

Committee: Council

Date: 21 November 2018

Wards: ALL

Subject: South West London and Surrey Joint Health Overview & Scrutiny Committee

Lead officer: Ged Curran Chief Executive

Contact officer: Fiona Thomsen, Head of Shared Legal Services

Recommendation:

- A. That the Council confirms that the power to refer to the Secretary of State under Regulation 23 of Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 is retained by the Council.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

This report is to clarify the position that under the Council's Constitution the Healthier Communities and Older People Scrutiny Panel has the power (under Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 to refer proposals for substantial development or variations to the provision of health services to the Secretary of State (subject to criteria). For the purposes of clarification the power to refer to the Secretary of State has not been delegated to the South West London Joint Health Overview and Scrutiny Committee nor its sub-committee.

2 DETAILS

- 2.1 Under Part 4E of the Council's constitution the Council has delegated its health scrutiny function to the Healthier Communities and Older People Overview and Scrutiny Panel.
- 2.2 The Council has also established with six other Local Authorities a Standing Joint Health Overview and Scrutiny Committee, with responsibility for responding to consultation on substantial service changes affecting multiple authorities across the area.
- 2.3 At the Annual Council meeting on 23 May 2018 Council reconstituted the existing South West London and Surrey Joint Health Overview and Scrutiny Committee (JHOSC) and agreed the Terms of Reference and Rules of Procedure for the Joint Committee.
- 2.4 At the meeting of the JHOSC on 26 June 2018, it was decided to establish a sub committee of the JHOSC made up of the London Boroughs of Merton and Sutton and Surrey County Council to carry out a detailed scrutiny of the

Improving Health Together 2020 –2030 Programme and the JHOSC agreed that the final decision making power was delegated to the sub committee.

- 2.5 The status of the existing JHOSC and sub-committee is discretionary under the Local Authority Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (the Regulations).
- 2.6 Under Regulation 23 of the Regulations, bodies and providers of NHS services must consult with the local authority about any proposals for a substantial development or variation of the health service in the authority's area. If the proposals affect more than one local authority a joint health overview and scrutiny committee must be established. At the point consultation under Regulation 23 commences the existing discretionary JHOSC becomes a mandatory sub committee for the purposes of the Regulations.
- 2.7 Once mandatory, the Regulations set out the following requirements:
- Only the joint committee may respond to consultation (ie rather than each individual local authority responding separately)
 - Only the joint committee may exercise the power to require the provision of information by the relevant NHS body or health service provider about the proposal.
 - Only the joint committee may exercise the power to require members or employees of the relevant NHS body or health service provider to attend before it to answer questions in connection with the consultation.
- 2.8 These restrictions, however, do not apply to the power to make a referral to the Secretary of State.
- 2.9 Under the Regulations Local Authorities may report to the Secretary of State in writing if:
- It is not satisfied with the adequacy of content of the consultation
 - It is not satisfied that sufficient time has been allowed for consultation
 - It considers that the proposal would not be in the interests of the health services in its area
 - It has not been consulted, and it is not satisfied that the reasons given for not carrying out consultation are adequate.
- 2.10 Local authorities may choose to delegate this power of referral to the mandatory joint committee but they need not do so. If the local authority has delegated this power, then it may not subsequently exercise the power of referral. If it does not delegate the power, it may make such referrals.
- 2.11 The terms of reference for the JHOSC include the joint committee agreeing whether to use the joint powers of the local authorities to refer either the consultation or the final decision in respect of any proposal for reconfiguration to the Secretary of State for Health.

- 2.12 This report has been brought before Council in order to clarify that the Council has not delegated its power to refer to the Secretary of State to the JHOSC and that the power remains with the Council and the Healthier Communities and Older People Overview and Scrutiny Panel.

3 ALTERNATIVE OPTIONS

- 3.1 The alternative option is that the power to refer to the Secretary of State can be delegated to the JHOSC.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 No consultation is proposed.

5 TIMETABLE

- 5.1 Consultation under Regulation 23 has not commenced yet and it is not expected to commence until next year.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. There are no such implications.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1 The National Health Service Act 2006, as amended by the Health and Social Care Act 2012, confers health scrutiny functions on the local authority. The Council conferred its health scrutiny functions on the Healthier Communities and Older People Overview and Scrutiny Panel.
- 7.2 The body of this report sets out the legal requirements and obligations under Regulations 23 and 30 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- 7.3 The power to refer matters to the Secretary of State can be retained by the Council or delegated to the JHOSC or the sub- committee of the JHOSC. If the power is delegated to the JHOSC the Council cannot make the referral of its own volition.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None for the purposes of this report.

9 CRIME AND DISORDER IMPLICATIONS

9.1. None for the purposes of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. None for the purposes of this report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- None

12 BACKGROUND PAPERS

- None