

Health and Adult Social Care Scrutiny Committee

30 January 2024

New Health Scrutiny Regulations and Statutory Guidance

Report of the Statutory Scrutiny Officer

1 Purpose

- 1.1 To inform the Committee of the new powers being introduced for the Secretary of State to intervene in the development of proposals for the reconfiguration of local health services, and the impact of these new powers on the Health Scrutiny process.

2 Action required

- 2.1 The Committee is asked to:

- 1) note the Secretary of State's new powers and their practical effects on the Health Scrutiny process, coming into force from 31 January 2024; and
- 2) note that the Committee's formal Terms of Reference will be reviewed for any amendments required as a result of the new legislative position.

3 Background information

- 3.1 From 31 January 2024, new measures will be in place to give the Secretary of State a broad power of intervention in relation to proposals for the reconfiguration of local health services – where, currently, the Secretary of State would only become involved if the proposals were referred on to them by a relevant Health Scrutiny Committee (HSC) in the event of a dispute that it has not been possible to resolve at the local level. Instead of a direct power of referral to the Secretary of State, HSCs (alongside the local Healthwatch group) will now have the right to be formally consulted on how the Secretary of State's new powers of 'call in' for a given proposal for changes to health services in their area will be used.
- 3.2 Going forward, anyone (including a HSC) may ask the Secretary of State to call in proposals for health service reconfigurations if they have concerns about them. However, proposals will only be called in under exceptional circumstances, where:
- a) it is clear that attempts have been made to resolve the concerns expressed through the local NHS commissioning body and the local authority/HSC;
 - b) NHS commissioning bodies and local authorities/HSCs have already taken steps to seek to resolve the issues themselves;
 - c) there are concerns that the proper processes for developing and consulting on the proposals have not been followed correctly by the NHS commissioning body or the provider; and/or

- d) a decision has been made, but concerns remain that a proposal is not in the best interests of the health service in the area.
- 3.3 The Secretary of State's powers to call in proposals will be used as a last resort, and only when it is considered that all local methods for resolution have been exhausted. Where a proposal is formally called in, the Secretary of State will consult the stakeholders (including local authorities/HSCs) in considering what action to take. Should the Secretary of State decide to intervene and make formal directions, the relevant NHS commissioners and providers must comply with those directions.
- 3.4 All other aspects of the Health Scrutiny process remain unchanged by the Secretary of State's new powers, including the ability of HSCs to:
- a) review and scrutinise matters relating to the planning, provision and operation of the health service in their area;
 - b) require information to be provided by NHS bodies about the planning, provision and operation of health services that is reasonably needed to carry out effective Health Scrutiny;
 - c) require employees (including non-executive directors) of NHS bodies to attend meetings to answer questions;
 - d) make reports and recommendations to NHS bodies and expect a response within 28 days; and
 - e) set up Joint Health Scrutiny Committees with other local authorities and/or delegate Health Scrutiny functions to an Overview and Scrutiny Committee of another local authority.
- 3.5 A HSC's status as a statutory consultee on the proposed reconfiguration of local health services also remains in place, with NHS commissioners and providers required to continue to engage with HSCs in the same way as they do currently. NHS commissioners will have new duties to notify the Department for Health and Social Care where a significant reconfiguration of health services is proposed, with evidence that the relevant HSC had been consulted and provided its views.
- 3.6 The Committee's formal Terms of Reference will be reviewed for any amendments required as a result of the new legislative position.

4 List of attached information

- 4.1 None

5 Background papers, other than published works or those disclosing exempt or confidential information

- 5.1 None

6 Published documents referred to in compiling this report

- 6.1 [Health scrutiny and the new reconfiguration arrangements](#) (9 January 2024)

- 6.2 [Advice to local authorities on scrutinising health services](#) (9 January 2024)
- 6.3 [Reconfiguring NHS services – ministerial intervention powers](#) (9 January 2024)
- 6.4 [Health overview and scrutiny committee principles](#) (29 July 2022)
- 6.5 [Planning, assuring and delivering service change for patients](#) (9 May 2022)

7 Wards affected

- 7.1 All

8 Contact information

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