

BOROUGH OF TELFORD & WREKIN

COUNCIL CONSTITUTION COMMITTEE – 19 FEBRUARY 2013

HEALTH AND WELLBEING BOARD AS A STATUTORY COMMITTEE OF THE COUNCIL AND FUTURE HEALTH AND CARE SCRUTINY ARRANGEMENTS

REPORT OF THE ASSISTANT DIRECTOR – SOCIAL CARE SPECIALIST AND DEMOCRATIC SERVICE MANAGER

1.0 SUMMARY

- 1.1 This report sets out details of the regulations that apply to Health and Wellbeing Boards as a Committee of the Council from 1 April 2013, when authorities take over a number of public health functions. The Regulations have recently been published (8th February) with further practical guidance awaited. This report is subject to the guidance that will follow.
- 1.2 The Localism Act 2012 and the Health and Social Care Act 2012 have also resulted in a number of changes that affect Scrutiny. Scrutiny Management Board considered the changes to the constitution at the committee meeting on November 16th 2012. The Board agreed to recommend the changes to the Constitution following the Localism Act 2011 and agreed to delegate the changes following the Health and Social Care Act 2012 to the Statutory Scrutiny Officer in consultation with the Chair of Scrutiny Management Board.

2.0 RECOMMENDATIONS

2.1 It is recommended that Council Constitution Committee make the following recommendations to Council:

- To establish the Health and Wellbeing Board as a Committee of the Council as set out in Section 5-10 and Appendix 3 of this report.
- That delegated authority be given to the Council's Monitoring Officer and Assistant Director: Law, Democracy and Public Protection, in consultation with the Chair of the Health and Wellbeing Board and Chair of Council Constitution Committee to make any necessary amendments and recommendations following any further regulations or guidance.
- To delegate the health scrutiny power vested in Council under the Health and Social Care Act 2012 to the relevant Scrutiny Committee and agree the changes to the constitution as set out in Section 11 of this report and Appendix 1
- To make the changes to Scrutiny elements of the constitution following the Localism Act 2011 as set out in Section 11 of this report and Appendix 1.

3.0 MINUTES OF PREVIOUS MEETINGS

3.1 SMB - 21

4.0. INFORMATION

4.1 The Health and Social Care Act 2012 (Section 194) places a statutory responsibility on the Council to have a Health and Wellbeing Board in place from the 1 April 2013. Up until this point the Board has been meeting in shadow form but in preparation for the 1 April the Board needs to be established as a formal Committee of the Council in accordance with statutory requirements and guidance.

4.3 The proposed structures of Health and Wellbeing Boards do not align with the traditional local authority executive/committee structures. To deal with this the Department of Health has implemented regulations governing the operation of Health and Wellbeing Boards (as per Section 194 (12) of the Health and Social Care Act). These regulations will come into force on 1 April 2013.

4.3 The regulations will allow Health and Wellbeing Boards to function as a committee of the local authority. However there will be some opportunity for local determination. **A revised Terms of Reference for the HWB, covering all the key points, is attached as Appendix 3.**

4.4 The key points are set out below

5.0 ESTABLISHMENT OF SUB COMMITTEES AND DELEGATION

5.1 Unless a local authority directs otherwise, a committee can establish a subcommittee to discharge certain functions. The regulations will enable Health and Wellbeing Boards to be able to establish subcommittees and delegate functions to them. Whether or not to establish sub-committees will be a matter for local determination.

6.0 VOTING RESTRICTIONS

6.1 Current legislation means that any members of a committee who are not members of the local authority should be treated as non-voting members, except in relation to a specified set of committees. The regulations remove this barrier and enable local authorities to empower all key members of the board to vote alongside the elected representatives. This also applies to any additional board members appointed in addition to the statutory membership set out in the Health and Social Care Act 2012.

7.0 POLITICAL PROPORTIONALITY

7.1 Seats on local authority committees and sub-committees are normally allocated to reflect the prevailing political proportionality of the local authority. The Department of Health has disapplied the provisions of the existing

legislation requiring political balance in relation to Health and Wellbeing Boards so that the question of political proportionality of Health and Wellbeing Board membership is left to local determination. It is recommended that each opposition party with 4 or more elected members shall have one place on the Health and Wellbeing Board with voting rights.

