

## **Covering report for the Protocol for South-West Regional Joint Health Scrutiny Committees (commissioning of Specialised Health Services)**

### **Purpose**

To propose a Protocol for the establishment and operation of regional Joint Health Scrutiny Committees in South West England, to enable participation in the scrutiny of proposals for changes to specialised NHS services that have been determined to be 'substantial' by the Health Scrutiny Committees of two or more South West Local Authorities.

In view of the diverse Constitutions and procedures within Councils in the South West, this Protocol has been drafted to facilitate a timely response to any proposed service change, and avoid any unnecessary delay to the establishment of the required regional Joint Health Scrutiny Committee. As a result, it is proposed that all Councils agree to use this Protocol, which will be kept in readiness for implementation if and when a regional Joint Health Scrutiny Committee is required to consider a service change proposal from the South West Specialised Commissioning Group.

### **Background**

While most health services are commissioned locally by an individual Primary Care Trust (PCT), some services have to be collectively commissioned by groups of PCTs due to their specialist nature and the small numbers of patients that receive them. These are known as 'Specialised Services'. These services are commissioned on a regional basis by a Specialised Commissioning Group (SCG) coterminous with the Strategic Health Authority. The Primary Care Trusts in the South West Strategic Health Authority, which covers the same area as the Local Authorities of the South West Health Scrutiny Network, have established the South West Specialised Commissioning Group for this purpose.

When a Specialised Commissioning Group proposes a change to a service, all Local Authorities that consider the proposal to be a substantial variation and wish to take part in scrutiny of the proposal must form a Joint Health Scrutiny Committee for the purpose of consultation with the SCG (see section 1.6 of the Protocol).

In the summer of 2008 all South West Councils considered the issues and options relating to the formation of a South West Joint Health Scrutiny Committee. There was no consensus to establish a Standing Committee.

The South West Health Scrutiny Network and South West Councils have therefore consulted with Councils in the region and with the South West Specialised Commissioning Group to draw up proposals for a Protocol to establish a Joint Health Scrutiny Committee if and when one is required to consider service change proposals for a specific Specialised Service.

**It is recommended that:**

Each South West Local Authority:

1. agrees to use this Protocol to enable it to take part in Regional Joint Health Scrutiny Committees established to consider proposals from the South West Specialised Commissioning Group that have been determined to be 'substantial' variations or developments to service by the Health Scrutiny Committees of two or more South West Local Authorities.
2. ensures that it has agreed an appropriate mechanism to appoint representatives to serve on a Joint Health Scrutiny Committee, consistent with this Protocol, to ensure that it can participate in regional Joint Health Scrutiny Committees and to avoid undue delay in their establishment.
3. resolves to waive the requirement for political proportionality for regional Joint Health Scrutiny Committees established under this Protocol to consider proposals from the South West Specialised Commissioning Group that have been determined to be 'substantial', to prevent undue delay in establishment of the Joint Committee and to give each Authority the flexibility to make its own appointments as it chooses.

**The proposed protocol**

The proposed Protocol is intended to enable the establishment of regional Joint Health Scrutiny Committees in order to consider proposals from the South West Specialised Commissioning Group for service changes that have been declared to be 'substantial' by the Health Scrutiny Committees of two or more South West Local Authorities. The Joint Committee will not decide if a proposed service change is 'substantial' – that is a decision for each individual Local Authority's Health Scrutiny Committee.

The Protocol does not replace or amend existing joint arrangements where they exist and it is not intended for other forms of joint scrutiny on a sub-regional or discretionary basis.

For further description and details of the circumstances under which a Joint Health Scrutiny Committee would be established, see section 1.4 of the Protocol.

Coordination to establish a Joint Health Scrutiny Committee, liaison between South West Local Authorities and administrative support for a regional Joint Health Scrutiny Committee will be provided by South West Councils – see sections 3 and 4 of the Protocol.

