

DECISION-MAKER:	GOVERNANCE COMMITTEE COUNCIL		
SUBJECT:	ESTABLISHMENT OF FORMAL HEALTH AND WELLBEING BOARD/HEALTH SCRUTINY FUNCTION		
DATE OF DECISION:	19 MARCH 2013 20MARCH 2013		
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY			
None.			

BRIEF SUMMARY

The Health and Social Care Act 2012 requires upper tier local authorities to establish Health and Wellbeing Boards. Southampton has operated its Board in shadow form since November 2011 and is now required to formally establish this as a formal Committee of the Council from 1st April 2013. A review of the shadow boards' operation has been undertaken, and this report sets out proposals for revised terms of reference and other associated matters to meet the requirements of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 ('the 2013 Regulations') requiring the formal establishment of the Board and to empower and support the work of the Board as it goes live from April 2013. It should be noted that, at the time of writing this report, further statutory and non statutory guidance and national legal advice on the composition and work of the Board is expected in due course and this report therefore includes appropriate delegations to the Head of Legal, HR and Democratic Services to amend the approved arrangements where necessary to bring the operation of the Board in line with such advice / guidance as it is received.

RECOMMENDATIONS:

GOVERNANCE COMMITTEE

- (i) To consider and comment on the proposed arrangements for the establishment and composition of the Health and Wellbeing Board, and
- (ii) To recommend the Terms of Reference of the Board to Council for inclusion in Part 3 of the Council's Constitution.

COUNCIL

- (i) To approve the Terms of Reference for the Health and Wellbeing Board as set out in Appendix 1 of the report for incorporation into Part 3 of the Council's Constitution;
- (ii) To determine the membership of the Board should comprise:
 - 5 Elected Members of Southampton City Council (to be appointed by the Leader of the Council having had due regard to the recommendations of the Shadow Health and Wellbeing Board)
 - Statutory Director for Public Health
 - Statutory Director for Adult and Children's Services (which will be the People Director from April 2013)
 - A representative from the Southampton Clinical Commissioning Group
 - A representative of Local Link (to be replaced by Healthwatch when the organisation is established in October 2013)
 - A representative from the NHS Commissioning Board's Wessex Area Team
- (iii) To note that, while Council shall determine the number of places allocated to Elected Members on the Board, the decision as to whom to appoint to such vacancies is an Executive Function to be determined by the Leader of the Council at the next available Cabinet Meeting.
- (iv) Having regard to recommendation (iii) above, to recommend that the Leader of the Council has regard to the recommendations of the Shadow Health and Wellbeing Board as to the preferred Elected Member composition of the Board as set out in paragraph 9 of the report when appointing Elected Members to vacancies on the Board.
- (v) To note that the Head of Legal, HR and Democratic Services, in accordance with powers delegated to him under the Constitution, intends to approve a Special Procedure Rule as set out in Appendix 2 of the report in relation to the administrative arrangements for the operation of the Board in accordance with the Regulations and following consultation with the Chair of the Health and Wellbeing Board;
- (vi) To determine that the powers to undertake Health Scrutiny conferred on the Council as set out in Part 4 of the 2013 Regulations be delegated to the Council's Health Overview and Scrutiny Panel until such time as the Council's arrangements for overview and scrutiny of health functions is reviewed at Annual Council.
- (vii) To delegate authority to the Head of Legal, HR and Democratic Services, following consultation with the Director of Public Health and the Chair of the Health and Wellbeing Board, to make any amendments to the Terms of Reference or other Constitutional Rules or Procedures that may be required to give effect to any new guidance or legal advice received in relation to the proper operation

of the Board and / or health scrutiny functions contained in the Regulations received after the date of this report.

REASONS FOR REPORT RECOMMENDATIONS

1. To formally establish a Health and Wellbeing Board in accordance with the requirements of the 2013 Regulations and to ensure that it has adequate powers and clearly determined governance arrangements to enable it to function effectively from 1st April 2013 and to support the promotion and advancement of health and wellbeing in the City.
2. To comply with the requirements of the 2013 Regulations in relation to health scrutiny and provide an interim arrangement for this up to the Annual General Meeting of the Council when it will be reviewed as part of the wider constitutional review.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3. Alternative options have not been considered due to the requirement to formally establish the Health and Wellbeing Board as a Committee of the Council under s.102 of the Local Government Act 1972 from 1st April 2013. The Council could decide to extend the remit of the Board to cover a wider function area but this is not recommended while legal and governance arrangements for such a Board are in their early stages. The remit of the Board can and should be reviewed annually in line with all other aspects of the Council's Constitution.

