

Item No. 8.1	Classification: Open	Date: April 8 2009	Meeting Name: Council Assembly
Report title:		Implications of the Local Government and Public Involvement in Health Act 2007 on the role of Overview and Scrutiny.	
Ward(s) or groups affected:		All	
From:		Strategic Director of Legal and Democratic Services	

RECOMMENDATIONS

1. That council assembly notes the implications for the Overview and Scrutiny Committee (OSC) arising from the Councillor Call for Action (CCfA) introduced by Local Government and Public Involvement in Health Act 2007 as from 1 April 2009.
2. That council assembly agrees the constitutional changes to Article 5 of the constitution and the Overview and Scrutiny Procedure Rules set out in Appendix A to this report and the addition of a new Protocol set out in Appendix B to this report.

BACKGROUND INFORMATION

3. In the White Paper "Strong and Prosperous Communities" published in October 2006, the Secretary of State for Communities and Local Government stated that the aim of the government was to ".....give local people and local communities more influence and power to improve their lives it is about creating strong, prosperous communities and delivering better public services through a rebalancing of the relationship between central government, local government and local people."
4. The Local Government and Public Involvement in Health Act 2007 (the 2007 Act) enacts some of the issues raised in the 2006 White Paper. The 2007 Act continues to come into force bit by bit. The latest and most significant provisions in the 2007 Act in terms of the Overview and Scrutiny Committee are as follows:
 - Councillors will be empowered to raise issues, on any other local matter, with Overview and Scrutiny Committees as part of Councillor Call For Action (CCFA);
 - The Executive will be under a duty to respond to reports and recommendations made by Overview and Scrutiny Committees within with 2 months of them being published; and
 - Overview and Scrutiny Committees will have new powers to review and scrutinise the actions of local public service providers.

5. The Local Government Act 2000 (the 2000 Act) established Overview and Scrutiny Committees (“O & S”) to scrutinise and make recommendations about executive decisions. All of the new O&S provisions in the 2007 Act have the effect of amending the existing provisions in section 21 of the 2000 Act.

KEY ISSUES FOR CONSIDERATION

6. Statutory Guidance on the principles of CCfA was expected on the 31 January 2009. This guidance is still awaited but it is anticipated that it will cover matters such as: timeframe, dealing with vexatious or repetitive CCfAs and those which affect several wards. It will also propose issues which councils may want to consider ensuring that CCfA mechanism works effectively. Once formal guidance is issued a further report may need to be made to this panel outlining its provisions and setting out how this will be locally interpreted, and it is possible that further constitutional changes will be needed.
7. The current constitutional position for getting an item included on the agenda at OSC is set out at paragraph 15 of the Overview and Scrutiny Procedure Rules. The constitution at paragraph 15(2) provides that:

“Any two members of the council who are not members of the overview and scrutiny committee or a sub-committee may give written notice to the proper officer that they wish an item to be included on the agenda of that committee or sub-committee, If the proper officer receives such a notification, then he/she will include the item on the first available agenda of the committee for consideration”

The current constitutional provisions are not applicable to CCfA’s as these do not reflect the requirements of the 2007 Act and the Overview and Scrutiny (Reference by Councillors) (excluded matters) (England) Order 2008,

8. A review of the CCfA process will with be conducted in July 2009 to ensure that the process is operating efficiently.

Councillor call for action

9. Sections 119 of the 2007 Act takes forward the CCfA proposals by establishing the right of individual councillors to refer a “local government” matter affecting their ward to the Overview and Scrutiny Committee. A “local government matter” is described as something which:
 - a) relates to the discharge of any function of the authority;
 - b) affects all or part of the member’s ward or any person(s) who lives or works in it;
 - c) is not an excluded matter

To “refer” means to secure a place on the agenda for discussion of the matter. It should be noted that a CCfA is deemed to be an option of “last resort” A call for action will only be included on the relevant Scrutiny Panel agenda if the Head of Overview and Scrutiny is satisfied that it meets certain criteria. It is hoped that these criteria will become clearer when guidance is issued. However, this is not likely to be in the near future, but in the meantime we propose the following

protocol for dealing with CCfAs which is attached at Appendix B to this report.

