

COMMITTEE: CONSTITUTION
DATE: 3RD APRIL 2003
SUBJECT: HEALTH SCRUTINY
REPORT BY: DIRECTOR OF SCRUTINY
CONTACT OFFICER: GEOFF. BOCUTT 01582 546073

IMPLICATIONS:

LEGAL	✓	COMMUNITY SAFETY
EQUALITIES		ENVIRONMENT
FINANCIAL		CONSULTATIONS
STAFFING		OTHER

WARDS AFFECTED: NONE

PURPOSE

1. The purpose of this report is to advise the Constitution Committee about the proposed arrangements for scrutiny to exercise new statutory powers to scrutinise local health services and to ask the committee to recommend to the Council to establish a Joint Committee with Bedfordshire County Council and to authorise the making of any necessary amendments to the Council's Constitution.

RECOMMENDATION(S)

2. That the Council be recommended:
 - 2.1 to establish a Joint Committee with Bedfordshire County Council in order to carry out the Council's powers and duties in relation to scrutiny of the National Health Service under the Health and Social Care Act 2001 and the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002;
 - 2.2 to authorise the public consultation referred to in the report.

2.3 to authorise the Council's Monitoring Officer to make any necessary amendments to the Council's Constitution, including Article 6 of the Constitution (Overview and Scrutiny Committees).

BACKGROUND

3. The Government has legislated to put in place the arrangements for local authorities to scrutinise local health services first suggested in the NHS Plan.
4. The power is conferred (by section 7 of the Health and Social Care Act 2001) on authorities with responsibility for social services. Section 8 of that Act enables the Secretary of State to make Regulations which, amongst other things, may provide that two or more local authorities may appoint a joint committee and delegate their health scrutiny powers to that committee.
5. Regulations made under the Act came into force on 1st January 2003 and empower a local authority overview and scrutiny committee to "review and scrutinise any matter relating to the planning, provision and operation of health services in the area of its local authority". There is a requirement to follow any guidance issued by the Secretary of State and although draft guidance has been the subject of consultation, the definitive guidance had not been issued when this report was written.
6. When a local health body is considering "any proposal for a substantial development of the health service in the area of a local authority or for a substantial variation in the provision of such service, it shall consult the relevant overview and scrutiny committee of that authority". Responding to consultations about proposals for what were previously called 'major reconfigurations' of health services has been the role of community health councils but, from 1st January 2003, it is now the role of the relevant scrutiny committee, although community health councils will continue to be consulted until they are abolished (probably in September 2003).
7. It is then a matter for the scrutiny committee to decide:
 - whether consultation has been adequate in terms of time and content
 - whether the proposal(s) are in the interests of health services in the area
8. The scrutiny committee may decide to report to the Secretary of State if they are not satisfied about either of these aspects.
9. It should be noted that, in this context, the regulations refer specifically to the scrutiny committee and not to the Council or the Executive.

REPORT

10. In setting the work programme for scrutiny for the year 2002-03 the Scrutiny Board decided to retain responsibility for monitoring the progress of health scrutiny and for considering the arrangements that would need to be put in place.
11. At the meeting on 15th October 2002, the Board received a presentation from the Assistant Chief Executive of Bedfordshire County Council. The Board had previously agreed in principle a proposal for the Borough Council and the County Council to work

together on health scrutiny. The proposal was based on a pilot scheme that had been submitted as a bid to the Department of Health and that would have involved a joint committee supervising a number of 'trust facing' panels with differing Member composition based on the catchment of the trust being scrutinised. In the absence of a decision from the DoH the pilot had not been implemented and the proposals had been modified to try to reduce the likely cost in the expectation that any Government funding for health scrutiny would be very limited. They had also been modified to reflect the advice from the DoH that health scrutiny should be thematic rather than trust based. The proposal submitted retained the joint committee but abandoned the idea of the trust facing panels. The estimated cost of providing officer support, commissioned research and facilitating the work of the joint committee was about £150k of which about £50k would be borne by Luton.

12. The Board reaffirmed their support for the principle of joint working with the County Council on health scrutiny. They also reiterated their view that health scrutiny can only be effective if the Government provides the necessary financial resources and they appointed a reference panel of three Members of the Board to advise on health scrutiny matters between Board meetings if that proved necessary. The Members appointed to the reference panel were Councillors Hambleton, Jenkins and Franks.
13. At the meeting of the Board on 22 January 2003 I provided an update on health scrutiny and advised the Board that, although the exercise of the power of scrutiny is a discretionary matter, I had been advised that local authorities have a duty to put in place the necessary arrangements so that the power can be exercised. I also advised the Board that no funding for this function had been provided through the revenue support grant settlement for 2003-04 but that there was still the possibility of funding in the form of a specific grant from the DoH.
14. The Board decided (minute 8/2003):
 - (i) That the report and current situation regarding the funding of health scrutiny be noted.
 - (ii) That the Constitution Committee be recommended to advise the Council to make appropriate amendments to the Council's Constitution to enable three Members of the Council to be appointed by the Scrutiny Board to serve on a joint committee with the County Council to undertake health scrutiny so that the Council's obligations in this respect are carried out.
 - (iii) That subject to (ii) above those Members who were appointed by the Board at the last meeting as the Health Scrutiny Reference Group (Councillors Franks, Dr. Hambleton and Jenkins) be appointed to serve as the 'Joint Committee' Members until the end of this Municipal Year.

PROPOSAL/OPTION

15. The proposals therefore are that the power to scrutinise local health services, including the power to respond to any consultations about substantial variations or developments, should be delegated to a joint committee with the Bedfordshire County Council.

16. The recommendation from the Board suggests that the Board itself should appoint the three Luton Members of the joint committee. That does not necessarily mean that the three must be Members of the Board but it does mean that they cannot be Members of the Executive. However, the Head of Legal Services now advises that appointments need to be made by Full Council. The political balance rules apply to the appointments to the joint committee.
17. There is still no announcement from the DoH about funding for local authorities to carry out their health scrutiny function.

LEGAL IMPLICATIONS

18. When the Council's current political managements were introduced there was significant public consultation, including consultation on the scrutiny arrangements. Although there is no legal duty to consult on a change to the arrangements which affects only scrutiny, it would be in keeping with Government Guidance and the Council's previous practice to consult the public to some extent. It is proposed that there should be a "light touch" consultation, to use a phrase borrowed from Government Guidance. It is proposed to place an advertisement in the local press advising the public of the proposals and giving a fairly short period for comments to be made. Any comments received would be placed before the meeting of Full Council on 15th April 2003.

LIST OF BACKGROUND PAPERS

LOCAL GOVERNMENT ACT 1972, SECTION 100D

Health and Social Care Act 2001

The Local Authority (Overview and Scrutiny Committees Health Functions) Regulations 2002

Draft Guidance to local authorities on the conduct of their health scrutiny function

Reports to and minutes of the Scrutiny Board meetings on 15.10.02 and 22.01.03