

Agenda Item No: 4

Report To: Selection and Constitutional Review Committee



Date: 5th May 2009

Report Title: Local Government and Public Involvement in Health Act 2007 – Councillor Call for Action and New Scrutiny Functions

Report Author: Head of Legal and Democratic Services

Summary:

The report provides an overview of the principal new functions for scrutiny arising from the Local Government and Public Improvement in Health Act 2007 and the Police and Justice Act 2006 and advises of the need to amend the Terms of Reference of the Overview and Scrutiny Committee to take account of these changes, together with other consequential changes to the Council's Constitution.

The Local Government and Public Involvement in Health Act also contains provisions relating to changes in the operation of executive arrangements. A further report on this matter will be submitted to the Committee in due course

Key Decision: NO – this is not an Executive decision

Affected Wards: All Wards

Recommendations: **The Selection and Constitutional Review Committee is asked to make the following recommendations to Council:-**

- i) **The Overview and Scrutiny Committee's Terms of Reference be amended to include responsibility for considering "Councillor Call for Action" under the Local Government and Public Involvement in Health Act 2007.**
- ii) **The Overview and Scrutiny Committee be designated as the Committee responsible for Crime and Disorder issues under the Police and Justice Act 2006 and the Terms of Reference be amended to reflect this.**
- iii) **The Head of Legal and Democratic Services report to a future meeting of the Selection and Constitutional Review Committee and the Overview and Scrutiny Committee with a suggested protocol for Members regarding the handling of 'Councillor Calls for Action'.**

- iv) **The Community Partnership Group's Terms of Reference be amended to delete reference to reviewing the operation and efficiency of the Crime and Disorder Reduction Partnership and the Community Safety Partnership.**

Policy Overview: The new powers for Overview and Scrutiny are consistent with the Council's Corporate priorities

Financial Implications: None in relation to this report

Risk Assessment NO

Other Material Implications:

Background Papers: None

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Local Government and Public Involvement in Health Act 2007 – Councillor Call for Action and New Scrutiny Functions

Purpose of the Report

1. To advise Members of the changes to the Overview and Scrutiny Committee arising from the Local Government and Public Involvement in Health Act 2007 and the Police and Justice Act 2006 and to seek authority to make the necessary amendments to the Terms of Reference and to the Council's Constitution.

Issue to be Decided

2. Authority is sought to amend the Terms of Reference of the Overview and Scrutiny Committee and to designate it formally as the Committee responsible for Crime and Disorder under the Police and Justice Act 2006. The Act requires the Committee with Crime and Disorder functions to be an Overview and Scrutiny Committee. The report also highlights the need to make other consequential amendments to the Council's Constitution.

Background

Local Government and Public Involvement in Health Act 2007 – Overview of Issues as they relate to Scrutiny

3. The Act's main implications for scrutiny include the establishment of 'Councillor Call for Action' (CCfA), powers of scrutiny over Partner Authorities and the ability to submit representations to the County Council regarding Local Area Agreements and regulations enabling a County Council in a two tier area to establish a joint Overview and Scrutiny Committee with one or more District Councils in the area.

Councillor Call for Action

4. This new provision applies to all members of the Council who will be able to refer a "Local Government matter" to the Overview and Scrutiny Committee for scrutiny. The Act defines 'local government matter' as a matter which relates to the discharge of any function 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 that area, and is not an excluded matter. Excluded matters as detailed in the Regulations are defined as follows:
 - (a) any matter relating to a planning decision (including enforcement action);
 - (b) any matter relating to a licensing decision;

- (c) any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;
 - (d) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee.
5. Detailed guidance issued by the Centre for Public Scrutiny (CfPS) acknowledges that Ward Councillors play a central role in the life of a Local Authority by acting as a conduit for discussion between the Council and its residents and as a 'Champion' for local concerns. To bolster this latter role, Section 119 of the Act provides for Members to have an opportunity to ask for discussions at scrutiny committees on issues where local problems have arisen and where other methods of resolution have been exhausted. However the guidance goes on to say that such provision should only be used as a last resort when a solution to a local problem had not been achieved via all the normal channels which are available. The CCfA should not be seen as an 'alternative' to normal ward work but a long stop – a technique to be used when other methods of resolving an issue have not succeeded. Such methods would include raising the matter with the Service Manager concerned, or via the complaints procedure. However, if the Member considers that the problem had reached such a stage and that it had not been remedied then this could be referred to the Overview and Scrutiny Committee for consideration. The Overview and Scrutiny Committee will then discuss the issue and decide on appropriate course of action. Officers will produce a draft protocol for the handling of 'Councillor Calls for Action' for consideration by this Committee and the Overview and Scrutiny Committee.

