Executive Summary

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 April 2013. Local authorities will have greater discretion over how to exercise these powers, with the function of health scrutiny conferred directly on the local authority; and health scrutiny powers will be extended to facilitate effective scrutiny of any provider of any NHS funded service, as well as any NHS commissioner. Regulations are due to come into force from April 2013, and guidance will be published to accompany them.

The Governance Committee is asked to consider the implications and to agree some proposed changes to the Constitution of the County Council. It may be necessary to further review how the Council discharges its health scrutiny functions, in light of both the guidance due to be published and any changes to resulting from the Francis Inquiry into the Mid Staffordshire Hospitals NHS Foundation Trust.

Recommendations

The Governance Committee is asked to:

(1) Note the changes to how the health scrutiny function will be exercised from 1 April 2013 (as set out in paragraph 2);

(2) Consider the implications of these changes to West Sussex County Council (as set out in paragraph 3) and recommend to the County Council that:
   (a) The County Council should discharge its health scrutiny functions through the Health and Adult Social Care Select Committee
   (b) The County Council should delegate the health scrutiny power of referral to the Health and Adult Social Care Select Committee
   (c) The Health and Adult Social Care Select Committee should notify the County Council where it is likely to refer a matter to the Secretary of State
   (d) The changes set out in Appendix B should be made to the Constitution of the County Council;

(3) Endorse the changes to the membership of the Health and Adult Social Care Select Committee, relating to the new Local HealthWatch organisation, as set out in Appendix C, for recommendation to the County Council.
1. Health Scrutiny - Context

1.1 The Health and Social Care Act 2001 introduced the provision for local authorities with social services responsibilities to scrutinise the NHS through overview and scrutiny committees with a power to review any matter relating to the planning, provision and operation of health services in their area, and to make reports and recommendations to NHS bodies and local authorities. These powers are currently discharged in West Sussex through the Health and Adult Social Care Select Committee (HASC).

1.2 Further reforms are underway following the Health and Social Care Act 2012. This has extending the scope to include any provider of NHS and public health services commissioned by the new NHS Commissioning Board, clinical commissioning groups and local authorities (i.e. including providers in the independent and third sectors). It also confers the health scrutiny functions on the local authority directly – so there is no longer a requirement to have a statutory health scrutiny committee. Local authorities can decide how they wish to exercise this function, and may choose to do so through continuing to have a health scrutiny committee.

1.3 The Government recognised the need to ensure that new organisations (e.g. the health and wellbeing board, clinical commissioning groups, the NHS Commissioning Board) are subject to appropriate scrutiny and that all NHS commissioners and providers continue to be held to account locally. Therefore, the Department of Health (DH) has published new Local Authority Regulations and this report focuses on the health scrutiny aspects of these and the implications for the County Council.

2. Changes to Health Scrutiny Regulations

2.1 The new regulations make provision for local authorities to review and scrutinise matters relating to the planning, provision and operation of the health service in their area.

2.2 The key change is that the health scrutiny function and powers are conferred on the local authority itself, rather than directly onto a health scrutiny committee. The regulations therefore allow local authorities to arrange for their health scrutiny functions to be discharged by:

(a) An overview and scrutiny committee of the council
(b) A joint overview and scrutiny committee appointed by the Council and one or more other local authorities
(c) Another committee or sub-committee of the Council
(d) An overview and scrutiny committee of another local authority

2.3 N.B. The health scrutiny function may not be delegated to the Health and Wellbeing Board.

2.4 The changes also mean that the following organisations 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:
- NHS Commissioning Board
- Clinical Commissioning Groups
- NHS trusts or NHS foundation trusts providing services to people residing in the area of the authority
- Other relevant health service providers, providing NHS services in the area (e.g. this may include voluntary, independent and private sector providers)

2.5 Another key change 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). 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.

2.6 The DH position is that, regardless of what arrangements councils establish for referral to the Secretary of State, the full Council should be aware of how the powers are being exercised, as it is ultimately accountable for them. It proposed that a health scrutiny committee might wish to notify its full Council that it is likely to refer a matter to the Secretary of State to give the Council the opportunity to debate the matter, if it so wishes. The suggested mechanism is set out in Appendix B.

2.7 A number of other changes will be made to how proposed substantial changes/variations to NHS services are scrutinised (and will be set out in more detail in the guidance due to be published) including:

- Requiring both the NHS and local authority to publish clear timescales for their decision-making
- Requiring financial considerations to be taken into account in any referral to the Secretary of State on a contested proposal for service change
- The NHS Commissioning Board will have a supportive role with a focus on facilitating engagement and local agreement on contested proposals.
- It is expected that any NHS service change proposal will support the local Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy. If the health and wellbeing board supports a service change proposal and the local authority decides to refer it to the Secretary of State for Health, it will have to set out clearly why it is referring something that the health and wellbeing board supports.
- It is suggested that the health and wellbeing board could play a role in helping to resolve any local disagreements for service reconfiguration.
- Joint scrutiny arrangements will be required where the change proposer consults more than one local authority (i.e. where the implications of a proposed service change cross local authority boundaries).

