DECISION-MAKER:	**HEALTH OVERVIEW AND SCRUTINY PANEL**
SUBJECT:	**LOCAL AUTHORITY HEALTH SCRUTINY – PROPOSALS FOR CONSULTATION**
DATE OF DECISION:	15 AUGUST 2012
REPORT OF:	SENIOR MANAGER CUSTOMER AND BUSINESS IMPROVEMENT
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

The Department of Health is currently consulting on changes to legislation on Health Overview and Scrutiny (HOS). This paper summarises the consultation and invites the Panel to make a response.

RECOMMENDATIONS:

(i) The Panel agree to submit a response to the consultation on changes to Health Overview and Scrutiny.

(ii) The Panel considers it response to the consultation questions outlined at appendix 2.

(iii) The Panel considers if would like to contribute to a SHIP HOSCs consultation response.

REASONS FOR REPORT RECOMMENDATIONS

1. The consultation proposes changes to the way HOSCs operate. This report gives HOSP members the opportunity to respond to the consultation. The consultation runs until 7 September 2012.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. None.

DETAIL (Including consultation carried out)

3. **Health and Social Care Act 2012**

The Health and Social Care Act 2012 introduced two main changes to health scrutiny:

• The scope covers new 'relevant NHS bodies' – the NHSCB and CCGs – and 'relevant health service providers' of NHS and public health services. The scope of HOSCs is thus extended to independent service providers.

• Responsibility to discharge scrutiny functions was moved directly from HOSCs to lie with the local authority. Councils can 'discharge their health scrutiny functions in the way they deem to be most suitable.' They may continue with a HOSC but could also choose alternative arrangements; this must be decided by the full council of each local authority.

4. The Act also changes the Local Government role in relation to health via the introduction of Health and Well-Being Boards (HWBBs). Through health and wellbeing boards, local authorities, the NHS and local communities will work

together to improve health and care services, joining them up around the needs of local people and improving the health and wellbeing of local people. By including elected representatives and patient representatives, health and wellbeing boards will significantly strengthen the local democratic legitimacy of local commissioning and will provide a forum for the involvement of local people. Overview and scrutiny committees of the local authority will be able to scrutinise the decisions and actions of the health and wellbeing board, and make reports and recommendations to the authority or its executive.

5. The Government feels that that the current arrangements for health scrutiny need to be updated to ensure the scrutiny provisions reflect the new structure and are appropriate to the new system.

6. **The consultation**

The consultation proposals mainly relate to the power to refer unsupported proposals for changes to NHS services to the Secretary of State. The key proposals being considered are:

• local authorities would publish a timescale for making a decision on whether a proposal will be referred to the Secretary of State (SoS)

• local authorities would be required to take account of financial considerations when considering a referral

• there would be a new intermediate referral stage for referral to the NHS commissioning board for some service reconfigurations

• the full council of a local authority would discharge the function of making a referral to the Secretary of State for Health.

7. **Timescales for decision**

Under existing regulations the HOSC can decide to refer a reconfiguration proposal to the Secretary of State at any point during the planning or development of that proposal; in practice this is generally done when the NHS has finished its consultation and decided on its preferred option.

It has been suggested that timescales should be specified in regulations, but the government does not believe that fixed timescales would be helpful. It proposes that an NHS body must publish the date by which it believes that it will be able to make a decision on its consultation proposals and notify the local authority of this. The local authority must then notify the NHS body of the date by which they intend to make a decision whether or not to refer. If timescales need to be extended the NHS would notify the local authority who would submit a revised date of response. The regulations would state that the NHS body should 'provide a definitive decision point against which the local authority can commence any decisions on referral'. The consultation seeks views on whether the proposals are helpful and their reasons for this view. It also asks for the benefits and disadvantages of setting indicative timescales.

8. **Financial Considerations**

The NHS will increasingly be required to produce efficiency savings, while working alongside local authorities in health and wellbeing boards. In light of this the government believes that HOSCs should have to consider whether

proposals will be financially sustainable as part of its deliberations on whether they should be approved or referred, and should look at the opportunities for savings to be made for use elsewhere in improving health services. It proposes that regulations would make the provision that local authorities would need to have regard to financial and resource considerations when deciding whether a proposal is in the best interests of the local health service.