DETAIL (Including consultation carried out)

4. A shadow Health and Wellbeing Board was established by the Council in November 2011, and provided with terms of reference to enable it to develop and function in shadow form as an advisory rather than a decision making body. Over the time since then the Health and Social Care Bill has completed its passage through the Parliamentary processes and achieved Royal Assent.
5. In January 2013, the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 ('the 2013 Regulations') completed the legal framework to enable local authorities to establish their Health and Wellbeing Boards as formal committees of the Council with decision making powers. These Regulations in relation to Health and Wellbeing Boards made provision for the disapplication and modification of certain enactments relating to the Local Authority Committees appointed under Section 102 of the Local Government Act 1972 insofar as they are applicable to a Health and Wellbeing Board established under Section 194 of the Health and Social Care Act 2012. Specifically:-
 - Health and Wellbeing Boards may establish sub-committees and delegate functions to them;
 - Voting restrictions have been removed so that non Elected Members of a Health and Wellbeing Board i.e. Clinical Commissioning Group Representatives, Healthwatch, and statutory Directors could vote alongside nominated Elected Member representatives of the Board;
 - Political proportionality requirements have been removed.

6. The Shadow Health and Wellbeing Board has reviewed the experience of its operations over the past 15 months, and in light of the legal frameworks and the practical guidance that has jointly been developed by the Local Government Association and Association of Democratic Services Officer to aid governance and constitutional issues have developed its recommendations to Council which are reflected in this report.
7. The function of encouraging integrated and close working is conferred directly on Health and Wellbeing Boards. The Health and Social Care Act 2012 also requires that Councils and Clinical Commissioning Groups discharge their functions of developing Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies through Health and Wellbeing Boards.

8. **Membership**

Section 194 (2) (a) of the Health and Social Care Act 2012 requires that the minimum membership of the Health and Wellbeing Board shall be:

- At least one Councillor (who must be appointed by the Leader of the Council)
- The Director of Adult Social Services
- The Director of Children's Services
- The Director of Public Health
- A representative of local Healthwatch, (nominated by Healthwatch)
- A representative of each Clinical Commissioning Group operating in the area, (nominated by the Clinical Commissioning Group)
- Such other persons as the Council considers appropriate

Council may determine the number of Elected Member position that will be available on the Board; however the appointment of members to the Board is an Executive function that falls to the Leader of the Council to determine. The Shadow Health and Wellbeing Board have recommended that the membership of the Board comprise those individuals / bodies set out in paragraph 9 below. The Leader is asked to have regard to the views and recommendations from the Board in making his appointments however it should be noted that he is not bound to follow the recommendations of the Shadow Health and Wellbeing Board in making such appointments.

9. The Shadow Health and Wellbeing Board is recommending that membership remains the same as during the shadow year, which comprises the following:-
 - Cabinet Member for Communities
 - Cabinet Member for Adult Social Care
 - Cabinet Member for Children's Services
 - 2 Elected Opposition Members
 - Statutory Director for Public Health
 - Statutory Director for Adult and Children's Services (which will be the People Director from April 2013)
 - A representative from the Southampton Clinical Commissioning Group

- A representative of Local Link (to be replaced by Healthwatch when the organisation is established in October 2013)
- A representative from the NHS Commissioning Board's Wessex Area Team

Voting

The Local Government Act 1972 does not allow officers to be members of Local Authority Committees. Regulation 5(1) of the 2013 Regulations removes this restriction in relation to Health and Wellbeing Boards by disappling Section 104(1) of the 1972 Act to enable the Local Authority Directors specified in the 2012 Act to become members of the Board. Regulation 6 of the 2013 Regulations modifies the Local Government and Housing Act 1989 (Section 13(1)) to enable all members of the Board or their sub-committees to vote unless the Council decides otherwise.

The Shadow Health and Wellbeing Board is recommending that the voting is as follows:-

- Decisions will normally be reached on a consensus basis, but in the event of any dispute requiring a formal vote then each member of the Board shall be entitled to a single vote with the Chair having the casting vote. Decisions in such circumstances will be passed by simple majority.

11. **Quorum**

Acknowledging the cross agency representation of the Health and Wellbeing Board the Shadow Health and Wellbeing Board is recommending that the quorum is as follows:-

- The quorum of the Board shall be 3 members, who will include at least one Elected Member, a member from Health and the Local Link member who will be replaced by Healthwatch following their establishment in October 2013.