2.8 Regulations will also enable:

a) Local HealthWatch (the local champion for patients and the public, with a remit covering both health and social care) may refer matters to a HOSC. Where a local HealthWatch makes such a referral, the HOSC will be under a duty to acknowledge receipt of the referral within 20 working days and keep them informed of any action it intends to take.
b) Health and Wellbeing Boards to be subject to overview and scrutiny. It is expected that health scrutiny committees will want to review and scrutinise the Health and Wellbeing Board’s decisions and actions and make reports to the Cabinet/Executive. Health scrutiny committees are identified as an important way for local people to hold the non-elected members of health and wellbeing boards to account.

c) The commissioners and providers of Public Health Services to be held to account and subject to scrutiny as are other health services.

3. Implications for The County Council

3.1 The County Council currently discharges its health scrutiny functions through the Health and Adult Social Care Select Committee (HASC). This committee was formed in April 2012, following the Governance Committee’s review of the Council’s scrutiny arrangements, with the merger of the former Health Overview and Scrutiny Committee and the Adults’ Services Select Committee. In light of the new Regulations, and the fact that it is no longer a statutory requirement to have a health scrutiny committee, Governance Committee is asked to consider the following:

a) Whether or not the Council should delegate its health scrutiny powers to the HASC; and if not, how the health scrutiny powers should be discharged (to include how scrutiny of the Health and Wellbeing Board should be carried out)

b) If it is agreed that the Council should discharge its health scrutiny functions through the HASC, whether or not the power of referral should be delegated to the HASC

3.2 In considering these questions, members are asked to take into account the following:

- Health scrutiny powers have been extended and strengthened
- Health scrutiny committees are widely recognised to have been a success (with the DH response to the consultation on new Regulations stating that “we agree that the HOSC model is a strong one”)
- An effective relationship between health and wellbeing boards, HealthWatch and health scrutiny will be essential to ensuring high quality and effective services are commissioned and delivered.
- The Council’s comments (made in a joint submission by the Leader and Chairman of the HASC) on the proposals to change the power of referral, as set out at Appendix A.

3.3 If it is agreed that the power of referral should be delegated to the HASC, a number of changes to the Council’s Constitution for approval by the County Council will be required, as set out in Appendix B. A number of other consequential changes are required as a result of the new Regulations, set out in Appendix C.

3.4 The Committee is also asked to endorse some minor changes to the Constitution, relating to membership of the HASC. The Local Involvement Network (LINk) currently has one representative (non-voting) on the HASC. LINk is becoming a new organisation – Local HealthWatch. This will be the
local champion for patients and public, building on the work of LINK and carrying forward its core functions, with a remit covering both health and social care. Local Health Watch will take up its responsibilities from 1 April 2013, and it is therefore recommended that the Committee endorses the proposal that Local HealthWatch should have one representative on HASC, replacing the LINK representation. The proposed changes to the Constitution for recommendation to the County Council are set out in Appendix C.

4. Health Scrutiny – Guidance and the Francis Inquiry

4.1 Further guidance on health scrutiny is expected to be published in the near future replacing DH guidance issued in 2002. In addition, the report of the Public Inquiry into the Mid Staffordshire NHS Foundation Trust (the “Francis Inquiry”) in February 2013 has made a number of recommendations relating to health scrutiny, including that:

- Overview and scrutiny committees and Local HealthWatch should have access to detailed information about complaints (allowing for patient confidentiality).
- Guidance should promote the coordination between Local HealthWatch, Health and Wellbeing Boards, and local government scrutiny committees.
- Scrutiny committees should have powers to scrutinise providers, rather than relying on local patient involvement groups to carry out this role, or should actively work to trigger and follow up inspections rather than receiving reports without comment or suggestions for action.

4.2 It will be necessary to review the implications of the further guidance and any changes resulting from the Francis Inquiry, as and when appropriate.

5. Consultation

Not applicable.

6. Resource Implications and Value for Money

There are no resource implications for the County Council arising from this report.

7. Risk Management Implications

Without the necessary changes to the Protocol on Select Committees, there will be a lack of clarity regarding how the Council will exercise the health scrutiny power of referral. This could lead to difficulties as and when any NHS service reconfigurations are scrutinised, causing unnecessary delays to the process.

8. Other Considerations – Equality – Crime Reduction – Human Rights

Public Sector Equality Duty

A Customer Focus Appraisal is not required for this decision.
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- **Appendix A** – Extract of the WSCC response to DH proposals for consultation on local authority health scrutiny, August 2012
- **Appendix B** - Suggested Constitutional changes relating to the power of referral (Protocol on Select Committees, Part 4, Section 3; and Responsibility for Functions, Part 3, Appendix 8B)
- **Appendix C** – Suggested Constitutional Changes relating to Local HealthWatch membership of the Health and Adult Social Care Select Committee (Part 3, Responsibility for Functions, Appendix 8B; and Part 4, Section 3, Protocol on Select Committees)

**Background Papers**

Statutory Instruments, 2013 No 218: The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 3013
Extract of the WSCC response to DH proposals for consultation on local authority health scrutiny, August 2012

Do you consider it would be helpful for referrals to have to be made by the full council?