8.0 DISQUALIFICATION FOR MEMBERSHIP

8.1 The current legislative framework states that any person who would be disqualified from being able to stand for election as a councillor shall be disqualified from being a member of a committee or sub-committee of a local authority. The regulations state that these disqualifications will be retained, but the regulations will ensure the disqualifications do not apply to Health and Wellbeing Boards in so far as they cover disqualifications in respect of members of the board:

- Holding any paid employment or office in the local authority – this in effect allows the Directors of Adult Social Services, Children’s Services and Public Health to be formal members of the Committee

8.2 **However, it is recommended that the following disqualifications are retained locally in respect of members of the Board:**

- Being the subject of a bankruptcy restrictions order or interim order
- Having been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence and has had passed a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine

9.0 APPLICATION OF A CODE OF CONDUCT AND DECLARATIONS OF INTEREST

9.1 The Council has adopted a code of conduct. The new regulations will apply this code of conduct to members of the Health and Wellbeing Board even if they are not elected members. However, the Department of Health is exploring whether a modification is necessary in relation to Clinical Commissioning Group participation in discussions and decisions in which they could otherwise potentially be excluded. This is subject to receipt of further guidance.

10.0 APPLICATION OF TRANSPARENT PROVISIONS

10.1 There is a strict set of rules governing access to documents and meetings of local authority committees and sub-committees, and there are prescribed situations in which the public can be excluded from meetings and when local authorities can withhold documents from inspection. The regulations will not disapply or make any modifications to the existing provisions, which will apply to Health and Wellbeing Boards unchanged.

11.0 SCRUTINY ARRANGEMENTS

- 11.1 The Localism Act 2012 and the Health and Social Care Act 2011 have resulted in a number of changes that affect Scrutiny. The substantial changes set out below require changes in the Council's constitution.
- 11.2 Regulations following the Localism Act 2012 set out that the Executive must now give 28 "clear" days notice of an intention to hold all or part of a Cabinet meeting in private and the reasons for doing so. There is also a requirement in respect of all key decisions, to publish a notice setting out details of that proposed key decision; such a notice must be published 28 clear days before the decision is taken. There is no longer a requirement for the Council to publish a monthly Forward Plan of key decisions.
- 11.3 If the 28 day timetable for notification of a key decision is impracticable, the decision can still be taken if the Proper Officer has informed the Chair of the relevant Scrutiny Committee in writing of the details of the decision to be made. If there is less than 5 clear days notice before the decision is to be taken, there is a Special Urgency provision. Such a decision can only be taken if the decision-maker has received the permission of the Chair of the relevant Scrutiny Committee. This mirrors the previous arrangement where permission had to be sought of Scrutiny Chairs if a key decision was not in the Forward Plan or was very urgent.
- 11.4 The Health and Social Care Act 2012 has given the health scrutiny power to the Local Authority with effect from April 2013. The scope of the health scrutiny powers will be extended to include relevant health service providers – this includes providers of NHS and public health services commissioned by the NHS Commissioning Board, CCGs and local authorities, including providers in the independent and third sectors. While the Regulations relating to these aspects of the legislation have not been published the Department of Health has published its response to the consultation on Health Scrutiny Regulations. This confirmed that Council will have the power to delegate the Health Scrutiny powers to a Health Overview and Scrutiny Committee (HOSC) including the power of referral to the Secretary of State in the event of a contested substantial variation or development in service. It is recommended that CCC recommend to Council that these powers are delegated to the relevant Scrutiny Committee. The Department of Health believes that in a delegated arrangement it is right that full council should be fully sighted on how the powers for which it is accountable are being exercised. E.g. that the HOSC notify full council of an intention to refer a matter to the Secretary of State before a referral is made. The process to inform Council will be set out in the Scrutiny Handbook as described below.
- 11.5 The Department of Health has set out that the new regulations will require the formation of joint scrutiny arrangements where the an NHS organisation proposing service change consults more than one authority. As is currently set out in the Constitution the existing Joint HOSC with Shropshire and any

other Joint HOSC established will be sub groups of the Scrutiny Committee to which the Health Scrutiny power has been delegated. The Department of Health response has set out that where HOSC has been established to consider a substantial variation or development in the power of referral is vested with the Joint HOSC.

