

HEALTH SCRUTINY COMMITTEE

27th March 2024

Title: Changes to Health Scrutiny Committees	
Report of the Director of Public Health	
Open Report	For Information
Wards Affected: None	Key Decision: No
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Summary This report outlines the recent changes to legislation, notably the role of Health Scrutiny Committees (HSCs) in relation to health reconfigurations, which came into effect from 31 January 2024.	
Recommendation(s) The Health Scrutiny Committee is asked to note the report.	
Reason(s) Legislation changes in relation to the Health Scrutiny Committee came into force on 31 January 2024.	

1. Introduction and Background

- 1.1 On 31 January 2024, new powers came into force allowing the Secretary of State for Health and Social Care to intervene in proposals for changes to local NHS services.
- 1.2 These reforms update a process, whereby powers previously held exclusively by Health Scrutiny Committees (HSCs) to refer proposed reconfigurations to the Secretary of State are replaced with a call-in request process open to anyone. The changes also mean that the Secretary of State may act proactively without a HSC referral or call-in request.

2. Changes to Health Scrutiny Committees

- 2.1 The most significant change highlights the power of the Secretary of State for Health and Social Care to intervene in proposals regarding changes, or, reconfigurations, to local NHS services in comparison to the exclusive power of

HSCs to refer proposed reconfigurations to the Secretary of State previously. A call-in request process is now available for use, without a HSC referral or call-in request, following on from contributions to the Health and Care Act 2022.

- 2.2 Although the Secretary of State may call-in and make a decision which impacts a reconfiguration proposal, such powers shall be used for complex cases which create a significant cause for public concern.
- 2.3 As such, HSCs will continue to hold powers in respect of 'responsible persons' including NHS commissioners and providers within a local area. Local Authorities (LAs) therefore, may review and scrutinise any matter relating to the planning, provision and operation of the health service in its area, but must invite interested parties to provide comment on such matters, whilst taking into consideration any information provided by the local Healthwatch. Reports and recommendations may be devised by the local authority to a 'responsible person' on any of the scrutinised matters; should a response from the 'responsible person' be required, a time period of 28 days is given.
- 2.4 The role of the 'responsible person' is to consult local authorities on 'substantial developments' or 'substantial variations' in health services, alongside providing them with the necessary information to discharge relevant functions. A representative of the local authority, including any member or employee of the 'responsible person', may be required to answer questions before the authority.
- 2.5 Furthermore, Regulation 28 states that local authorities "may" arrange for their relevant functions to be discharged by an OSC, or under certain circumstances, by the OSC of another council.
- 2.6 Under the new arrangements, HSCs will also be consulted where the Secretary of State has decided to 'call in' a proposal for reconfiguration. The referral process and the new call-in process began from 31 January 2024.
- 2.7 Regarding exemptions to the duty on NHS commissioners to notify the Department for Health and Social Care (DHSC) of substantial variations in the case of urgency, proposals for substantial variation must be notified to DHSC, where statutory consultation is required to be carried out. However, there are arrangements in place for commissioners to make urgent temporary reconfigurations of services in relation to circumstances affecting patient safety, for example. In such circumstances, a commissioner is required to notify (but not consult) the HSC of any changes but does not need to notify the DHSC. These temporary changes are expected to have clear plans for reverting changes or moving to permanent reconfiguration in due course. There are currently no timescales for 'temporary' changes.
- 2.8 Regarding changes that are subject to call-in, it is highlighted that any proposal for change may be subject to call-in, whether they are notifiable or not. Although there is no specific definition of 'proposal' in legislation or guidance, the guidelines for determining a proposal remain unchanged. There is still an internal and external assurance process which allows for a transition from an 'outline proposal' to a proposal that is ready to be formally presented. It is therefore assumed that a 'proposal' will be classed as one subject to call-in under the Act and Regulations.

- 2.9 There is, however, a general obligation for commissioners to provide information which is necessary for the Secretary of State to fulfil their new functions, which could be used to support an intervention for a non-substantial proposal if necessary.
- 2.10 Call in requests can also be made about any proposal, and do not require a specific timeframe for the request to be made, given that local attempts to resolve the issue have been exhausted. It is expected that NHS commissioners will involve HSCs early on in the process for major changes.
- 2.11 The above changes to HSCs may be communicated to the public to bring about local awareness through partners such as the local Healthwatch to support this. This would be particularly beneficial for campaigning and advocacy groups who may not be aware of such changes against the 2013 arrangements.
- 2.12 By retaining many of the previous arrangements for local health scrutiny of NHS reconfigurations, these changes facilitate an ongoing dialogue on NHS service changes and the HSC-NHS relationship. Expectations for HSCs to liaise with commissioners remain in place, though where local resolution is not possible, engaging with the Secretary of State via the call-in request process is in place.
- 2.13 Following an active monitoring of the new arrangements, the DHSC will update the statutory guidance accordingly, a year after the new process comes into force. Although JOSCs may be established on a statutory and non-statutory basis, the new arrangements do not currently impact JOSCs, although it is likely that ICSs will make proposals for change in the future.

Public Background Papers Used in the Preparation of the Report: None

List of appendices: None