



**LEICESTER, LEICESTERSHIRE AND RUTLAND JOINT HEALTH  
SCRUTINY COMMITTEE: 27 MARCH 2024**

**PROPOSED AMENDMENTS TO COMMITTEE TERMS OF REFERENCE**

**REPORT OF THE SECRETARIAT (LEICESTERSHIRE COUNTY  
COUNCIL)**

**Purpose of report**

1. The purpose of this report is to enable the Committee to consider proposed changes to the Committee's Terms of Reference which are required as a result of new Regulations and guidance from the Department of Health and Social Care which has been published relating to the role and powers of Health Scrutiny Committees.

**Policy Framework and Previous Decisions**

2. The Terms of Reference of the Leicester, Leicestershire and Rutland Joint Health Scrutiny Committee were last updated at the Committee meeting on 6 July 2021.

**Background**

**Power of referral to Secretary of State**

3. Regulation 23(9) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 originally stated that a local authority may report to the Secretary of State in writing where—
  - (a) the authority is not satisfied that consultation on any proposal has been adequate in relation to content or time allowed;
  - (b) the authority is not satisfied that the reasons given are adequate; or
  - (c) the authority considers that the proposal would not be in the interests of the health service in its area.
4. The Secretary of State was originally only able to intervene in health proposals after the above referral from a local authority had taken place.

**Joint Health Scrutiny**

5. Section 30 of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 states that 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. The Leicester, Leicestershire and Rutland Joint Health Scrutiny Committee was set up in accordance with this.

6. Leicestershire County Council and Rutland County Council decided that any decision to make a referral to the Secretary of State had to be made by their full Council and not by a Scrutiny committee. Leicester City Council delegated the referral power to its Health scrutiny committee.
7. The Terms of Reference of the Leicester, Leicestershire and Rutland Joint Health Scrutiny Committee were therefore drafted to reflect the position as set out in paragraphs 3, 4, 5 and 6 above. The Constitutions of the three constituent authorities were amended to reflect this position.
8. Section 46 of the Health and Care Act 2022 amended the National Health Service Act 2006 to confer intervention powers on the Secretary of State in relation to the reconfiguration of NHS services. This meant that the Secretary of State no longer needed to receive a referral before they could intervene.
9. The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provision) Regulations 2024 came into force on 31 January 2024. These Regulations amended certain sections of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 and, of most significance, Regulation 23 has been deleted. The guidance from the Department of Health and Social Care confirms that this means local authorities' powers of referral to the Secretary of State have been removed. Instead of the referral power, health overview scrutiny committees and other interested parties can write to request (via a call-in request form) that the Secretary of State consider calling in a proposal.
10. The written request to the Secretary of State that the Secretary of State consider calling in a proposal should state clearly how the request meets one of the following criteria:
  - a) there are concerns with the process that has been followed by the NHS commissioning body or NHS provider (for example, the adequacy of the content of consultation with the public or the time allowed for consultation with the public; how options have been developed);
  - b) a decision has been made and there are concerns that a proposal is not in the best interests of the health service in the area.
11. Where a reconfiguration has been called in, each local authority whose area the proposed reconfiguration of NHS services relates to will have an opportunity to make representations to the Secretary of State.

### **Interim arrangements**

12. Section 3 of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) (Amendment and Saving Provision) Regulations 2024 states that if a local authority has already made a referral to the Secretary of State on a day up to and including 30 January 2024 then the procedure under the old Regulation 23(9) of The Local Authority (Public Health, Health and Wellbeing Boards and Health

Scrutiny) Regulations 2013 will apply. However, as no local authority in Leicester, Leicestershire and Rutland (LLR) made any referrals to the Secretary of State prior to 30 January 2024, all health service proposals for LLR will now be subject to the amended Regulations.

### **Proposals/Options**

13. The Terms of Reference of the Leicester, Leicestershire and Rutland Health Overview and Scrutiny Committee require amending to reflect the change in the regulations as set out in paragraph 9 above.
14. It is proposed that 'Section 6: Scope of the Joint Committee' be amended to reflect that local authorities' powers of referral to the Secretary of State have been removed but that there is the ability to complete a call-in request form (see Appendix A).
15. The Constitutions of the constituent authorities will also require amending to reflect that the powers of referral no longer exist, but these amendments will require approval of those authorities themselves.

### **Access to Information Procedure Rules**

16. As the Constitution/Standing Orders of the Authority providing the Secretariat apply to the Joint Committee, the link in the Terms of Reference to the Leicester City Council Access to Information Procedure Rules also needs changing to the Leicestershire County Council Access to Information Procedure Rules.

### **Recommendation**

17. That the proposed amendments to the Leicester, Leicestershire and Rutland Joint Health Scrutiny Committee as set out in paragraphs 13-16 above be approved.

### **Background papers**

18. Department of Health and Social Care Guidance - Local Authority Health Scrutiny <https://www.gov.uk/government/publications/advice-to-local-authorities-on-scrutinising-health-services/local-authority-health-scrutiny>
19. Centre for Governance and Scrutiny Guidance <https://www.cfgs.org.uk/wp-content/uploads/2024-01-09-HEALTH-SCRUTINY-PRIMER.pdf>
15. Department of Health and Social Care Guidance - Reconfiguring NHS services - ministerial intervention power <https://www.gov.uk/government/publications/reconfiguring-nhs-services-ministerial-intervention-powers/reconfiguring-nhs-services-ministerial-intervention-powers>

### **Circulation under the Local Issues Alert Procedure**

None

### **Equality Implications**

20. None

**Human Rights Implications**

21. None

**Appendices**

Appendix A – Proposed new Terms of Reference

**Officer to Contact**

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