- Whilst we understand a local authority that no longer has a health scrutiny committee may wish to make referrals through its full council, we do not feel that this should apply to all councils. Where health scrutiny committees have been retained it should be possible for full council to delegate the referral function to this committee.

- We have a number of concerns with this proposal, including:
  - Full council will not have the same level of understanding (through research/evidence gathering) as the health scrutiny committee. Giving it the referral function would risk undermining the integrity of the scrutiny process.
  - Co-opted health scrutiny members (e.g. district and borough councillors) would be disempowered and excluded from the process.
  - There may be potential conflicts of interest for councillors who also sit on the health and wellbeing board.

- Another concern is that requiring referrals to be made by the full council will delay the referral process. However, if this is required it should be possible for local authorities to manage this so as to avoid unnecessary delays due to the timing of full council meetings. For example, the indicative timetable could identify any key council meetings that might need to consider a referral.

- We support enabling democratically elected councillors to have input into/express their views on key service reconfigurations, but feel that there are other ways of achieving this without requiring referrals to be made by full council. For example:
  - Inviting local councillors to submit evidence to the health scrutiny process on any major service change proposals. At West Sussex County Council, our health scrutiny committee will generally invite local councillors to submit evidence through our County Local Committees (area committees with representation from all County Councillors) and through district and borough councils.
  - A debate at full council where there is political or local demand. Our Council’s Constitution enables major items of work undertaken by select committees to be reported to meetings of the County Council for debate.
Responsibility for Functions (Part 3, Appendix 8B, Health and Adult Social Care Select Committee)

18. To respond to consultation by any local NHS body with reference to any proposals for a substantial development of the health service in the area of West Sussex or for a substantial variation in the provision of such service with the exception of urgent proposals as defined in Regulation 23 (2) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 excluding pilot schemes (within the meaning of Section 4 of the National Health Service (Primary Care) Act 1997 and urgent proposals as defined in Regulation 4 (3) of the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 and to make comments by the due date specified by the local NHS body referring the matter.

Protocol on Select Committees (Part 4, Section 3)

47. Any dissolution or establishment of an NHS Trust shall not in itself be a substantial development or variation and neither will pilot schemes within the meaning of Section 4 of the National Health Service (Primary Care) Act 1997. Any urgent change made by the NHS because of a risk to safety or welfare of patients or staff will not be subject to consultation, but the NHS must inform the Health and Adult Social Care Select Committee and outline the reasons for urgency.

49. The County Council has delegated the power of referral to the Health and Adult Social Care Select Committee, so in any case where the Committee is not satisfied that consultation on any proposal for substantial variation or development is reasonable in terms of content or time allowed, or if the committee is not satisfied that the reasons for an urgent change to services is adequate, it may refer the item to the Secretary of State. The Secretary of State may require the local NHS body to carry out further consultation as he or she considers appropriate.

51. The Committee will notify the County Council of any proposals for NHS service change that have been identified as ‘substantial’ and which it intends to refer to the Secretary of State for Health. This notification will be made to all members of the Council within two working days of the decision. Any member may require that the County Council debates the proposed referral at the next meeting of the County Council provided the member has the support of at least eight other members and informs the Chairman of this request within eight days of the notification. Otherwise the matter will be noted at the Council meeting. The referral may be made ‘subject to consideration by full Council’, if the referral would otherwise be compromised by the need to await such debate.
Standing Orders (Part 4, Section 1)

Order of Business; Time Limits

14. (1) The order of business at a meeting of the County Council shall be:

   (xvi) To consider any reports from Select Committees pursuant to Standing Order 57(2)(c);

   (xvi) To consider any reports from the Health and Adult Social Care Select Committee under Standing Order 57(2)(d);

   (xviii) To consider notices of motion in the order in which they have been received in accordance with Standing Order 16(1);

   (xviv) Other business (if any) specified in the summons.

Select Committees

57. (2) (d) The Health and Adult Social Care Select Committee will notify the County Council of any proposals for NHS service change that have been identified as ‘substantial’ and which it intends to refer to the Secretary of State for Health. This notification will be made to all members of the Council within two working days of the decision. Any member may require that the County Council debates the proposed referral at the next meeting of the County Council provided the member has the support of at least eight other members and informs the Chairman of this request within eight days of the notification. Otherwise the matter will be noted at the Council meeting.
Part 3, Responsibility for Functions, Appendix 8B, Health and Adult Social Care Select Committee

(Additions shown in bold, italic text, deletions struck through)

14 members of the County Council and seven members comprising one from each of the borough and district councils (voting) and one LINk (Local Involvement Network) Local HealthWatch representative (non-voting).

**Note:**
The LINk Local HealthWatch representative will have health care as their main area of expertise and will serve for a maximum of two two-year terms, (i.e. four years in total).

**Part 4, Section 3, Protocol on Select Committees:**

Para 14 (Membership, Co-option and Liaison):

The Health and Adult Social Care Select Committee also has one non-voting, co-opted member from Local HealthWatch the Local Involvement Network.