10. Excluded matters are defined as:
 - a) a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006 (local authority scrutiny of crime and disorder matters) covered by separate arrangements under section 19 of the Police and Justice Act 2006
 - b) any matter relating to a planning decision;
 - c) any matter relating to a licensing decision;
 - d) any matter relating to an individual or entity in respect of which that individual or entity has the right that has a right of recourse to a review or appeal conferred by or under any enactment;
 - e) any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, to be discussed at, a meeting of the overview and scrutiny committee or at a meeting of a sub-committee of that committee.

Strengthened role for overview and scrutiny

11. Section 120 of the 2007 Act gives a power to overview and scrutiny committees to question decision makers. The overview and scrutiny committee

“May require any other member of the authority to attend before it to answer questions relating to any function which is exercisable by the member by virtue of section 236 of the Local Government and Public Involvement in Health Act 2007(exercise of functions by local councillors in England)”

12. Section 121 of the 2007 Act provides new powers for overview and scrutiny committees to review and scrutinize the actions of key local public services providers. The powers apply specifically to the provision of information. There is no requirement for the partner authorities to appear before overview and scrutiny committees, although they may themselves choose to do so. Details of the 20 partner authorities who are required to cooperate with overview and scrutiny committees can be found at section 104 of the 2007 Act these include a Primary Care Trust, Transport for London and a Youth offending team
13. Section 122 of the 2007 Act will apply where the overview and scrutiny committee makes a report or recommendation to the authority or executive, When the O&S committee does so, it must give the authority or executive notice in writing specifying the steps which the authority or executive must take within 2 months of receiving the report or recommendation. These steps will include responding formally to the report or recommendations and, if the documents were published by O&S committee then publishing the response accordingly. In summary the section 122:
 - places a duty on the executive to respond to O&S’s reports and recommendations;

- outlines the duties of certain “partner authorities” in relation to reports and recommendations from O&S
 - defines “confidential and exempt information” in relation to the publication of reports, recommendations and responses.
14. As stated above the government is yet to produce statutory guidance in respect of CCfA. It is unlikely that this guidance will be issued in the near future. However, once guidance is issued, section 125 of the 2007 Act provides that O&S committees must have regard to it.

The Police and Justice Act 2006 (PAJA 2006)

15. The Police and Justice Act 2006 sets out a “Call for Action” for crime and disorder and community safety issues. The provisions for the crime and disorder Call for Action are very similar to the version being introduced by the 2007 Act. Section 126 of the 2007 Act amends the Police and Justice Act 2006 to align what was previously known as the “Community Call for Action with the “Councillor Call for Action”, enabled in section 119 as described above.
16. The amendment to section 19(3) the PAJA 2006 has removed the omission of councillors from this procedure. This means that once these parts of the PAJA 2006 are enabled all councillors will be able to raise a “Call for Action” in relation to both “crime and disorder” and “local government” matters.

The structure of overview and scrutiny

17. In view of the new scrutiny powers within the legislation and the requirement to establish a Crime /safety committee a review will need to be undertaken of existing scrutiny panel remits.

Potential options could be to either:

- create an additional scrutiny panel to cover crime & safety matters; or
- retain the existing number of scrutiny panels and amending the remit of one of the panels to include crime and safety issues.

Resource implications

18. The revised scrutiny role will attract additional costs but these will be managed within available resources

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Legal and Democratic Services

19. The legal implications are set out the body of this report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Local Government and Public Involvement in Health Act 2007	Town Hall, Peckham Road, London SE5 8UB	Carol Hughes-Young Tel: 020 7525 7512
White Paper "Strong and Prosperous Communities" 2006	As Above	
The Police and Justice Act 2006		

APPENDICES

No.	Title
A	Amendments required to the constitution to implement CCfA
B	Councillor Call for Action Protocol

AUDIT TRAIL

Lead Officer	Deborah Collins – Strategic Director of Legal and Democratic Services	
Report Author	Carol Hughes-Young – Senior Lawyer Governance Team	
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Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Legal and Democratic Services	Yes	Yes
Finance Director	No	No
Executive Member	N/A	N/A
Date final report sent to Constitutional Team		April 3 2009