**Appointment of representatives**

Under the proposed Protocol, each participating Local Authority will be

represented on a regional Joint Health Scrutiny Committee as follows:

- a. If 10 or more Local Authorities participate in a Joint Health Scrutiny Committee – then each participating Authority will nominate one Councillor to become members of the Committee (total 10 to 16 Members) and one substitute;
- b. if 5 to 9 Local Authorities participate - then each participating Authority will nominate two Councillors (total 10 to 18 Members) and up to two substitutes;  
or
- c. if 2 to 4 Local Authorities participate - then each participating Authority will nominate three Councillors (total 6 to 12 Members) and up to three substitutes.

Each participating Local Authority will need to select its representatives according to its own procedures, which should ensure that it can nominate 1, 2 or 3 representatives as required, without undue delay to the establishment of the Joint Committee – see section 3.1 of the Protocol.

Local Authorities should note that at the time of deciding to participate in a Joint Health Scrutiny Committee, it would not be known how many representatives each Authority would have on the Joint Committee. Therefore, to avoid undue delay in establishing a Joint Committee, Local Authorities that appoint a pool of Members would need to have a mechanism to select the appropriate number of representatives from that pool without having to go back to committee.

Local Authorities, in particular those that will be nominating a pool of Members in advance, should be aware that circumstances may arise where more than one Joint Committee is required to be established at the same time. They may therefore wish to consider appointing a larger pool of members or consider who they would appoint to a second joint committee if for example their first named member was already fully committed to another Joint Committee.

### **Political proportionality**

Legislation requires representatives on Joint Health Scrutiny Committees to be politically proportional to the membership of their Local Authority unless all Local Authorities agree to waive the requirement. The majority of Joint Health Scrutiny Committees established across the country have been set up on a non-proportional basis.

To give each authority flexibility in deciding its own representatives on a Joint Health Scrutiny Committee, for example to reflect local circumstances and to allow appropriate representation without the Committee becoming too large, and avoid imposing constraints on how an individual authority makes its appointments, the requirement for political proportionality needs to be waived by all participating Local Authorities.

Therefore, each South West Local Authority is asked to resolve to waive the requirement for political proportionality for Joint Health Scrutiny Committees established under this Protocol to consider proposals from the South West Specialised Commissioning Group that have been determined to be substantial

variations. However, each individual Local Authority remains at liberty to select its representatives on the basis of its own political balance.

### **Financial implications**

The costs of coordination and liaison in establishing a regional Joint Health Scrutiny Committee under this Protocol, and of providing administrative support to the joint Committee will be met by South West Councils (see section 4 of the protocol).

South West Councils cannot provide Health Scrutiny and research support. Such research and support that is required will need to be provided by Officers of the participating Local Authorities.

Each participating Authority will need to provide the necessary support to its own representative(s) on a Joint Committee, to provide relevant information to South West Councils to advise the work of the Joint Committee and to communicate information within its own Authority and its own area. See section 4.8 of the Protocol.

If the Joint Health Scrutiny Committee wishes to undertake any activity over and above that described in the Protocol, and which cannot be provided by the participating Authorities or relevant NHS bodies, this can be done by buying in specific support, which will be administered by South West Councils and recharged proportionately to the participating Local Authorities on the basis of their population. Any significant legal costs will be treated in this manner. Before the Joint Committee commits itself to any significant additional costs it will seek the agreement of the participating Local Authorities.

### **Legal**

Directions issued by the Secretary of State for Health in July 2003 refer to instances when an NHS body (the Specialised Commissioning Group) wishes to consult with more than one Authority on issues that Local Authorities may consider to be a substantial variation or service development. In such cases, Local Authorities considering proposals to be substantial must form a Joint Health Scrutiny Committee for the purpose of consultation with the NHS body regarding the proposal.

Department of Health Guidance issued in July 2003 indicates that the duty on NHS bodies to provide information or attend meetings relates only to that Joint Health Scrutiny Committee.

If a Health Scrutiny Committee decides that a proposal is not 'substantial', it would not be able to take part in a Joint Health Scrutiny Committee. If a Health Scrutiny Committee did not take part in the Joint Health Scrutiny Committee it would not be able to exercise powers of Health Scrutiny with respect to the proposal, it could

not choose to participate at a later stage, and it would not be able to exercise the right of referral to the Secretary of State.

See section 1.6 of the Protocol.

**End of Document**