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OFFICER REPORT TO COUNCIL

AMENDMENTS TO THE CONSTITUTION - HEALTH AND WELLBEING BOARD AND HEALTH SCRUTINY

KEY ISSUE/DECISION:

To ensure the Constitution is in line with recent legislation and regulations, the Council is asked to agree a new article introducing a Health and Wellbeing Board and revisions to the arrangements for the scrutiny of health services.

BACKGROUND:

1. Given new legislation and associated regulations, some aspects of the Constitution are out of date or do not accurately reflect current working practices.
2. This report asks the Council to look at two specific parts of the Constitution and agree changes to ensure it accurately reflects current legislation.

HEALTH AND WELLBEING BOARD:

3. The Health and Social Care Act 2012 requires that the Council establish a Health & Wellbeing Board from 1 April 2013 as a committee of the local authority to oversee the production of the Joint Health & Wellbeing Strategy, Joint Strategic Need Assessment and to encourage integrated working. Uniquely, the Board will include representatives of local Clinical Commissioning Groups (CCGs), senior officers of the Council and a representative of the newly established local Healthwatch organisation.
4. As an early adopter, Surrey has operated a Health and Wellbeing Board in shadow form since Spring 2011. Surrey County Council, the NHS, borough and district councils and local users representatives have worked together to pilot the proposals in anticipation of the adoption of formal powers and responsibilities from 1 April 2013. The shadow Board has successfully laid the groundwork that will enable the formal Health and Wellbeing Board to hit the ground running with established working

relationships. This will help to enable those involved in health and social care to continue to work together to improve the health and wellbeing of the people of Surrey. This new partnership will continue to identify opportunities for collaboration and integration across agencies and will develop direct links to services users, patients and local stakeholders.

5. Whilst the Health and Social Care Act 2012 set out the statutory membership requirements and key functions of Health and Wellbeing Boards, much of the detail of their operation was reserved for regulation. The recently published Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 provide local authorities with the powers to overcome some initial incompatibilities between the intentions of the Act and existing legislation governing local authority committees.
6. In recognition of the unique nature and particular role of the Health and Wellbeing Boards, the Regulations modify a number of the legislative requirements which apply to local authority committees so that they do not apply to the operation of the Board. The modifications are:
 - a. Regulations 3 and 4 modify s102 of the Local Government Act 1972 to allow the functions of the Board to be carried out by a sub-committee and to allow the Board to appoint a sub -committee to advise them
 - b. Regulation 5 modifies s104 of the Local Government Act 1972 to remove the restrictions which would prevent local authority officers from being members of a Council committee
 - c. Regulation 6 modifies s13(1) of the Local Government and Housing Act 1989 (the 1989 Act) to enable all members of the Board, whether or not they are elected members, to vote at meetings unless the Council decides otherwise
 - d. Regulation 7 modifies ss15 and 16 and Schedule 1 of the 1989 Act to remove the requirement for political balance that applies to other local authority committees.
7. A new article, Article 8A Health and Wellbeing Board, setting out the membership and proposed governance arrangements has been drafted for the Constitution and is attached as **Appendix 1**.
8. The establishment and terms of reference of the Board as set out in the draft article have been drawn directly from the primary and secondary legislation, with the intention that the Board will decide its own detailed operating procedures, including voting arrangements, as required.
9. The Board will be subject to the same requirements of openness and transparency as other section 102 committees. This means that voting members of the Board will be governed by the Council's code of conduct, and will be required to complete the register of member's interests and to disclose any disclosable pecuniary interests at meetings where any matter to be considered relates to their interest.

10. The requirements of the Local Government Act 1972 in relation to publication of agendas and minutes, and of the Local Government Act 2000 in relation to provision for public access to meetings also apply to meetings of the Board. The Board is subject to scrutiny as set out below. However, the core functions of the Board are not executive functions, and are not therefore subject to call in.

HEALTH SCRUTINY:

11. The Health and Social Care Act 2012 included a number of changes to the local authority health scrutiny function and powers, due to come into effect from 1 April 2013. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 recognise the need to ensure that new organisations (such as the Health and Wellbeing Board, Clinical Commissioning Groups and the NHS Commissioning Board) are subject to appropriate scrutiny. As a result of this new legislation and regulations, there is a need to update Article 8 of the constitution. The suggested amended article is attached as **Appendix 2**.
12. The key changes can be summarised as follows:
- The NHS Commissioning Board, Clinical Commissioning Groups, NHS trusts or foundations trusts and other relevant health service providers providing NHS services in the area may be subject to health scrutiny, and will be required to consult the local authority where they are considering any proposals for a substantial development or substantial variation in the health service provision in the area.
 - Local HealthWatch will have the power to refer matters to the Health Scrutiny Committee.
 - Health and Wellbeing Boards will be subject to overview and scrutiny.
 - The commissioners and providers of Public Health Services will be subject to overview and scrutiny.

Discharge of the Health Scrutiny Function

13. A key change within the regulations is that the health scrutiny function and powers are conferred on the local authority, rather than directly onto a health scrutiny committee. The regulations therefore allow local authorities to either retain its Health Scrutiny Committee or arrange their health scrutiny functions to be discharged by:
- An overview and scrutiny committee of the Council
 - A joint overview and scrutiny committee appointed by the Council and one or more other local authorities
 - Another committee or sub-committee of the Council
 - An overview and scrutiny committee of another local authority

14. It is recommended that the Council should delegate its health scrutiny function to the Health Scrutiny Committee. The Committee is well-established in Surrey and given the current state of change in the health system there will be benefit to maintaining continuity in how the scrutiny function is exercised.

Delegation of power of referral to Secretary of State

15. Another key change within the regulations is that the power of referral, whereby contested proposals for substantial change/variation in service can be referred to the Secretary of State for Health will be given to the full Council (it currently sits with the Health Scrutiny Committee). However, where a council retains a health scrutiny committee it can delegate the power of referral to this committee but it cannot delegate it to any other committee or sub-committee.
16. It is recommended that Council delegates the power of referral to the Health Scrutiny Committee but that the Chairman of that Committee will ensure all Members are notified when this power is utilised. It should be noted that the power of referral is very much a last resort, to be used when all other negotiations have failed.

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| RECOMMENDATIONS: |
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- (1) The new Article 8A Health and Wellbeing Board be adopted as part of the Council's Constitution as attached at Appendix 1.
- (2) Article 7 Select Committees be amended to reflect the changes to Health Scrutiny as set out in Appendix 2.
- (3) That the Council delegates responsibility for health scrutiny in Surrey to the Health Scrutiny Committee.
- (4) That the Council delegates power of referral to the Secretary of State to the Health Scrutiny Committee.

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Sources/background papers:

Health and Social Care Act 2012
The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013