- 11.6 The consequent changes to the Constitution are shown as track changes in Appendix 1 Scrutiny Handbook are set out in Appendix 2.

12.0 EQUAL OPPORTUNITIES

- 12.1 There are no direct equal opportunity implications from this report. The Health and Wellbeing Board and Health Scrutiny Committees will consider the equal opportunity issues relevant to the Health and Wellbeing Strategy, work programme and reviews.

13.0 ENVIRONMENTAL IMPACT

- 13.1 There are no environmental implications from this report.

14.0 LEGAL COMMENT

- 14.1 The provision for Health and Wellbeing Boards has been established by the Health and Social Care Act 2012. Section 194 sets out the requirements for the constitution of the Board. Appendix 3 sets out the proposals for how the Board will be set out. The nomination for councillors on the Health and Wellbeing Board is to be made by the executive leader of the authority (section 194(3) of the Health and Social Care Act 2012).
- 14.2 Specific arrangements for the structure and powers of the Board has now been clarified in The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2012. Key provisions of the Regulations are set out in the main body of the report and at Appendix 3. However, guidance to assist with interpretation of the Regulations have yet to be released and further modifications to the arrangements as set out may need to be made at a later date. The Regulations include the following provisions:
- The Health and Wellbeing Boards to delegate the discharge of certain functions to sub-committees and/or officers or to create sub-committees to advise on their functions
 - To establish non-voting members of the Health and Wellbeing Board if considered appropriate.
 - That the rules relating to the political balance of committees as set out at Sections 15, 16 and Schedule 1 of the Local Government and Housing Act 1989 do not apply to the Health and Wellbeing Board

- 14.3 In relation to the scrutiny arrangements referred to in the report, the regulations set out in paragraph 11.2 and 11.3 are the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012/2089 which came into force on 10th September 2012.
- 14.4 The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2012 also make amendments to scrutiny arrangements for health and wellbeing matters which are set out in Part 12, Chapter 3 of the NHS Act 2006 as amended by the Health and Social Care Act 2012. If the Council chooses to continue to have this function undertaken by an overview and scrutiny committee the provisions are set out as to how this is to be done in this report, in consideration of the aforementioned new regulations (but also stating that further amendment may be required in the event of further regulations and/or guidance).
- 14.5 All of the provisions and changes proposed in this report must be compliant with the statutory provisions referred to. The most recent regulations have been published with short notice for implementation. Further regulations or guidance may mean that proposals here need to be amended. Accordingly the report contains a delegation to the Assistant Director for Law, Democracy and Public Protection in consultation with the relevant elected members to make any changes required at short notice to ensure that the council performs its functions in accordance with statutory requirements. This delegation is requested on the understanding that any changes will be reported to the appropriate committees thereafter for review.

15.0 LINKS WITH CORPORATE PRIORITIES

- 15.1 The establishment of the Health and Wellbeing Board and the work of the HOSC and Join HOSC links with the corporate priority to improve the health and wellbeing of our communities and address health inequalities.

16.0 OPPORTUNITIES AND RISKS

- 16.1 The establishment of the Health and Wellbeing Board provides an opportunity to build on the good working relationships with partner organisations in the NHS.

17.0 FINANCIAL IMPLICATIONS

- 17.1 All costs of administering Scrutiny are funded from their annual revenue budget . Any financial issues will be highlighted as part of financial monitoring as appropriate. Any specific costs associated with the establishment of the Health and Wellbeing Board can be met from within the Council's resources.

18.0 WARD IMPLICATIONS

18.0 There are no ward implications resulting from this report.

19.0 BACKGROUND PAPERS

19.0 The Health and Social Care Act 2012
The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2012
The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012/2089
National Health Service Act 2006

The formal route for approving the final recommendations is:

Council Constitution Committee – 19 Feb 2013
Council - 7 March 2013

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