powers to require information and attendance at meetings remain part of health scrutiny. These powers extend over the NHS Commissioning Board, Clinical Commissioning Groups and providers of

NHS and public health services commissioned by the NHS Commissioning Board, Clinical Commissioning Groups and local authorities. These are analogous to currently existing powers and are there to enable health scrutiny to 'review and scrutinise any matter relating to the planning, provision and operation of the health service in its area'.

- (f) As currently, there is a requirement for the County Council to be consulted on service reconfigurations. Where a service reconfiguration affects the areas of more than one council with health scrutiny functions, a joint overview and scrutiny committee must be established, or the responsibility delegated to a committee in a different area. Additional requirements have been introduced to require the relevant health service body and local authority to try and reach agreement where there are differences of opinion.
- (g) The ability to make a report to the Secretary of State on a service reconfiguration ('referral') continues on the same existing three grounds:
  - a. The consultation with the Committee on the proposal is deemed to have been inadequate in relation to content or time allowed;
  - b. The reasons given for not consulting with the Committee on a proposal are inadequate;
  - c. The proposal is not considered to be in the interests of the health services of the area.
- (h) The decision to refer a service reconfiguration to the Secretary of State must be carried out by full Council unless the health scrutiny function has been delegated specifically to an Overview and Scrutiny Committee or Joint Overview and Scrutiny Committee and not a Committee or Sub-Committee set up under s.102 of the Local Government Act 1972.

## **2. Key Points**

- (a) The revised protocols assume that the Health Overview and Scrutiny Committee (HOSC) will continue and will be the default means through which the statutory health scrutiny function of Kent County Council is to be exercised. The exception to this is the situation where a joint overview and scrutiny committee is required due to a service reconfiguration affecting more than one area.
- (b) The decisions of the Health and Wellbeing Board do not necessarily all come under the statutory remit of health scrutiny. The Health and Wellbeing Board covers children's services, social services and public health as well as health. The remit of statutory health scrutiny will cover the commissioning decisions of the Clinical Commissioning Groups who are statutory members of the Board, but not the other commissioners present. It will also cover any health services commissioned by public health or the Clinical Commissioning Groups. The commissioning

decisions taken by the local authority will be considered separately under the Cabinet Committee system.

- (c) Similarly, the wide-ranging nature of the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategies means that HOSC is likely to be interested in their contents and be able to add value to their development, but this does not mean it need necessarily carry out the role of a Cabinet Committee in relation to the Health and Wellbeing Board..
- (d) A few examples of the way the Health and Wellbeing Board and HOSC would interact strategically are set out in Section 5 of the revised Protocol.
- (e) Local Health Watch retains the power currently enjoyed by the LINK to formally refer matters relating to the planning, provision and operation of the health service in its area to the HOSC.
- (f) As under the previous legislation, health scrutiny remains a function of upper tier authorities. Borough/City/District Councils are still able to scrutinise health topics under their 'general well being' powers, although the ability to delegate some health scrutiny powers where appropriate remains. Sub-architecture for the Health and Wellbeing Board is being developed and involves Borough/City/District Councils. This may become more of a focus for Borough/City/District Councils involvement in health matters than health scrutiny.
- (g) Where health scrutiny is carried out at the Borough/City/District Council level, the Constitution already contains the previously agreed Protocol for Overview and Scrutiny Inter-Authority Co-Operation.
- (h) The revised Terms of Reference will replace those currently in the Constitution Appendix 2, Part 2.

### **3. Recommendation**

That the Committee recommends to the County Council for approval the revised terms of Reference and Protocol for Health Overview and Scrutiny in Kent and recommends that Appendix 2, Part 2, of the Constitution be amended accordingly.

### **Background Documents**

Department of Health, *Local Authority Health Scrutiny. A summary of consultation responses*, 14 December 2012, <http://www.dh.gov.uk/health/2012/12/health-scrutiny-response/>  
*Health and Social Care Act* 2012, <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

*The Local Authority (Public Health, Health and Wellbeing Boards and Health  
Scrutiny) Regulations* 2013,  
<http://www.legislation.gov.uk/uksi/2013/218/contents/made>

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