

AGENDA ITEM

**REPORT TO
EXECUTIVE
SCRUTINY
COMMITTEE**

5 JULY 2013

**REPORT OF
DIRECTOR OF
LAW AND
DEMOCRACY**

NEW HEALTH SCRUTINY REGULATIONS

SUMMARY

This report provides an update on the new health scrutiny regulations following the introduction of the Health and Social Care Act 2012 and subsequent amendments to the regulations.

RECOMMENDATIONS

It is recommended that Executive Scrutiny Committee note the revised health scrutiny regulations, the production of draft guidance, and implications for Stockton.

DETAIL

Previous Position and Amendments to Legislation

1. The Health and Social Care Act 2001 required all local authorities with social services responsibilities to establish overview and scrutiny committees that had the power to scrutinise the operation of the health service in their area (Health Overview and Scrutiny Committees or 'HOSC'). This role is fulfilled by the Adult Service and Health Select Committee in the case of Stockton Council. Health scrutiny committees have the power to pro-actively review the provision of NHS services in their area, and seek to recommend ways of reducing health inequalities. The NHS has also been required to consult such scrutiny committees when it was considering 'substantial' variations to local services. HOSCs were given the power to refer such proposals to the Secretary of State for Health should they not agree with them, if they believed certain criteria had not been met.
2. Following a period of significant change on the NHS and the introduction of the Health and Social Care Act 2012, the Department of Health consulted on proposed changes to the regulations governing local authority health scrutiny in summer 2012. A summary of responses was subsequently published which included references to Stockton's response. New regulations have been published - The Local Authority (Public Health, Health and Wellbeing

boards and Health Scrutiny Regulations 2013 - and associated guidance continues to be drafted.

Revised Regulations

3. A key benefit of the new regulations is that the scope of health scrutiny has been widened and there is greater power to hold health providers to account; ie. all relevant health service providers delivering services commissioned by Clinical Commissioning Groups (CCGs), NHS England or local authorities are now covered by the scope of health scrutiny powers (eg. the ability to require attendance at a meeting). This positive change will facilitate a strategic approach to reviewing the quality of local services.
4. The key points of the new regulations are as follows:
 - a) The scope of health scrutiny powers now extends to both NHS and 'all relevant health service providers' – this means public, private or voluntary organisations that deliver services when commissioned by a CCG, NHS England, or local authorities themselves in relation to public health;
 - b) The power to undertake health scrutiny is now conferred on a Council as a whole. This can be discharged through establishment of a HOSC or through other arrangements.
 - c) The power to make referrals to the Secretary of State is conferred on a Council as a whole. The power of referrals may be delegated to a HOSC or joint committee by Council but not to any other health scrutiny arrangement that may be set up.
 - d) Consultations on substantial variations must be led by NHS commissioners (eg. a CCG), whether the proposals come from commissioners or providers originally.
 - e) When proposals for substantial variations cover more than one LA area, a joint committee must be formed by those LAs that are consulted. It is only the joint committee that has the right to be consulted and to require NHS attendance at meetings on the matter. However the joint committee itself does not have the power to refer a matter to the Secretary of State unless each Council involved has delegated its power to do so to it.
 - f) According to draft guidance, those LAs choosing not to be involved in such a joint committee (ie. by not considering it a substantial matter) forfeit their right to be consulted on the matter and the ability to make a referral to the Secretary of State.
 - g) The NHS must publish timescales that set out by when it will decide on which of the options for service change it will implement. The local authority must publish timescales that set out by when it will make a

decision as to whether to refer a matter to the Secretary of State, and subsequently by when it intends to make that referral.

- h) Reasonable steps must be taken by the NHS and local authorities to achieve a local resolution to disputes over service changes
 - i) Any referrals to the Secretary of State must be evidenced and include an explanation as to how the local authority has considered the effect of the proposal on the sustainability or otherwise of the local health service (eg. regarding quality, safety and financial issues), and an explanation of any steps taken to reach agreement with the consulting body
 - j) Normal health scrutiny functions will not apply when either a Trust Special Administrator or a Health Administrator is appointed to a provider of NHS services, when such a provider has become unsustainable.
5. There is an expectation that NHS England (through the relevant Area Team primarily) would be involved either by health scrutiny or the local CCG in order to assist with the local resolution of any disputes and potential referrals (unless NHS England was itself the commissioner proposing a particular change).
6. A summary of the revised legal powers and duties is as follows:

Powers of local authorities

Local authorities may:

- a) review any matter relating to the planning, provision and operation of health services in their area;
- b) request information from NHS bodies and relevant health service providers;
- c) require attendance of NHS staff and members of relevant health service providers at scrutiny meetings;
- d) make reports and recommendations to NHS bodies, relevant health service providers and the local authority, and expect a response where one is requested within 28 days;
- e) respond to consultations by NHS bodies and relevant health service providers on matters of substantial variations or developments to health services;
- f) refer contested service changes to the Secretary of State on specific grounds. They must provide robust evidence in support of this and publish clear timescales within which the referral will be made;
- g) co-opt representatives onto their health scrutiny arrangements;
- h) delegate health scrutiny powers to another local authority, or to a joint committee of a number of local authorities;
- i) delegate health scrutiny powers to a Health Overview and Scrutiny Committee (HOSC), where one is retained;
- j) delegate some health scrutiny functions where a HOSC has not been retained in favour of an alternative mechanism;

- k) form joint scrutiny arrangements with other local authorities. This is mandatory in relation to proposals for substantial service change.

Duties of NHS bodies and relevant health service providers

NHS bodies and relevant health service providers must:

- a) provide information requested by local authorities, subject to certain exemptions;
 - b) attend before local authority scrutiny meetings to answer questions, subject to exemptions;
 - c) on request, respond to reports and recommendations made by local authorities within 28 days of the request being made;
 - d) consult the local authority (including joint committees) on proposals for substantial variations or developments to health services;
 - e) publish timescales for consulting on and implementing substantial variations or developments to services.
7. In terms of structures there is no requirement to amend Stockton's current arrangements following these changes. As the draft guidance makes clear, health scrutiny functions are non-executive functions of the local authority (when an authority operates Executive arrangements).
8. The draft statutory guidance highlights the role of health scrutiny in the new health 'system' and post-Francis Inquiry era. The function should provide an ongoing overview of local health services including an emphasis on monitoring quality, in-depth outcome focused reviews of key issues, and a mechanism for testing new proposals to ensure that they remain 'grounded' and address local concerns.
9. This report outlines the revised duties and powers. A separate report has been produced in relation to an improved approach to monitoring the quality of local health and care provision in more practical terms.

FINANCIAL IMPLICATIONS

10. There are no specific financial implications associated with this report.

LEGAL IMPLICATIONS

11. The powers and duties in relation to the operation of health scrutiny are outlined in the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013. Associated statutory guidance is being developed by the Department of Health.

CONSULTATION INCLUDING WARD/COUNCILLORS

12. This report outlines the new statutory position following the publication of new regulations. During summer 2012, Stockton Council responded to the Government's consultation on changes to the regulations, and this was signed off by the Cabinet Member for Adult Services and Health, following

consultation with senior officers, Adult Services and Health Select Committee, and the shadow Health and Wellbeing Board.

13. The new position will also be reported to Adult Services and Health Select Committee, and Cabinet.

Head of Democratic Services

Name of contact officer: Peter Mennear

Post Title: Scrutiny Officer

Telephone Number.: 01642 528957

Email address: peter.mennear@stockton.gov.uk