



Briefing for:	Overview and Scrutiny Committee
Title:	Implications for the Overview and Scrutiny Committee of the Health and Social Care Bill and the Localism Bill.
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1. Background

1.1. The [NHS White Paper: Equity and Excellence](#) was published in Summer 2010. Amongst other things, this paper outlined plans to:

- shift the total £80bn worth of commissioning from 152 Primary Care Trusts (PCTS) to new compulsory GP consortia by 2013
- produce an outcomes framework for health and social care to replace the current targets
- set up an NHS Commissioning Board in England by 2011 to commission GPs and specialist services
- open up health provision to “any willing provider” extending the private provider market
- abolish PCTs from April 2013 and Strategic Health Authorities (SHAs) by 2012/2013
- strengthen local democratic legitimacy of the NHS
- transfer responsibility for public health and local health strategy to local authorities.
- set up new statutory local authority Health and Well-being Boards by April 2012
- Create HealthWatch which will build on and replace Local Involvement Networks (LINKs)
- Transfer Health Scrutiny powers to the new Health and Wellbeing Boards.

2. [The Health and Social Care Bill 2011](#) was published in January 2011. The Bill contains provisions covering five themes:

- strengthening commissioning of NHS services
- increasing democratic accountability and public voice
- liberating provision of NHS services
- strengthening public health services



2.1. This Bill has a number of implications for scrutiny which are outlined below. Please note that this Bill is currently being debated and a number of amendments and points of clarity are being discussed. The Committee stage is due to end on 31st March.

2.1.1. A verbal update on any amendments impacting Scrutiny will be provided to the Overview and Scrutiny Committee verbally at the meeting.

3. Health and Social Care Bill¹

(Clause 175)

Health Scrutiny powers

3.1. Following consultation the government revised their early intention to transfer health scrutiny powers to the new Health and Wellbeing Boards. Instead, the intention is to extend formal scrutiny powers to cover all NHS funded services, and give Local Authorities 'greater freedom in how they exercise these functions'².

3.2. It is important to note that the Bill gives the health overview and scrutiny functions to the Local Authority itself. The Local Authority can then arrange for these functions to be discharged by the Overview and Scrutiny Committee³.

3.2.1. This arrangement is aimed to bring the Health and Social Care Bill in line with the intentions of the Localism Bill (which grants Local Authorities greater freedoms in their governance structures and allows for the return to the Committee system).

3.3. The Local Authority can not delegate the health scrutiny powers to the Health and Wellbeing board.

3.4. An amendment tabled for Overview and Scrutiny to retain the function directly was not agreed at the Committee stage⁴.

Attendance at meetings by the local NHS

3.5. Current health scrutiny powers enable local authorities to request NHS bodies to appear before them to answer questions and to provide information. The Health and Social Care Bill will extend regulations to cover GP consortia, the NHS commissioning board and all other providers of NHS-funded services for example, primary medical dental or pharmacy services, independent sector treatment centres, as well as any NHS commissioner. The powers will also include scrutiny of local public health services.

¹ Amends section 244 of the NHS Act 2006

² Liberating the NHS: Legislative Framework and Next Steps, December 2010.

³ Health and Social Care Bill, Explanatory notes

⁴ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/health/110310/pm/110310s01.htm>



3.6. There has been discussion at the Committee stage with reference to the relationship between Overview and Scrutiny and GP Consortia. There was concern expressed that spending decisions made by the GP Consortia do not have to be taken in public and the impact that this could have on the ability of scrutiny to sufficiently carry out its role in relation to NHS-funded services. In response the Minister for Care Services stated that “*there is no information that a Scrutiny Committee cannot ask of a GP commissioning consortia*”⁵.

Referral power

3.7. Individual Overview and Scrutiny Committees currently have the power to refer matters of significant service change to the Secretary of State for consideration. The Bill proposes that in future any decision to refer a matter must be triggered by a meeting of Full Council.

3.7.1. Referrals will in future apply to ‘any type of provider of NHS-funded services, whatever their governance arrangements and ownership structure’⁶.

3.8. Referral decisions taken by Joint Overview and Scrutiny Committees (JOSCs) do not have to go through Full Council as JOSCs will themselves hold the referral power. It is proposed that when JOSCs are established they are done so on the basis that ‘at an early stage they agree for the decisions of the JOSC to be binding by all contributing councils’⁷.

3.9. It is proposed that the referral power will only relate to decisions around ‘designated services’. However, the services which constitute designated services have not yet been defined by Monitor (who are to become the financial regulator for health and social care) and in their evidence at committee stage; Monitor was unable to provide information as to when this would happen⁸.

3.10. Concern has been raised that once ‘designated services’ have been defined there may be a large number of services left which can be changed with little democratic accountability (whereas at present it is left to local discretion as to what constitutes a substantial variation).

3.11. Alongside this, concern has been raised that should an Overview and Scrutiny Committee decide to refer a decision to the Secretary of State, the ultimate say as to whether this were to happen would be taken by Full Council, who had not scrutinised the decision in detail and who may take

⁵ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/health/110310/pm/110310s01.htm>, Column 654

⁶ Liberating the NHS: Legislative Framework and Next Steps, December 2010.

⁷ Liberating the NHS: Legislative Framework and Next Steps, December 2010.

⁸ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/health/110301/am/110301s01.htm>



decisions along party lines with the London Scrutiny Network also arguing that it also significantly weakens accountability⁹.

3.12. This was discussed at the Committee stage, where the Minister for Care Services informed the Committee that every local authority must be consulted by Monitor on what should constitute a 'designated service'¹⁰, and that the services which are not then constituted as 'designated services' would still come under the 'duty to consult', meaning the public would be consulted on changes to services and that 'overview and scrutiny will...be able to conduct their scrutiny of such reconfiguration decisions'¹¹. The Minister of Care Services was asked to clarify the position in writing to the Committee.

