
**Manchester City Council
Report for Information**

Report to: Constitutional and Nomination Committee – 10 July 2013

Subject: Health Scrutiny Committee - Governance and Constitutional Issues

Report of: Governance and Scrutiny Support Unit

Summary

The following report was submitted to Health Scrutiny Committee on 23 May 2013. The Committee was asked to make recommendations to Constitutional and Nomination Committee, in order that appropriate arrangements for the discharge of health scrutiny functions can be approved by Council. Appended to the report is the minutes of the Health Scrutiny Committee pertaining to this item which includes the recommendations to Constitutional and Nomination Committee.

This report summarises the key issues arising from the recently published Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 which came into effect on 1 April 2013. The Regulations modify certain legislation as it applies to health scrutiny and its operation. This report provides a summary of how the Regulations will affect the operation of Manchester's Health Scrutiny Committee and its members.

Recommendations

1. The Health Scrutiny Committee requests that the Constitutional and Nomination Committee recommend to Council that the Council retains the existing structure for the discharge of the Council's Health Scrutiny functions, namely that they are discharged by the Health Scrutiny Committee

2. The Committee requests that the following local authority powers are delegated to the Health Scrutiny Committee:
 - 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. They must publish timescales for making such responses;
 - f) refer contested service changes to 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;

Wards Affected:

All

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Background documents (available for public inspection):

None

1.0 Introduction

1.1 This report summarises the key issues arising from the recently published Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 which were laid before parliament on the 8 February 2013. The Regulations came into effect on 1 April 2013. The Regulations can be downloaded from the internet at www.legislation.gov.uk/uksi/2013/218/contents/made.

1.2 The regulations contain general information regarding interpretation, provisions in relation to Health and Wellbeing Boards, provisions in respect of the weighing and measuring of children in attendance at schools under arrangements provided for by local authorities, and provisions in relation to Health Scrutiny by Local Authorities.

1.3 The regulations in relation to health scrutiny make provision for local authorities to review and scrutinise matters relating to the planning, provision and operation of the health service in their area. They replace the previous 2002 regulations on health scrutiny. Under the new system of health scrutiny, local authorities have greater flexibilities in how they discharge their health scrutiny functions. Certain elements of the previous regulations have been preserved; but there are new obligations on NHS bodies, relevant health service providers, and local authorities around consultations on substantial developments or variations to services to aid transparency and local agreement on proposals.

2.0 How local authorities discharge their health scrutiny functions

2.1 Since 2002 there has been a statutory obligation upon the Local Authority to establish an Overview and Scrutiny Committee to discharge its functions in respect of Health Scrutiny. The 2002 regulations are now revoked. Local Authorities are now able, under the new Regulations, to determine the most appropriate means of discharging their health scrutiny responsibilities. This may be through a Health

Overview and Scrutiny Committee (HOSC), joint scrutiny arrangements or through another suitable alternative.

2.2 The powers of local authorities and duties of NHS bodies and relevant health service providers in respect of Health Scrutiny are outlined in Appendix 1

2.3 The Centre for Public Scrutiny does not recommend a specific model for the discharge of health scrutiny functions.

2.4 The following models are options the Committee is invited to consider:

Model A: Health Overview and Scrutiny Committee (HOSC)

This is the current method of carrying out the Health Scrutiny function within Manchester Council

According to draft Department of Health Guidelines HOSC's are a proven model which offer a number of benefits that other structures may not. They

- have a clear identity within the local authority, separate from the Executive
- have "cross party" membership and are politically balanced
- are independent
- are flexible, and not constrained to formal timetables and venues
- are accessible and able to involve the public and other key stakeholders in their work
- have capacity and are able to tackle a range of issues that might overwhelm other scrutiny models.

The Department of Health advise that retaining a HOSC sends a clear message to local people that the accountability of health, through appropriate scrutiny, is important.

A report submitted to the Overview and Scrutiny Coordinating Group at its Meeting on 21st March 2013 reviewed the operation of the Councils Scrutiny Committee structure over the past 12 months. The report found that the structure was operating well and that there were no known issues with the current arrangements.

Model B: Joint Scrutiny Arrangements (JHOSC)

Retaining a Health Scrutiny Committee does not prevent the delegation of powers to a joint committee where appropriate. In fact, the regulations require a joint committee to be established where it is proposed to make a substantial development or variation which affects more than one local authority.

