STATUTORY INSTRUMENTS

2002 No. 3048

NATIONAL HEALTH SERVICE, ENGLAND

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

Made - - - -	*11th December 2002*
Laid before Parliament	*11th December 2002*
Coming into force	*1st January 2003*

The Secretary of State for Health, in exercise of the powers conferred on him by sections 7(3) and (4), 8(2), (3) and (4) and 64(6) to (8) of the Health and Social Care Act 2001**(a)** and by sections 17 and 126(4) of the National Health Service Act 1977**(b)** and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 and shall come into force on 1st January 2003.

(2) These Regulations apply in England only.

(3) In these Regulations—

"the Act" means the Health and Social Care Act 2001;

"the 2000 Act" means the Local Government Act 2000**(c)**;

"the 2002 Act" means the National Health Service Reform and Health Care Professions Act 2002;

"joint overview and scrutiny committee" means a committee appointed under regulation 7(1);

"local authority" means—

(a) in relation to regulations 2 to 6, a local authority to which section 7 of the Act applies and the Common Council for the City of London**(d)**; and

(b) in relation to regulations 7 to 10, a local authority to which section 8 of the Act applies and the Common Council for the City of London;

(a) 2001 c. 15. Section 7 of the Health and Social Care Act 2001 ("the Act") was amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17) ("the 2002 Act"), section 21 and Schedule 1, paragraph 55(2); *see* section 66 of the Act for the definition of "relevant authority" and "regulations".

(b) 1977 c.49. Section 17 was amended by sections 2(1) and 8 of, and Schedule 1 paragraph 8 to, the Health Authorities Act 1995, section 12(1) of the Health Act 1999 ("the 1999 Act"), section 1(3) of, and Schedule 1 Part 1 paragraphs 1 and 7 to, the 2002 Act, and section 67(1) of, and Schedule 5 Part 1 paragraph 5(1) and (3) to, the Act; section 126(4) was amended by section 67(1) of, and Schedule 5 Part 1 paragraphs 5(1) and 13(b) to, the Act, section 65(2) of the National Health Service and Community Care Act 1990, sections 6(3)(c) and 37(1) of, and Schedule 8 paragraphs 1 and 10(a) to, the 2002 Act, and section 65(1) of, and Schedule 4 paragraphs 4, 37(1) and (6) to, the 1999 Act.

(c) 2000 c.22.

(d) *See* section 10 of the Act.

"local NHS body" means, in relation to an overview and scrutiny committee, a Strategic Health Authority, Primary Care Trust or NHS trust which provides, or arranges for the provision of, or performs any management function in relation to, services to persons residing within the area of the committee's local authority or, in the case of a joint overview and scrutiny committee, the areas of the authorities which have appointed that joint committee.

(4) In regulations 2 to 6 references to an overview and scrutiny committee include references to a joint overview and scrutiny committee.

Review and scrutiny

2.—(1) An overview and scrutiny committee may review and scrutinise any matter relating to the planning, provision and operation of health services in the area of its local authority.

(2) In carrying out the review and scrutiny of a particular matter, the overview and scrutiny committee shall—

(a) have regard to any guidance issued by the Secretary of State under section 38 of the 2000 Act with respect to the exercise of its functions under section 21(2)(f) of that Act;

(b) invite interested parties to comment on the matter; and

(c) take account of relevant information available to it and, in particular, relevant information provided to it by a Patients' Forum**(a)** pursuant to a referral under section 15(5)(a) of the 2002 Act.

(3) Otherwise, the procedure of review and scrutiny is to be determined by the overview and scrutiny committee.

Reports and recommendations

3.—(1) An overview and scrutiny committee may make reports and recommendations to local NHS bodies and to its local authority on any matter reviewed or scrutinised by it pursuant to regulation 2.

(2) Where an overview and scrutiny committee makes such reports and recommendations it shall include—

(a) an explanation of the matter reviewed or scrutinised;

(b) a summary of the evidence considered;

(c) a list of the participants involved in the review or scrutiny; and

(d) any recommendations on the matter reviewed or scrutinised.

