

19 February 2024

Changes to Health Scrutiny Guidance and Powers

Ward(s): All wards

Portfolio: Councillor G. Flint (Wellbeing, Leisure and Public Spaces)

1. Aim

To provide an overview of the changes in statutory regulations contained within The Local Authority (*Public Health, Health and Wellbeing Boards and Health Scrutiny*) (*Amendment and Saving Provision*) *Regulations 2024* and the accompanying guidance from the Department of Health and Social Care published on the 9 January 2024.

2. Recommendations

1. That the Committee note the removal of the referral powers under The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provision) Regulations 2024 and the subsequent creation of the 'call-in' mechanism in relation to local significant service changes/reconfigurations.
2. That the Committee note that the new guidance and the NHS reorganisation under the Health and Care Act 2022 has created a more regional approach to health service delivery meaning that more joint scrutiny between local authorities on significant service changes could be needed in future.
3. That the Committee be requested Democratic Services to explore options to facilitate potential future joint scrutiny on significant service changes with health partners and including the possibility of a joint memorandum of understanding be explored between Black Country Local Authorities and regional health partners.

3. Report detail – know

- 3.1 On the 9 January 2023, the Department of Health and Social Care (DHSC) released new guidance and new *regulations (The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provision) Regulations 2024)* to reflect changes that were made under *the Health and Care Act 2022*. The main changes outlined in the new regulations are the removal of the health scrutiny's powers of referral to the Secretary of State for Health and Social Care in relation to NHS significant service reconfigurations (sometimes called Substantial Service Change) to health care services locally.

The power of referral to the Secretary of State was removed on the 31 January 2024.

Changes to Secretary of State intervention powers

- 3.2 Previously the Secretary of State could only intervene in health service reconfigurations upon receiving a referral from a local authority scrutiny function. In addition, the Secretary of State could only intervene in relation to the adequacy of the consultation for service reconfigurations or whether the proposed reconfiguration was in the interest of the health services in the area.
- 3.3 The removal of the referral powers on the 31 January 2024 has been replaced by a 'call-in' mechanism in which scrutiny committees or any other interested party can write to the Secretary of State to call in a reconfiguration proposal.
- 3.4 Whilst the new 'call-in' mechanism is open to anyone effected by proposed health service reconfigurations, the guidance stresses that all steps be taken to reach a resolution at a local level before making a 'call-in' request to the Secretary of State.
- 3.5 The new call-in mechanism grants additional powers to the Secretary of State to intervene over that of the referral system. The Secretary of State can now intervene at any stage of the reconfiguration process and when used this will prevent the NHS service provider from starting any irreversible changes until a decision has been made. In addition, the guidance states that the Secretary of State will provide the NHS commissioning body, the local authority which is affected by the proposed reconfiguration and any other person the Secretary of State considers appropriate the opportunity to make representations before a decision on a 'call-in' is made.
- 3.6 The guidance makes clear that the most reconfigurations should be dealt with at a local level and should not require ministerial intervention. If a call-in is required to resolve local disagreements, then local parties should take reasonable steps to try and resolve issues before Secretary of State intervention.
- 3.7 In practice NHS partners will still be expected to engage the Committee with consultations in relation to significant service reconfigurations. Whilst the removal of the referral powers under *s244 National Health Service Act 2006* and the creation of the new 'call in' powers under *s68A: Schedule 10A* may seem like reducing the role of health scrutiny committees. In practice the referral powers were rarely used.

Unchanged powers of the Committee

- 3.8 Under the new guidance the Committee retains the following powers under the *(Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013* as delegated by full Council:
 - review and scrutinise matters relating to the planning, provision and operation of the health service in the area - this may well include scrutinising the finances of local health services.

