

**TO: GOVERNANCE AND AUDIT COMMITTEE
28 JANUARY 2015**

**AMENDMENTS TO THE CONSTITUTION – HEALTH OVERVIEW AND SCRUTINY
Assistant Chief Executive**

1 PURPOSE OF DECISION

- 1.1 To recommend changes to the Council's Constitution arising from new regulations and Department of Health guidance under the Health and Social Care Act 2012, also from the agreed recommendations of a Health Overview and Scrutiny (O&S) Working Group, and some miscellaneous changes.

2 RECOMMENDATION

- 2.1 **That the Governance and Audit Committee recommends to Council to amend the Constitution, as shown in Appendix 1.**

3 REASONS FOR RECOMMENDATIONS

- 3.1 The new regulations require Council to decide whether to retain health O&S functions itself or to delegate the functions wholly or partly to the Health O&S Panel or elsewhere.
- 3.2 To implement the agreed recommendations of the Health O&S Panel, emanating from a review of the implications of the Francis report.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 An alternative course would be for Council to delegate to the Health O&S Panel or another committee the power to refer to the Secretary of State any concerns over planned substantial developments or substantial variations in the provision of the health service. This would exclude many councillors from the decision making process in the event of a referral of an important matter to the Government.

5 SUPPORTING INFORMATION

Changes Arising from the Health and Social Care Act

- 5.1 The 2012 Health and Social Care Act's amendments to the National Health Service Act 2006, and the accompanying regulations (*The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013*) made various changes to the system of health scrutiny. One main change was to confer health scrutiny functions on the local authority, as distinct from any overview and scrutiny committee or panel within the local authority, as is currently the case in the Council. This new provision was designed to give local authorities greater flexibility and freedom over the way they discharge health scrutiny functions. The full council of each local authority is required to determine which arrangement is adopted. For example:

- It may choose to continue to operate its existing health overview and scrutiny committee/panel, delegating its health scrutiny functions to them.
- It may choose other arrangements, such as appointing a committee involving members of the public and delegating its health scrutiny functions (except the function of making referrals) to that committee.
- It may operate its health scrutiny functions through a joint scrutiny committee with one or more other councils.

Unrestricted

- 5.2 The Department of Health's long-awaited guidance on the 2013 regulations was issued in June 2014. This included, '*If a council decides to delegate to a health scrutiny committee, it need not delegate all of its health scrutiny functions to that committee (i.e. it could retain some functions itself). For example, it might choose to retain the power to refer issues to the Secretary of State for Health*'. This relates to regulation 23, which deals with consultation of local authorities by 'responsible persons' on proposals for substantial developments of the health service or for substantial variations in the provision of the health service.
- 5.3 Consultations over substantial development or variation in health services affecting Bracknell Forest residents are infrequent, and are likely to be of interest to all councillors, not just those who are members of the Health O&S Panel. Furthermore, it is extremely rare that there are unresolved differences of view such that the Council would want to refer an NHS consultation to the Secretary of State for their re-consideration. Consequently, the most appropriate course could be for
- a) The Health O&S Panel to continue to work closely with the Executive Member for Health and the Director of Adult Social Care, Health and Housing when responding to consultations, involving Council as appropriate. This practice was followed most recently and successfully in the case of the 'Shaping the Future of Health Services' consultation, where the response was agreed by full Council in January 2013.
 - b) The power to refer consultations to the Secretary of State being reserved for Council decision, instead of solely the Health O&S Panel as previously.
- 5.4 No other changes are recommended to the role or operation of the Health O&S Panel, which is well established and effective, nor to the Joint Committee arrangements.

Changes Arising From Recommendations By the Health O&S Panel

- 5.5 The Health O&S Panel's Working Group on the implications of the Francis Report made a number of recommendations in January 2014 which were accepted by the Panel and supported by the Executive. These included having a clear statement of the aim of health O&S, also that the Panel's terms of reference should recognise the role of Local Healthwatch. The Working Group's recommended wording is shown in the amendments at Appendix 1.

Other Changes

- 5.6 The opportunity is also being taken to correct the title of one panel, and to update the wording to reflect the earlier amendment to the Constitution which allowed the O&S Panels to issue reports without the involvement of the O&S Commission.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 Nothing to add to the report.

Borough Treasurer

- 6.2 There are no financial implications arising from the recommendations in this report.

Equalities Impact Assessment

- 6.3 There are no direct impact issues to be considered.

Strategic Risk Management Issues

6.4 This report presents no strategic risk management issues for the Council.

Other Officers

6.5 The views of the Director of Adult Social Care, Health and Housing have been sought in the production of this report.

