

HEALTH AND SOCIAL CARE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: National Health Service

Health Service Funding

Local Authority Scrutiny of Health Service Provision

Section 7: Functions of overview and scrutiny committees

52. This section provides for local authority overview and scrutiny committees to exercise new functions in relation to the NHS and NHS bodies. In particular, it enables such a committee to review and scrutinise the operation of the health service in its area.
53. Local authority overview and scrutiny committees (OSCs) are to be established under section 21 of the Local Government Act 2000. These committees are part of the arrangements for local authorities under Part II of that Act. Under these arrangements, local authorities may establish an executive to perform particular functions and to implement the plans and policies approved by the authority. The executive may take one of four forms –
- an elected mayor and cabinet executive consisting of 2 or more councillors;
 - a council leader and cabinet executive consisting of 2 or more councillors;
 - an elected mayor and an officer of the authority appointed as the council manager;
 - such other form as may be prescribed in regulations made by the Secretary of State.
54. An overview and scrutiny committee is a committee of the authority made up of councillors who are not members of the executive. The committee's functions are to review and scrutinise the decisions and other actions of the executive or the authority itself, and to make reports or recommendations to the authority or executive with respect to the discharge of functions by the executive or authority. In addition, the committee may make reports and recommendations to the authority or executive on matters which affect the authority's area or its inhabitants.
55. *Subsection (1)* confers on some of these committees the additional functions of reviewing and scrutinising health service matters and making reports and recommendations to NHS bodies on such matters. These functions will not be conferred on all overview and scrutiny committees; the provisions only apply to committees of county councils, county borough councils in Wales, unitary authorities and London borough councils (see *subsection (2)*). These are the authorities that also hold responsibility for social services. District Councils will be able to contribute to the scrutiny of the NHS through joint arrangements with the authorities set out above (see *section 8*).

56. The detail of how the committees are to operate and the matters which they may review and scrutinise are to be set out in regulations under *subsection (3)*. HAs would be required to consult OSCs on major service changes and Chief Executives of local NHS bodies will be required to attend OSC meetings at least twice a year. It is intended that overview and scrutiny committee functions will include referring contested proposals for major service changes to the Secretary of State on the grounds of process and merit. A new Independent Reconfiguration Panel is being established to advise the Secretary of State on proposals referred to him in this way and its membership will include clinicians, patient representatives and NHS managers.
57. OSCs will scrutinise not only health services, but also social care services provided or commissioned by NHS bodies exercising local authority functions under arrangements under section 31 of the Health Act 1999 (*see subsection (5)*). OSCs may scrutinise local authority social services under the existing provisions of the Local Government Act 2000.

Section 8: Joint overview and scrutiny committees etc

58. This section allows the Secretary of State (or, in relation to Wales, the National Assembly for Wales) to make regulations which provide for joint overview and scrutiny committees of two or more local authorities; it allows for a number of different options. It enables the Secretary of State and the Assembly to make regulations providing for local authorities to form joint OSCs, for a local authority to delegate the NHS functions of their OSC to an OSC of another local authority, and for district council OSC members to be co-opted on to county council OSCs as voting members.
59. *Subsection (2)(a)* allows for two or more authorities, which can include district councils, to form a single overview and scrutiny committee to scrutinise health organisations. Where a district council joins with a county council, the scrutiny is the county council's responsibility, and the county council will therefore remain in the lead. These joint arrangements may also include local authorities operating "alternative arrangements" under regulations under section 32 of the Local Government Act 2000. "Alternative arrangements" do not involve the creation of an executive for the authority, but they will provide for the establishment of a committee to undertake scrutiny functions similar to those carried out by an overview and scrutiny committee under section 21 of the Local Government Act 2000.
60. *Subsection (2)(b)* provides for two or more authorities whose OSCs have responsibility to scrutinise the NHS to give the lead to one OSC so that it exercises the others' functions in relation to health scrutiny. Under this provision, a county council and district council could arrange for the district OSC to undertake the county council OSC's responsibility of scrutinising health services in the district. This approach may be appropriate where a localised service is being considered, for example a particular PCT.
61. *Subsection (2)(c)* provides for a county council to co-opt one or more district council OSC members onto its own OSC; the county council may also co-opt district council OSC members when that county is part of a joint scheme with another OSC.
62. *Subsection (3)* allows regulations relating to the joint arrangements to set out the circumstances and conditions under which joint schemes can be established. District council involvement in the joint scheme arrangements will be set out in regulations; the lead will always be with local social services authorities. Regulations and directions may also under *subsection (4)* provide for the circumstances where authorities will be required to put in place joint scheme arrangements.
63. The regulations that relate to the normal arrangements for scrutiny and review of the NHS by OSCs will also apply to the scrutiny and review of the NHS where there is a joint scheme in operation.

Section 9: Overview and scrutiny committees: exempt information

64. As local authority committees, overview and scrutiny committees are subject to section 100A of the Local Government Act 1972, which provides that councils and their committees must be open to the public except to the extent that they must be excluded under section 100A(2) (where certain confidential information may be disclosed) or may be excluded under section 100A(4) (exclusion by resolution of the council or committee, if certain “exempt information” may be disclosed). The categories of exempt information are set out in Schedule 12A to the 1972 Act. *Section 9(2)* of, and *Schedule 1* to, the Act extend the categories of exempt information, where an overview and scrutiny committee is dealing with NHS matters. As with the categories of exempt information in the 1972 Act, the Secretary of State may add to, or remove provisions or otherwise amend the list by making an order (*section 9(4) and (5)*).

Section 10: Application to the City of London

65. The Local Government Act 2000 does not provide for the Common Council of the City of London (the local authority for the City) to establish an overview and scrutiny committee. This section makes it possible for the Common Council of the City of London to set up a committee which mirrors the functions of the overview and scrutiny committees in relation to the scrutiny of the NHS. *Subsection (2)* applies sections 7(3) to (5) and 8 and 9 and Schedule 1 to the committee that is set up. *Subsection (3)* of *section 10* applies the provisions of section 21 of the Local Government Act 2000 (overview and scrutiny committees) to a scrutiny committee established by the Common Council, with modifications to reflect the fact that the Common Council will not have an executive under Part 2 of that Act.