(3) Where an overview and scrutiny committee requests a response from a local NHS body to whom it has made a report or recommendation, that body shall respond in writing to the committee within 28 days of the request.

Consultation of Committees by local NHS bodies

4.—(1) Subject to the following provisions of this regulation, where a local NHS body has under consideration 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 overview and scrutiny committee of that authority.

(2) Paragraph (1) shall not apply with respect to—

(a) any proposal to establish or dissolve an NHS trust or a Primary Care Trust (unless the establishment or dissolution involves a substantial development or variation as referred to in paragraph (1) above); or

(b) any proposal for a pilot scheme within the meaning of section 4 of the National Health Service (Primary Care) Act 1997**(b)**.

(3) Paragraph (1) shall not apply to any proposals on which the local NHS body concerned is satisfied that a decision has to be taken without allowing time for consultation because of a risk to

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(a) *See* section 15 of the 2002 Act.
(b) 1997 c.46.

safety or welfare of patients or staff; but, in any such case, the local NHS body shall notify the overview and scrutiny committee immediately of the decision taken and the reason why no consultation has taken place.

(4) Subject to any directions issued under regulation 10, an overview and scrutiny committee which has been consulted by a local NHS body pursuant to paragraph (1) may make comments on the proposal consulted on by such date as may be specified by the local NHS body.

(5) In any case where an overview and scrutiny committee is not satisfied that—

(a) consultation on any proposal referred to in paragraph (1) has been adequate in relation to content or time allowed; or

(b) where paragraph (3) applies, the reasons given by the local NHS body are adequate,

it may report to the Secretary of State**(a)** in writing who may require the local NHS body concerned to carry out such consultation, or such further consultation, with the overview and scrutiny committee as he considers appropriate.

(6) Where further consultation has been required under paragraph (5), the local NHS body shall, having regard to the outcome of such further consultation, reconsider any decision it has taken in relation to the proposal in question.

(7) In any case where an overview and scrutiny committee considers that the proposal would not be in the interests of the health service in the area of the committee's local authority, it may report to the Secretary of State in writing who may make a final decision on the proposal and require the local NHS body to take such action, or desist from taking such action, as he may direct.

Information to be furnished by local NHS bodies

5.—(1) Subject to paragraph (3), it shall be the duty of a local NHS body to provide an overview and scrutiny committee with such information about the planning, provision and operation of health services in the area of that committee's local authority as the committee may reasonably require in order to discharge its functions.

(2) Where a local NHS body provides, or arranges for the provision of, or performs any management function in relation to, services to persons residing within the area of several local authorities, its duty under paragraph (1) shall be satisfied if it provides information to the joint overview and scrutiny committee of those authorities.

(3) Nothing in paragraph (1) shall require the provision by a local NHS body of—

(a) confidential information which relates to and identifies a living individual, unless at least one of the conditions specified in paragraph (4) applies; or

(b) any other information the disclosure of which is prohibited by or under any enactment, unless paragraph (5) applies.

(4) The conditions referred to in paragraph (3)(a) are—

(a) the information is or can be disclosed in a form from which the identity of the individual cannot be ascertained; or

(b) the individual consents to the information being disclosed.

(5) This paragraph applies where—

(a) the prohibition on the disclosure of information arises because the information is capable of identifying an individual; and

(b) the information is or can be disclosed in a form from which the identity of the individual cannot be ascertained.

(a) *See* section 7 of the Act as amended by section 21 of the 2002 Act.

(6) In a case where the disclosure of information is prohibited by paragraph (3), the overview and scrutiny committee may require the person holding the information to put the information in a form from which the identity of the individual concerned cannot be identified in order that the information may be disclosed.

Obtaining information and explanations

6.—(1) Subject to any directions issued under regulation 10, an overview and scrutiny committee may require an officer of a local NHS body to attend before the committee to answer such questions as appear to the committee to be necessary for discharging its functions.

(2) Subject to paragraphs (3) and (4), it is the duty of any such officer to comply with any such requirement.

(3) The overview and scrutiny committee may not require a person to attend in accordance with paragraph (1) unless reasonable notice of the intended date of attendance has been given to that person.

