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Scrutiny Powers relevant to NFLA Policy Work: England and Wales

1. Introduction

This briefing is intended to advise supporting authorities in England and Wales on the scope for using

- their general powers of scrutiny and
- the specific health scrutiny power provided under the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 for England and Wales to undertake work relevant to the objectives of NFLAs.

2. General power of scrutiny

2.1 Part 1 of the Local Government Act 2000

- created powers for English and Welsh councils to promote the economic, social or environmental well-being of their community - these form the subject of a separate NFLA legal briefing; and
- established a requirement that an authority have at least one Overview and Scrutiny Committee (OSC).

2.2 Arrangements for overview and scrutiny (including the membership and remits of the committees) are a matter for local choice. The OSCs generally establish a work programme for each year which sets out the Committee's activities planned for that year. However a programme can allow for new work if an issue emerges that was not planned for.

2.3 OSCs are empowered¹ to make reports or recommendations to the local authority or the executive in relation to matters which are *not* the responsibility of the local authority *provided* they nevertheless affect the local authority's area or its inhabitants e.g. matters affecting the economic, social or environmental well-being of the area. An OSC can therefore examine the performance of other public bodies in its area by inviting reports to be submitted to and/or representatives to address an OSC meeting.

2.4 Subject to what is said below,

- the 2001 Act does not detail for any organisation under scrutiny (other than the authority itself) what its duties are in the scrutiny process;
- although an OSC has power to invite any other persons to attend its meetings, it cannot require them to do so; and
- any recommendations of an OSC cannot be binding on outside bodies.

1.5 As a result of the above, all Councils in England and Wales are able to use an OSC to scrutinise, for example, local health, environmental and safety issues.

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3. Specific Health Scrutiny Power

3.1 The Health and Social Care Act 2001² provides for more explicit powers for particular authorities in England and Wales to scrutinise health services within the authority's area.³ The powers apply only to county councils, county borough councils, district councils where no county councils exist and London Boroughs. The Act details what the duties of the NHS are in the scrutiny process. Regulations make specific provision in relation to this health scrutiny function.⁴ An OSC of an authority mentioned can "review and scrutinise, in accordance with regulations under that section, matters relating to the health service in the authority's area"

3.2 The regulations set out

- the procedure and scope of review, scrutiny, reports and recommendations;
- requirements for consultation of OSCs by local NHS bodies on proposals for substantial developments of the health service or for substantial variations in the provision of the health service;
- information required to be furnished to committees by local NHS bodies and,
- the power for OSCs to require officers of local NHS bodies to attend before them and answer questions for the purpose of the committees' functions.

4. Suggested action: use of powers and terms of reference

4.1 English and Welsh authorities may wish to consider the implications of both (i) the general power of review available to an OSC and (ii) the new specific health services scrutiny power, for present purposes. These both have operational implications for work in England and Wales.

4.2 It is open to an OSC to consider the implications of, e.g.,

- a local nuclear facility's routine operations or a potential accident at such a facility;
- a transporter's use of an authority's area for the transport of civilian or military nuclear materials;
- the use, prospective or actual, of any location for a facility to accept radioactive waste.

An authority could conduct

- (a) a general review under the "general" OSC arrangements, considering e.g. potential economic impacts, but without specific powers to insist on the provision of information or witness-attendance before the relevant committee; and/or
- (b) a health review under the health scrutiny power requiring specific information from the Health Services on routine radiation impacts or emergency planning preparedness for civil, military or terrorist radiation incidents or other health aspects of the examples given above with the power to insist on witness attendance.⁵

4.3 Authorities will have very diverse arrangements for OSCs. It may be that the terms of reference used in an authority's existing arrangements will already allow for the scrutiny of nuclear issues where the language adopted has been general. Member authorities could usefully ensure that the language used is capable of taking comfortable account of nuclear issues and if not that a suitable opportunity is taken for an appropriate amendment.

4.4 In the case of Health Scrutiny Panels it would be advisable to ensure that the terms of reference are so drafted that they can comfortably embrace scrutiny functions in connection with actual and potential health issues arising from the use, transport or disposal of radioactive materials.

4.5 Specific further advice can be obtained from the NFLA Legal Adviser Jamie Woolley (0114 220 4452, jkwoolley@gn.apc.org)

¹ Section 21(2)(e) LGA 2000

² sections 7 and 8 of the Health and Social Care Act 2001

³ "(f) in the case of the overview and scrutiny committee or committees of an authority to which section 7 of the Health and Social Care Act 2001 applies, to review and scrutinise, in accordance with regulations under that section, matters relating to the health service (within the meaning of that section) in the authority's area, and to make reports and recommendations on such matters in accordance with the regulations."

⁴ The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002

⁵ "...it shall be the duty of a local NHS body to provide an overview and scrutiny committee with such information about the planning, provision and operation of health services in the area of that committee's local authority as the committee may reasonably require in order to discharge its functions." Regulation 5