Partner Authorities

6. Section 121 of the Act introduces powers to require, in a two-tier area, that the County Council or partners (other than a Police Authority or Chief Constable) make information available to a District Council's Overview and Scrutiny Committee in relation to targets within the Local Area Agreement. This also includes information which the County Council or partners might have which could help the work of the Overview and Scrutiny Committee generally. This aspect of the Act will be subject to Government regulations and if necessary a further report will be brought to the Committee in due course.

Joint County and District Overview and Scrutiny Committees

7. Section 123 of the Act gives the Secretary of State authority to make regulations which would enable a County Council in a two-tier area to establish a joint Overview and Scrutiny Committee with one or more districts in the area. The purpose of the joint Committees is to enable Authorities to work together more effectively to make reports and recommendations on progress being made in Local Area Agreement Targets. Guidance suggests that the Government proposes to develop this power further within the Local Democracy, Economic Development and Construction Bill currently before Parliament. The Centre for Public Scrutiny is currently preparing guidance on the arrangements regarding joint committees.

Executive Arrangements under the Local Government and Public Involvement in Health Act 2007

8. Part 3 of the Act requires all Local Authorities to review their executive arrangements and to consider which of the following two models available to adopt:
 - (a) A directly elected Mayor and Cabinet
 - (b) A new style of Leader and Cabinet

For Ashford a decision will need to be made by 31st December 2010, and the new arrangement must be implemented three days after the next all Council elections in May 2011. As mentioned earlier a full report on this matter will be submitted to this Committee in due course.

Police and Justice Act 2006

9. Part 3 of the Act: Crime and Anti-Social Behaviour – Section 19 deals with Local Authorities' scrutiny of crime and disorder matters and makes it a requirement for every Local Authority to have a Crime and Disorder Committee with the power to review and scrutinise and make reports or recommendations regarding the functioning of the responsible Authorities or the Local Crime and Disorder Reduction Partnership.
10. Section 119 of the Act further provides for the Crime and Disorder Committee to be an Overview and Scrutiny Committee for Councils operating executive arrangements. Ashford will need to formally designate the Overview and Scrutiny Committee as the Council Committee responsible for Crime and Disorder issues under this Act. As this is a new statutory role for Overview and Scrutiny and all relevant agencies, Police, PCT and Fire Police Authorities would have a duty to co-operate with Overview and Scrutiny. These changes could be considered to be merely a formulation of what is already happening in practice as Overview and Scrutiny Committees at Ashford have already undertaken scrutiny investigations regarding partner agencies. The draft Crime and Disorder (Overview and Scrutiny) Regulations 2009 cover issues such as the co-option of additional members where the Committee considered it desirable to assist in their work. The draft regulations also prescribe that the Crime and Disorder Committee shall meet to review or scrutinise decisions made, or other action taken in connection with the discharge by the responsible Authorities of their crime and disorder functions, no less than twice in every twelve month period. Clearly there will be a need for Officers to discuss this aspect of the regulations with the Chairman of the Crime and Disorder Partnership to see how this can best be achieved and worked into the Overview and Scrutiny Committee's work programme. The draft regulations also contain detail regarding the provision of information from responsible Authorities.

Community Partnership Group

11. At the Selection and Constitutional Review Committee held on the 15th February 2007 consideration was given to a report of the Chief Executive entitled "Strengthening the Council's Community Leadership Role". That report set out details of the Local Government White Paper and the Police and Justice Act 2006 and suggested that at that time it would be sensible to pre-empt any legislation or regulations on 'Councillor Call for Action' and put in place the Council's own mechanism for dealing with them. Accordingly the responsibility for reviewing Crime and Disorder were included within the Terms of Reference of the Community Partnership Group. However, as advised earlier in this report the draft regulations now require the scrutiny of Crime and Disorder issues to fall within the responsibility of Overview and Scrutiny. There is therefore a need to amend the Terms of Reference of the Community Partnership Group to delete reference to this particular aspect of its role.

Handling

12. As detailed earlier in the report Officers will bring forward a further report and suggested detailed guidance for the handling of 'Councillor Call for Action' which will be considered by this Committee and the Overview and Scrutiny Committee prior to being adopted by Council. Members will also be provided with a copy of the Best Practice Guidance produced by the Centre for Public Scrutiny. Changes to the Terms of Reference of the Overview and Scrutiny Committee and the Community Partnership Group will need to be undertaken together with amendments to the detailed procedure rules for Overview and Scrutiny.

Conclusion

13. The detailed guidance issued by the Centre for Public Scrutiny emphasises that the use of 'Councillor Call for Action' should be the last resort and that a Ward Member would need to demonstrate that they had exhausted all the usual mechanisms for resolving the complaint or problem prior to it being considered by the Overview and Scrutiny Committee. The guidance note will cover this issue in detail.

Portfolio Holder's Views

14. The Leader of the Council supports the recommendations within this report.

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