(4) Nothing in paragraph (1) shall require any person to answer any question put to him by the overview and scrutiny committee—

(a) to the extent that the answer requires the provision of information of a type specified in regulation 5(3) (unless within an exception under regulation 5(4) or (5)); or

(b) if he would be entitled to refuse to answer in, or for the purposes of, proceedings in a court in England and Wales.

Joint Committees

7.—(1) Two or more local authorities may appoint a joint committee (a "joint overview and scrutiny committee") of those authorities and arrange for relevant functions in relation to any (or all) of those authorities to be exercisable by the joint committee subject to such terms and conditions as the authorities may consider appropriate.

(2) A joint overview and scrutiny committee may not discharge any functions other than relevant functions exercised by it by virtue of arrangements made under paragraph (1) above.

(3) The provisions of section 21(6) to (15) of the 2000 Act shall apply to a joint overview and scrutiny committee as they apply to an overview and scrutiny committee within the meaning of section 21 of that Act, but subject to the modification that subsection (10) shall apply as though the words "subject to any provision made by or under paragraphs 7 to 9 of Schedule 1" were omitted.

(4) Section 9 of, and Schedule 1 to, the Act shall apply to a joint overview and scrutiny committee.

Delegated scrutiny

8.—(1) A local authority may arrange for relevant functions in relation to that authority to be exercisable by an overview and scrutiny committee of another local authority in the circumstances set out in paragraph (2).

(2) The circumstances referred to paragraph (1) above are where a local authority considers that another local authority would be better placed to undertake a relevant function and the latter agrees to exercise that function.

Co-option

9.—(1) A county council for any area may arrange for one or more of the members of an overview and scrutiny committee of the council for a district comprised in that area to be appointed as—

(a) a member of an overview and scrutiny committee of the county council or another local authority, for the purposes of relevant functions of the committee in relation to the county council; or

(b) a member of an overview and scrutiny committee of the county council, for the purposes of relevant functions of the committee in relation to another local authority.

(2) A county council making an arrangement for an appointment under paragraph (1)(a) or (b) above may specify that the appointment is—

(a) for the life of the overview and scrutiny committee; or

(b) until such time as it decides to terminate the appointment; or

(c) for the review or scrutiny of a particular matter.

(3) In this regulation, references to an overview and scrutiny committee of a county council include references to a joint overview and scrutiny committee of the council and another local authority.

Directions

10. The Secretary of State may direct a local authority—

(a) to make arrangements of any description within regulations 7 to 9 above; and

(b) to comply with such requirements in connection with the arrangements as he may direct.

Signed by Authority of the Secretary of State for Health

David Lammy
Parliamentary under Secretary of State for Health
Department of Health

11th December 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the health scrutiny functions of overview and scrutiny committees under sections 7 and 8 of the Health and Social Care Act 2001 ("the Act"). Section 7 of the Act inserts a power to review and scrutinise health matters in section 21 of the Local Government Act 2000 which deals with local authority overview and scrutiny committees.

Regulation 1 (citation, commencement, application and interpretation), inter alia, defines the local authorities to which the regulations apply and provides a definition for the term "local NHS body" in relation to a committee.

Regulations 2 to 6 relate to the provisions in section 7 of the Act. Regulation 2 sets out the procedure and scope of review and scrutiny. Regulation 3 deals with reports and recommendations. Regulation 4 deals with consultation of committees by local NHS bodies on proposals for substantial developments of the health service or for substantial variations in the provision of the health service. Regulation 5 deals with information to be furnished to committees by local NHS bodies and regulation 6 provides committees with the power to require officers of local NHS bodies to attend before them and answer questions for the purpose of the committees' functions.

Regulations 7 to 10 relate to the provisions in section 8 of the Act. Regulation 7 deals with joint committees, regulation 8 with delegation and regulation 9 with co-option. Regulation 10 provides the Secretary of State with a direction making power under which he may require a local authority to make arrangements for joint committees, delegation or co-option.

S T A T U T O R Y I N S T R U M E N T S

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£2.00

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under the authority and superintendence of Carol Tullo,
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Acts of Parliament

E1837 12/02 ON (MFK)