At present there are no known arguments for establishing a Joint Scrutiny arrangement rather than a HOSC to discharge all of the Council's Health Scrutiny functions.

Model C: Suitable Alternative

The regulations do not provide any definition or guidance on 'suitable alternative', and Local Authorities are free to explore what they consider this may be. What 'suitable alternative' Local Authorities choose to employ to carry out their Health Scrutiny function will be dependent on their priorities and experiences in respect of carrying out this function.

There are at present no known examples of an effective 'suitable alternative' that may be appropriate for Manchester. The regulations do allow for the Secretary of State to make further directions but none have been made at the present time. Preliminary investigations have not revealed that any other Local Authorities intend to change their Committee Structure in response to the regulations at the present time.

3.0 Implications for Manchester City Council ('the Council')

3.1 The Council's Constitution will be updated at May Council to reflect the fact that Health Scrutiny is the relevant body for the purposes of these regulations as an interim measure. However, to make any further changes to the constitution it is necessary to formally consult to ensure that the Council wishes to continue with existing arrangements.

3.2 Following consultation with Health Scrutiny Committee this report/a report will be submitted to Constitutional and Nomination Committee and then Council, for it to approve the recommended changes which will then be implemented.

3.3 As a result of the new regulations, should a Local Authority decide to delegate its Health Scrutiny functions to a Health Scrutiny Committee, it is necessary to formally delegate these powers and to state which powers are to be formally delegated.

3.4 In respect of the power to refer proposals for a service change to the Secretary of State, this can be delegated to a HOSC or another local authority or joint scrutiny arrangement should the local authority decide it wishes to delegate this power. Should the local authority decide on a suitable alternative instead this power is retained and can only be exercised by the full council of the local authority.

3.5 One issue with the Local Authority retaining some of its Health Scrutiny powers would be the delay caused by infrequency of meetings of full Council.

4.0 Recommendations

4.1 The Committee are invited to consider the options and decide whether they want to retain the existing structure for the discharge of the Council's Health Scrutiny functions, namely that they are discharged by the Health Scrutiny Committee

4.2 The Committee are invited to consider the powers available to the Local Authority outlined in Appendix 1 and consider whether they wish these powers to be delegated to the Health Scrutiny Committee, namely powers a-g (inclusive)

4.3 The Committee are asked to note that the regulations contain further provisions in respect of procedures and protocols in respect of Healthwatch and NHS service change which are included in the updated members guide

Appendix 1

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. They must publish timescales for making such responses;
- f) refer contested service changes to 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 HOSC, where one is retained under s244 (as amended)
- j) delegate some health scrutiny functions where a HOSC has not been retained in favour of an alternative mechanism such as a S101 committee
- 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

HSC/13/23 Health Scrutiny Committee- Governance and Constitutional Issues

The Committee were presented with a report of the Governance and Scrutiny Support Unit which the Chair explained the rationale for. New regulations had removed the legal obligation for a local authority to establish a specific Health Scrutiny Committee and the Council now had greater flexibility to decide how to delegate these powers. Other aspects of the new regulations had been incorporated into the new Member's Guide which had been re-issued to all members at the meeting. Members advised they had read the report and were happy with current arrangements.

Decision:

1. The Committee requests that the Constitutional and Nomination Committee recommend to Council that the Council retains the existing structure for the discharge of the Council's Health Scrutiny functions, namely that they are discharged by the Health Scrutiny Committee
2. The Committee requests that the following local authority powers are delegated to the Health Scrutiny Committee:
 - h) review any matter relating to the planning, provision and operation of health services in their area;
 - i) request information from NHS bodies and relevant health service providers;
 - j) require attendance of NHS staff and members of relevant health service providers at scrutiny meetings;
 - k) 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;
 - l) respond to consultations by NHS bodies and relevant health service providers on matters of substantial variations or developments to health services. They must publish timescales for making such responses;
 - m) refer contested service changes to 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,
 - n) co-opt representatives onto their health scrutiny arrangements;
3. The Committee noted that the regulations contain further provisions in respect of procedures and protocols in respect of Healthwatch and NHS service change which are included in the updated members guide which they have received