7 CONSULTATION

Principal Groups Consulted

7.1 Corporate Management Team

Method of Consultation

7.2 Consultation was carried out on the draft information report.

Representations Received

7.3 None.

Background Papers

Quarterly Corporate and Departmental performance reports 2013/14

Contact for further information

Victor Nicholls, Assistant Chief Executive

Victor.nicholls@bracknell-forest.gov.uk

Tel: 01344 355604

Richard Beaumont, Head of Overview & Scrutiny

Richard.beaumont@bracknell-forest.gov.uk

Tel: 01344 352283

Doc. Ref

G\CXO\Overview and Scrutiny

Recommended Changes to the Constitution

(Deleted text shown as struck through and new text shown in bold italics)

Part 3, Section 3

3. OVERVIEW AND SCRUTINY PANELS

3.1 (a) The Overview and Scrutiny Commission shall establish such overview and scrutiny panels as it shall determine, including at least the following ~~three~~ **four** panels:

- Environment, Culture and Communities Overview and Scrutiny Panel
- Adult Social Care, ~~Health~~ and Housing Overview and Scrutiny Panel
- Children, Young People and Learning Overview and Scrutiny Panel
- ***Health Overview and Scrutiny Panel***

with terms of reference as set out below. The Commission may discontinue any overview and scrutiny panel and/or appoint alternative or additional panels, subject to there being a minimum of the ~~three~~ **four** standing panels. The Commission may also amend the terms of reference of the panels as appropriate.

(b) Where the Overview and Scrutiny Commission seeks to discontinue or appoint overview and scrutiny panels other than as set out in the Constitution, it may do so provided that it has consulted with interested parties, if appropriate. Any change will be reported to the proper officer and then to the next meeting of the Council by the chairman of the Commission, so that the Constitution may be amended accordingly

3.3 Terms of Reference

The ~~three~~ **four** above mentioned overview and scrutiny panels shall

(i) conduct scrutiny reviews or policy development projects allocated by the Overview and Scrutiny Commission from the corporately agreed work programme, preparing evidence-based reports and recommendations ~~for consideration by the Commission.~~

(ii) at the request of the Overview and Scrutiny Commission:

- review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the Council's functions;
- consider any matter affecting the Borough or its inhabitants.

In addition, the following panels shall have responsibility for performance monitoring activities as set out in the table below.

Environment, Culture and Communities Overview and Scrutiny Panel	To receive Quarterly Service Reports on the work of the Environment, Culture and Communities Department and to question the relevant Executive portfolio holders and senior officers thereon, reporting to the Overview and Scrutiny Commission where necessary.
Adult Social Care, Health and Housing Overview and Scrutiny Panel	To receive Quarterly Service Reports on the work of the Adult Social Care, Health and Housing Department and to question the relevant Executive portfolio holder(s) and senior officers thereon in so far as it relates to the Adult Social Care <i>and housing</i> functions of the Council, reporting to the Overview and Scrutiny Commission where necessary.
Children, Young People and Learning	To receive Quarterly Service Reports on the work of the Children, Young People and Learning Department and to question the relevant Executive

Unrestricted

Overview and Scrutiny Panel	portfolio holder(s) and senior officers thereon in so far as it relates to the Children, Young People and Learning functions of the Council, reporting to the Overview and Scrutiny Commission where necessary.
Health Overview and Scrutiny Panel	<p>To undertake all the statutory functions of a scrutiny committee in accordance with Sections 244-246 (and regulations made under those sections) of the Health and Social Care Act 2001. National Health Service Act 2006, as amended by the Health and Social Care Act 2012 and subsequent legislation. The power to refer to the Secretary of State concerns over consultations regarding substantial development or variation in health services is reserved for Council decision.</p> <p>To receive Quarterly Service Reports on the work of the Adult Social Care, Health and Housing Department relating to health and to question the relevant Executive portfolio holder(s) and senior officers thereon in so far as it relates to the health functions of the Council, reporting to the Overview and Scrutiny Commission where necessary.</p>

The overall aim of Health scrutiny is: Through constructive challenge and accountability, to work with the Executive, the Health and Wellbeing Board and Health Service Providers to help ensure good health services are provided to residents of Bracknell Forest, reducing health inequalities, and helping everyone to stay fit and lead healthy lives.

In addition, the Council has established/participates in the following overview and scrutiny committees:

- (i) The Joint East Berkshire Health Overview and Scrutiny Committee.
- (ii) The Joint East Berkshire Health Overview and Scrutiny Committee with Buckinghamshire County Council.

Part 4, Section 9

SECTION 9 – OVERVIEW AND SCRUTINY PROCEDURE RULES

2. Who May Sit on the Overview and Scrutiny Bodies?

All councillors except members of the Executive may be members of the Overview and Scrutiny Commission and/or one or more overview and scrutiny panels. However, no Member may be involved in scrutinising a decision in which he/she has been directly involved. Council may also make appointments of people other than councillors to the Overview and Scrutiny Commission and Panels, to meet statutory and other requirements. ***This will include a representative of Local Healthwatch as an Observer on the Health Overview and Scrutiny Panel***