



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 Given new legislation and associated regulations, some aspects of the Constitution are out of date or do not accurately reflect current working practices.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.

RECOMMENDATIONS:

- (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

ARTICLE 8 – REGULATORY AND OTHER COMMITTEES

- 8.1 The Council will appoint committees with the terms of reference set out in Part 3 of this Constitution and these committees will follow Parts 2 and 3 of Standing Orders as apply to them.

ARTICLE 8A – HEALTH & WELLBEING BOARD

The Council will appoint a Health and Wellbeing Board to discharge the functions conferred by the Health and Social Care Act 2012 and in accordance with regulations as set out below.

8A.1 Membership

In accordance with section 194 of the Health and Social Care Act 2012 the membership of the Health and Wellbeing Board is to consist of—

- (a) at least one councillor of the local authority, nominated by the executive leader of the local authority. The executive leader of the local authority may, instead of or in addition to making a nomination, be a member of the Board,
- (b) the director of adult social services for the local authority,
- (c) the director of children's services for the local authority,
- (d) the director of public health for the local authority,
- (e) a representative of the local Healthwatch organisation for the area of the local authority,
- (f) a representative of each relevant clinical commissioning group,
- (g) such other persons, or representatives of such other persons, as the local authority thinks appropriate. At any time after a Health and Wellbeing Board is established, a local authority must, before appointing another person to be a member of the Board under subsection (g), consult the Health and Wellbeing Board,
- (h) such additional persons as the Health and Wellbeing Board think appropriate.

8A.2 Functions

The Health and Wellbeing Board has the following functions under the Health and Social Care Act 2012:

1. a duty to encourage integrated working (section 195 of the Act) and:

- (i) must, for the purpose of advancing the health and wellbeing of the people in its area, encourage persons who arrange for the provision of any health or social care services in that area to work in an integrated manner;
 - (ii) must, in particular, provide such advice, assistance or other support as it thinks appropriate for the purpose of encouraging the making of arrangements under section 75 of the National Health Service Act 2006 in connection with the provision of such services;
 - (iii) may encourage persons who arrange for the provision of any health-related services in its area to work closely with the Health and Wellbeing Board; and
 - (iv) may encourage persons who arrange for the provision of any health or social care services in its area and persons who arrange for the provision of any health-related services in its area to work closely together.
2. The exercise of the functions of the local authority and its partner clinical commissioning groups under sections 116 (joint strategic needs assessments) and 116A of the Local Government and Public Involvement in Health Act 2007 (joint health and wellbeing strategies). (section 196(1) of the Act)
 3. By arrangement of the local authority, the exercise of any functions that are exercisable by the authority (this power does not apply to the functions of the authority by virtue of section 244 of the National Health Service Act 2006). (section 196(2) of the Act)
 4. The Health and Wellbeing Board may give the local authority that established it its opinion on whether the authority is discharging its duty under section 116B of the 2007 Act (duty to have regard to assessments and strategies). (section 196(3) of the Act)

8A.3 Terms of Reference

In accordance with section 194(11) of the Health and Social Care Act 2012, the Health and Wellbeing Board is a committee of the local authority and, for the purposes of any enactment, is to be treated as if it were a committee appointed by the authority under section 102 of the Local Government Act 1972.

Regulations may provide that any enactment relating to a committee appointed under section 102 of that Act of 1972—

- (a) does not apply in relation to a Health and Wellbeing Board, or
- (b) applies in relation to it with such modifications as may be prescribed in the regulations.

The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 modifies provisions in primary legislation relating to a committee appointed under section 102 of the Local Government Act 1972 (c.70) ("the 1972 Act") in so far as those provisions relate to Health and Wellbeing Boards and provides that certain provisions do not apply to Health and Wellbeing Boards. The following enactments therefore do not apply or are modified as prescribed:

1. Section 101(2) of the 1972 Act modified to enable certain functions of Health and Wellbeing Boards to be carried out by a sub-committee of a Health and Wellbeing Board and for functions of Health and Wellbeing Boards under section 196(2) of the 2012 Act to be carried out by a sub-committee of the Board or an officer of the local authority. The modification will also enable a sub-committee of the Board to arrange for functions under section 196(2) of the 2012 Act to be carried out by an officer of the authority. (Regulation 3)
2. Provision for section 102(2) of the 1972 Act to apply subject to section 194(2) to (9) of the 2012 Act and modifies section 102 to allow a Health and Wellbeing Board to appoint a sub-committee to advise the Board. (Regulation 4)
3. Section 104(1) of the 1972 Act in so far as that provision relates to Health and Wellbeing Boards, a sub-committee of such a Board, or a joint sub-committee of two or more such Boards so as to remove the restrictions which would prevent certain local authority officers from being members of Health and Wellbeing Boards. This does not apply in so far as it relates to section 80(1)(b) and (d) of the 1972 Act. (Regulation 5)
4. Section 13(1) of the Local Government and Housing Act 1989 (c.42) ("the 1989 Act") modified so as to enable all members of Health and Wellbeing Boards to vote in a section 102 committee meeting unless the local authority directs otherwise. (Regulation 6)
5. Political balance requirements disapplied as set out in sections 15 and 16 of, and Schedule 1 to the 1989 Act, which apply to local authorities in relation to appointments to committees and sub-committees under section 102 of the 1972 Act in so far as those provisions relate to Health and Wellbeing Boards, a sub-committee of such a Board or a joint sub-committee of two or more such Boards. (Regulation 7)

The modification and disapplication provisions above also apply to sub-committees of Health and Wellbeing Boards and joint sub-committees of such boards.

The terms of reference and working arrangements for the Health and Wellbeing Board not set out in this article are to be determined by the Health and Wellbeing Board in accordance with applicable legislation and regulations at its first meeting and subject to review and revision by the Board as may be necessary.

Health Scrutiny Committee**Terms of Reference**

- 1.1. The Committee may review and scrutinise health services commissioned or delivered in the authority's area within the framework set out below:
 - a) arrangements made by NHS bodies to secure hospital and community health services to the inhabitants of the authority's area;
 - b) the provision of such services to those inhabitants;
 - c) the provision of family health services, personal medical services, personal dental services, pharmacy and NHS ophthalmic services;
 - d) the public health arrangements in the area;
 - e) the planning of health services by NHS bodies, including plans made in co-operation with local authorities, setting out a strategy for improving both the health of the local population, and the provision of health care to that population;
 - f) the plans, strategies and decisions of the Health and Wellbeing Board;
 - g) the arrangements made by NHS bodies for consulting and involving patients and the public under the duty placed on them by Sections 242 and 244 of the NHS Act 2006;
 - h) any matter referred to the Committee by Healthwatch under the Health and Social Care Act 2012;
 - i) social care services and other related services delivered by the authority.
- 1.2. The Committee may require partner authorities to provide information in respect of matters relating to the health service in the authority's area.
- 1.3. In addition, the Committee will be required to act as consultee to NHS bodies within their areas for:
 - a) substantial development of the health service in the authority's area; and
 - b) any proposals to make any substantial variations to the provision of such services.
- 1.4. These terms of reference include health services provided from a body outside the local authority's area to inhabitants within it.
- 1.5. The Health Scrutiny Committee shall appoint a joint committee where an NHS body intends to consult on a substantial development or variation to health services that extends beyond the area covered by the Committee and agree:
 - i) the size of any joint committee appointed for this purpose in consultation with other appropriate authorities which have an interest as consultees;
 - ii) the share of the Council's seats on each such joint committee; and
 - iii) the County Council's membership of any such joint committee in accordance with the wishes of political groups.

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