Local authorities will need support and information to make this assessment and the regulations will enable them to require relevant information to be provided by NHS bodies and providers. This will be further addressed in the guidance.

The consultation also states:

'Where local authorities are not assured that plans are in the best interests of the local health services, and believe that alternative proposals should be considered that are viable within the same financial envelope as available to local commissioners, they should offer alternatives to the NHS. They should also indicate how they have undertaken this engagement to support any subsequent referral. This will be set out in guidance rather than in regulations.'

The consultation asks whether it is appropriate that financial considerations should form part of local authority referrals.

9. **Referral to the NHS Commissioning Board (NHSCB)**

The consultation document describes the greater autonomy for the NHS from the Department of Health, and the new roles of the SoS and the NHSCB; it indicates that the Board has an important role in supporting disputes between NHS bodies and the local authority. The government is not proposing to remove the ultimate right to refer to the SoS, however it is considering whether to introduce an intermediate referral stage in which the initial referral is made to the NHSCB (except for services commissioned directly by the NHSCB). The Board would be required to take action, such as working with local commissioners to try to address the local authority's concerns, and would have to respond to the local authority with any action it intended to take. If the local authority still wished to pursue a referral, it would identify how the Board's actions did not address its concerns.

The consultation document indicates there are some problems with this approach, including the potential for slowing down the process of change and the fact that the NHSCB will be working closely with CCGs on an ongoing basis. It suggests an alternative approach in which the Board had an informal role in facilitating dialogue about the proposed changes. The document states that the government does not have a preference between formal and informal methods.

The consultation asks whether it would be helpful to have a first referral stage to the NHSCB; would there be any additional benefits or drawbacks of this

intermediate referral; and in what other ways might the referral process more accurately reflect autonomy in the new commissioning system and the importance of local dispute resolution.

10. **Full council agreement for referrals**

Currently HOSCs make the decision to refer to the SoS. The paper indicates that referral signals a breakdown in dialogue between local authorities and the NHS and should be regarded as the last resort with all discussion exhausted; the decision should be open to debate. Given the enhanced leadership role for local authorities in health and social care the government believes that it is right that the full council should support any decision to refer a proposed service change, and that the council should not be able to delegate this to a committee. It is likely to be undesirable for one part of the council – the health and wellbeing board – to be working with the NHS on a joint strategic framework while another part – the HOSC – has the power of referral.

The change would mean that scrutiny functions would 'need to assemble a full suite of evidence to support any referral recommendation'. It would allow all councillors to contribute their views and would bring health scrutiny in line with other local authority scrutiny functions which have to have full council agreement. The government believes this would lead to more local resolution and closer working across the NHS and local government.

The consultation asks whether it would be helpful for referrals to be made by the full council and the reasons for this.

11. **Formal Joint Health Overview and Scrutiny Meetings**

Current regulations enable joint scrutiny arrangements for consultations on substantial developments or variations to health services but do not require them to be formed. Where an NHS body is carrying out a consultation across boundaries, current directions require the local authorities involved to form a joint HOSC as the body that will carry out the scrutiny functions. The government is proposing to incorporate this requirement into regulations. It asks whether respondents agree with this proposal and if not, the reasons for this view. The formation of joint committees for other purposes would continue to be discretionary.

12. **Next Steps**

The consultation period runs until 7 September 2012. The full consultation document and the consultation questions are attached at Appendix 1 and 2. The Panel are asked to provide advice on the content of any response.

Initial discussions have taken place with Hampshire HOSC regarding the possibility of additionally submitting a joint SHIP wide HOSC response to demonstrate the good joint working that already exists and provide weight to any shared views. The Panel are asked to confirm if this is something they would like officers to pursue further.

RESOURCE IMPLICATIONS

Capital/Revenue

13 None.

Property/Other

14. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

15. The duty to undertake overview and scrutiny is set out in Section 21 of the Local Government Act 2000 and the Local Government and Public Involvement in Health Act 2007.

Other Legal Implications:

16. None.

POLICY FRAMEWORK IMPLICATIONS

17. None.

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KEY DECISION?

WARDS/COMMUNITIES AFFECTED:	

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Department of Health Consultation Document – Local Authority Health Scrutiny.
2.	Consultation Questions.

Documents In Members' Rooms

1.	N/A

Integrated Impact Assessment

Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out.	Yes/No

Other Background Documents

Integrated Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)