12. **Resignation and replacements**

The Shadow Health and Wellbeing Board is recommending that resignation and replacements (including substitution for individual meetings by way of resignation and replacement) is specifically provided for as follows:-

- In the event that a member of the Health and Wellbeing Board resigns, the Head of Legal, HR and Democratic Services shall be the Proper Officer for the purposes of appointing a named replacement member in accordance with the wishes of the resigning member and / or the body that they represent.

13. **Codes of Conduct and Conflicts of Interest**

The Regulations under Section 194 of the Health and Social Care Act 2012 do not modify or disapply any legislation relating to codes of conduct and conflicts of interest, therefore the Local Government Acts 1972, 2000 and the Localism Act 2011 will apply to Health and Wellbeing Boards. Members of the Board will be required to comply with the Council's Code of Conduct for Members in relation to their role as members of the Health and Wellbeing Board regardless of their status as Elected Members, officers or representatives of a third party organisation.

14. **Transparency and Openness**

The 2013 Regulations do not modify legislation in relation to transparency requirements in relation to Health and Wellbeing Boards. This means that they will be subject to the same requirements of openness and transparency as any other committee of the Council.

15. The Board will also be subject to the same requirements as any other Council committee. In particular, the Local Government Act 1972 imposes requirements in relation to Access to Information and making copies of agenda and reports of meetings open to the inspection by the public and the Freedom of Information Act 2000 provides a general right of access to information held by public authorities. The Equality Act 2010 requires specified public bodies, when exercising functions to have due regard to eliminating conduct prohibited by the Act and advancing equality of opportunity and fostering good relations between people who share protected characteristics and those who do not .

16. **Accountability and relationships between Health and Wellbeing Boards, Other Council Structures and Partnerships**

The discharge of functions by Health and Wellbeing Boards fall within the remit of Scrutiny but the core functions are not subject to call in as they are, predominantly, not Executive functions. There will need to be relationships between Health and Wellbeing Boards, Scrutiny Committee, particularly Health Overview Scrutiny and local Link which will be Local Healthwatch when established. Discussions on these relationships will take place to ensure understanding between the three elements to ensure clarity and mutual understanding of roles and responsibilities. The role of Scrutiny in relation to the review of health functions will be considered in the annual report on changes to the Constitution presented to Council at its AGM in May.

17. The 2013 Regulations amend the current health scrutiny legislation to confer the power to undertake health scrutiny on the Council rather than directly to a Health Scrutiny Committee. As a result, in order for health scrutiny to continue to be carried out by the existing Health Overview and Scrutiny Panel (HOSP), the Council is required to delegate responsibility to the Panel (recommendation (vi)).

18. The legislation as drafted and existing guidance is not clear as to whether the power to refer to the Secretary of State can also be delegated to the HOSP or remains a function of the Council. Further guidance is expected before the end of March and the position will be clarified at Annual Council.

19. Relationships with local Healthwatch, the NHS Commissioning Board and Clinical Commissioning Groups will be facilitated by their representation on the Board. It will be important to ensure that the priorities in the Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy are aligned to other Council and Local NHS strategies and those of other strategic bodies for the area, including those relating to Children's Services, Safeguarding Boards, Community Safety Partnerships and other Local Enterprise Partnerships and others.

RESOURCE IMPLICATIONS

Capital/Revenue

20. The cost of implementation of the formal Health and Wellbeing Board will be contained within existing budgets.

Property/Other

21. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

22. Section 194 of the Health and Social Care Act 2012 requires that every upper-tier Local Authority establish a Health and Wellbeing Board by 1st April 2013. In order to fit Health and Wellbeing Boards within Local Authority Structures, Section 194(11) provides that the Board is a Committee of the Local Authority which established it and, for the purposes of any enactment, is to be treated as if it were a Committee appointed by that Local Authority under Section 102 of the Local Government Act 1972.

Other Legal Implications:

23. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 completed the legal framework to enable local authorities to establish their Health and Wellbeing Boards. These regulations in relation to Health and Wellbeing Boards make provision for the disapplication and modification of certain enactments relating to the Local Authority Committees appointed under Section 102 of the Local Government Act 1972 insofar as they applicable to a Health and Wellbeing Board established under Section 194 of the Health and Social Care Act 2012.

POLICY FRAMEWORK IMPLICATIONS

24. The proposals in this report are consistent with and not contrary to any aspect of the Council's approved Policy Framework.

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	All
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SUPPORTING DOCUMENTATION

Appendices

1.	Terms of Reference for Formal Health and Wellbeing Board
2.	Draft Council Special Procedure Rule (for information)

Documents In Members' Rooms

1.	None.
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None.	
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