- require information to be provided by certain NHS bodies about the planning, provision and operation of health services that is reasonably needed to carry out health scrutiny.
 - require employees, including non-executive directors of certain NHS bodies, to attend before them to answer questions.
 - make reports and recommendations to certain NHS bodies and expect a response within 28 days.
 - where practicable, set up joint health overview and scrutiny committees with other local authorities and delegate health scrutiny functions to an overview and scrutiny committee of another local authority.
- 3.9 As the Council is also responsible for the commissioning of its own and joint health services through its public health functions. It too is also subject to the above powers.
- 3.10 The Committees functions as an overview and scrutiny committee of the Council are unaffected by these changes and the committee retains the responsibility to scrutinise decisions of the Council's executive and the running of the Council within its remit as set out in the Council's constitution.
- 3.11 It is also important to note that under regulations the local Healthwatch can make referrals to the Committee for scrutiny.

Effects of new guidance and increased joint working

- 3.12 The changes to current health scrutiny guidance for both local authorities and health partners coupled with the restructuring of NHS commissioning within England will make it increasingly likely that joint scrutiny between local authorities could need to take place.
- 3.13 Section 30 of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 makes clear that joint scrutiny must take place when more than one local authority is consulted on a significant reconfiguration.
- 3.14 The current Black Country Integrated Care System, under which the BCICB (Black Country Integrated Care Board) and the BCICP (Black Country Integrated Care Partnership) sits, the Black Country Foundation Trust and the various hospital trusts all provide or commission healthcare services in areas which overlap local authority boundaries. The creation of the Integrated Care Systems indicates that in future more regional and joined up healthcare systems will develop which could affect services in more than one local authority and thus require joint scrutiny.
- 3.15 The Committee will need to consider what kind of approach to joint scrutiny it wishes to take and how it will interact with both health partners and other local authorities in relation to significant health service reconfigurations. A possible method of facilitating this is through the agreement of a joint memorandum of understanding between Black Country Local Authorities and health partners.
- 3.16 A joint memorandum of understanding could help facilitate how Black Country Local Authorities manage significant service reconfigurations which affect

services across one or more of their boroughs. The memorandum could set out how joint consultations with health partners are handled and how a joint response to a consultation would be coordinated. In addition, the memorandum would need to outline the steps that local authorities and health partners should take to resolve disagreements in relation to significant services changes before requesting intervention from the Secretary of State through the 'call in' mechanism. The risk of not agreeing a joint memorandum of understanding would be that local authorities would not be prepared to respond to a proposed service reconfiguration in a timely manner and affect the ability of scrutiny to alter proposals before they are implemented.

3.17 More detailed information on the effect of the changes can be found in guidance from the Centre for Governance and Scrutiny in **Appendix 1 - Changes to scrutiny of health reconfigurations: frequently asked questions.**

3.18 The new guidance from the Department of Health and Social Care on health scrutiny can be found in **Appendix 2 – Guidance: Local authority health scrutiny (Updated 9 January 2024).**

4. Financial information

4.1 There are no financial considerations associated with this report.

5. Reducing Inequalities

5.1 The Council has a duty to reduce inequalities under the Public Sector Equality Duty (Equality Act 2010). Any decisions taken by the Committee should take into account this legislation.

6. Decide

6.1 The changes in health scrutiny guidance and the recent reorganisation of NHS commissioning make it increasingly likely that joint scrutiny may need to take place between local authorities in relation to significant health service reconfigurations.

6.2 While there are no decisions for the Committee to take at this stage, the Committee is asked for its opinions on how they would like potential joint scrutiny arrangements to work in future.

7. Respond

7.1 The report will be presented for scrutiny for feedback.

7.2 If the Committee requests for work to be carried out to explore the options for future joint scrutiny, then a further report will be provided outlining those options.

7.3 Additionally, any joint scrutiny in relation to health will need to be either decided by full Council or full Council will need to delegate power to the Committee to set up joint scrutiny arrangements.

8. Review

Not applicable.

Background papers

None

Appendices

Appendix 1 - Changes to scrutiny of health reconfigurations: frequently asked questions

Appendix 2 – Guidance: Local authority health scrutiny (Updated 9 January 2024)

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