Referrals from Local Involvement Networks (LINK)

3.13. The Local Government and Public Involvement in Health Act, 2007 gives LINKs the power to refer matters to the Overview and Scrutiny Committee and receive a response. This power will continue to apply in relation to referrals from HealthWatch¹².

Timeline

3.14. The final phase of the Bill implementation will be April 2013 onwards, when statutory duties and powers will take full effect. It is at this stage that the enhanced scrutiny powers will begin.

3.15. The Government intends to consult on regulations in relation to changes to scrutiny.

4. Localism Bill

4.1. The Localism Bill aims to decentralise power and empower communities. The Bill has significant implications for the powers of local government, community involvement in service delivery, the planning system and social housing.

4.2. Some key elements of the Bill are:

Decentralisation and Local Democracy

- Local Authorities will have a General Power of Competence.
- Local Authorities will be able to return to the committee system.
- Local Authorities will be required to produce an annual statement setting out the policy on the remuneration of chief officers.

⁹ London Scrutiny Network submission to the Public Bill Committee, Health and Social Care Bill, 2011

¹⁰ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/health/110310/pm/110310s01.htm>, Column 659

¹¹ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/health/110310/pm/110310s01.htm>, Column 660

¹² Health and Social Care Bill, Explanatory notes



- Local Authorities will have the power to grant a discount in business rates.

Community Empowerment

- Communities will be given powers to save local assets threatened with closure and will also be given greater opportunity to identify and bid for assets in order to deliver existing or new services.
- Residents will have the power to instigate, via a petition, local referendums on any local issue.
- Council Tax capping will end but local residents will have the power to veto council tax rises above a certain threshold, via a referendum.

4.3. Points relating specifically to the Overview and Scrutiny function are set out below.

4.3.1. The Bill aims to consolidate the previous Scrutiny legislation into one act, for example by including scrutiny sections from the Local Government Act 2000 and the Local Government and Public Involvement in Health Act 2007.

4.3.2. Local Authorities are to be given the power to return to the **Committee System**. 'Authorities operating the committee system will not be obliged to operate a formal overview and scrutiny committee. However, where they choose to do so, the Secretary of State may prescribe by regulations how the system is to operate'¹³.

4.3.2.1. However, where a Local Authority continues with Executive arrangements it must still have an Overview and Scrutiny Committee. This point links directly to the Health and Social Care Bill proposal to give the health scrutiny powers directly to the Local Authority as opposed to Overview and Scrutiny Committees.

4.3.3. The **Councillor Call for Action** power continues under the Localism Bill (Under the Local Government and Public Involvement in Health Act 2007 any Member can refer to the Overview and Scrutiny Committee any local government matter which is relevant to the function of that committee. A "local government matter" is defined as one which:

- Relates to the discharge of any functions of the authority
- Affects all or part of the electoral area for which the Member is elected or any person who lives or works in the area
- Is not a local crime and disorder matter which falls within Section 19 of the Police and Justice Act 2006.
- Has not been excluded by an Order made by the Secretary of State.)

¹³ Localism Bill: Local government and community empowerment', RESEARCH PAPER 11/02 , House of Commons Research Paper, January 2011



4.3.4. The Local Democracy, Economic Development and Construction Act 2009 introduced the duty on Local Authorities to respond to **petitions**. With specific reference to scrutiny, this duty meant that where a certain threshold of signatures was met, a designated Officer of the Local Authority could be requested to appear before an Overview and Scrutiny Committee. Also, that petition organisers could request that Overview and Scrutiny reviewed the Council's response to a petition. This duty is to be repealed by the Localism Bill. However, this is to be replaced with a power which states that if 5% or more of people in an area sign a petition it can trigger a local referendum on an issue.

4.3.5. The Bill requires Partners to continue to "have regard to" scrutiny recommendations, but does not include a power to compel attendance at meetings¹⁴.

4.3.6. The Bill refers to Scrutiny powers around partnerships with regards to the Local Improvement Targets (as per the Local Government and Public Involvement in Health Act). These targets have now been abolished by central Government and so this section of the bill will be amended according. As far as scrutiny powers in relation to partnerships go - the Bill does give power to Overview and Scrutiny to 'make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area'¹⁵ which would cover partnership agencies.

5. Department of Communities and Local Government (DCLG) [Review](#).

5.1. The DCLG is undertaking a review of the statutory duties placed on local government to determine which duties are no longer needed. The Government then intends to remove these duties.

5.1.1. There are a number of statutory duties relating to Overview and Scrutiny which form part of this review, for example the duty to appoint one or more Overview and Scrutiny Committees, responding to Overview and Scrutiny Committees, appointing a Statutory Scrutiny Officer, considering LINK referrals, and scrutinising crime and disorder functions.

5.2. The DCLG are seeking views on the following:

- What duties are vital to keep?
- What duties should be repealed?

¹⁴ Centre for Public Scrutiny, Localism Bill and Grant Allocation briefing, 2010

¹⁵ Section 9FA(2)(e), Localism Bill, <http://services.parliament.uk/bills/2010-11/localism/documents.html>



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- What burdens have been created through particular duties, and associated regulations and guidance?
- What duties have not been included on the attached list and should also be considered in the review?

5.3. N.b Many of the duties included in the above review currently form part of the Localism Bill, and so further amendments may be made to the Bill before it is enacted to take note of any changes put forward by the DCLG.

5.4. The Centre for Public Scrutiny and the London Scrutiny Network will be responding to this review, which closes on 25th April 2011.