PUBLIC HEALTH LEGISLATION IN SCOTLAND: A CONSULTATION – RESPONSE FROM SOUTH LANARKSHIRE COUNCIL

QUESTION 1

Organisational Authority

Views are invited on:

1.1 the proposal to assign legislative powers in relation to people to NHS Boards and for property and premises to local authorities, as set out in Tables 1 and 2 in Annex C.

Whilst it may be theoretically neat and tidy to split the people, premises and property domains between LAs and NHS Boards it does not reflect the practical position on the ground. The following will require to be determined in drafting the legislative framework.

Clarity of accountability within domains.

Powers in respect of controlling domains.

Penalties associated with failure to comply.

Future Proofing to ensure longevity and relevance of legislation.

Greater clarity is required in relation to responsibilities and powers in respect of people. The Council support the view that the responsibility for actions in relation to exclusions should sit with NHS Boards, however, people are inextricably linked to premises and property and enforcement/regulation of the people domain in these circumstances should remain with LAs. The Council believe that elements of the people domain will involve LAs in some circumstances and NHS Boards in others.

Some will be obvious as to where best they sit i.e. enforcement whilst others will require discussion to determine appropriateness.

The Council believe that rather than the legislation being prescriptive it would be best for responsibilities to be agreed within the context of Joint Health Protection Plans.

Guidance should be developed to ensure that the domain issue in respect of people is applied appropriately.

1.2 whether the provisions in Tables 1 and 2 in Annex D *could usefully be updated and retained in new legislation*

The Council recommends the updating and retention of sections 27, 30 and 35. Sections 50, 65 and 66 could be repealed as being no longer relevant.

The sections listed in Table 2 should be updated and retained. The Council would query the inclusion of ships in the definition of a house in relation to Section 51.

1.3 *whether there should be a requirement for the production of local Health Protection Plans and Statements, to be incorporated within Community Plans or Health Improvement Plans/Local*

1.4 whether the issues to be covered in Plans/Statements should include the matters covered in paragraph 3.17

The Council is in agreement with the introduction of the Joint Health Protection Plan within the local Community Planning framework. The Joint Health Protection Plan should be a discrete plan, separate from the Joint Health Improvement Plan.

1.5 whether the AIDS (Control) 1987 Act should be considered for repeal in Scotland

The Council agrees to the repeal of the AIDS (Control) Act 1987.

1.6 (a) whether the provision and statutory role for a DMO should be retained in new legislation

1.6 (b) if the role is retained should this role be a joint appointment between LA and NHS

1.6 (c) if the role is retained, should we define qualifications/professions eligible to fulfil this role

It is the view of the Council that the role of the 'Designated Medical Officer' should be repealed in favour of the designation of a 'competent person'. The qualifications and experience of the 'competent person' requires to be assessed and accredited and subject to a scheme of continuing professional development to ensure credibility of the appointee.

The line of responsibility should be determined in the local Joint Health Protection Plan.

A joint appointment would also ensure collaboration and communication on health protection matters.

If the DMO role is retained, the job title suggests that the post holder is medically qualified. This would need careful consideration in light of the emerging 'multi disciplinary' public health workforce.

1.7 whether legislation should require that certain outcomes, including those which restrict liberty, need input from a competent person and, in particular, a professional with defined qualifications

1.8 if so, whether these qualifications should be defined in regulations or guidance

1.9 whether powers for Scottish Ministers to intervene in public health matters should follow the principles already established in legislation.

Certain outcomes, including those which restrict liberty should require input from a competent person with defined qualifications. These should be defined in regulations or guidance to allow change if circumstances change.

Question 2

Notification Options

Views are invited on:

2.1 a new system of statutory notification to public health agencies, which:

a) has two lists: one on notifiable conditions and the second on reportable hazards
b) identifies three types of notifiable conditions:

- *diseases, e.g. tuberculosis*

- *organisms, e.g.*Clostridium botulinum
- *"health risk states", e.g. close contacts of SARS cases*

c) does not require consent for notification since it will be a legal requirement to notify and report to NHS Boards or other appropriate authority
d) includes the option to place a statutory duty on doctors to inform the patients of the notifiable condition as soon as possible
e) defines a "reportable hazard" as any micro-organism or environmental hazard
f) places a statutory duty on public and private sector organisations involved in testing for the presence of micro-organisms and environmental hazards in human, water, food and environmental samples to report on a defined regular basis to a named public health agency, the numbers and details of samples in which a reportable hazard is detected
g) specifies the reportable hazards and the details required, including to comply with EC and WHO requirements
h) specifies a time limit for notification and reporting in regulations
i) specifies a penalty for not notifying in regulations
j) discontinues current arrangements for payment of a fee per notification to general practitioners.

The Council supports these proposals.

2.2 proposals for developing an additional notification system for non-communicable diseases that:

a) defines the "statutory reportable conditions"
b) places a statutory duty on public and private sector organisations involved in caring for individuals suffering from the disease or investigating its extent in a population to report on a regular basis the numbers and details about those suffering from the disease and specified factors involved in its causation
c) specifies the diseases and the details required or the specific measurable factors leading to their occurrence to be reported
d) does not require consent for notification since it will be a legal requirement to notify and report
e) specifies a time limit for notification and reporting in regulations
f) specifies a penalty for not notifying in regulations.

The Council supports these proposals.

2.3 the proposal that the key issues to be considered prior to making a new condition or hazard reportable should be:

a) cultural and moral sensitivities
b) public health significance
c) current ethical and legal guidance
d) commercial considerations
e) resource and quality issues.

The Council supports these proposals.

2.4 whether to continue to exclude sexually transmitted infections from any new notification system and whether any other disease or condition be excluded

The Council supports the inclusion of sexually transmitted infections in the reporting system.

2.5 whether there are there any other legislative options for surveillance which should be considered.

Question 3

Investigation Options

Views are invited on whether:

3.1 legislation should make it a statutory duty to divulge information during public health outbreaks or incidents.

3.2 the triggers necessary for such action might be:

a) a significant public health incident or outbreak
b) involvement of a notifiable disease, or organism or health risk state
c) the seriousness of outbreak or incident in terms of morbidity, mortality or potential health risk

3.3 the need for such information should be certified by the Chief Executive of the NHS Board, or a case made by the competent person, or whether this should be the Sheriff

3.4 an appeal system or structure should be available against the duty to divulge, involving either reference to the chair of the NHS Board, and thereafter to the Sheriff, if necessary, or in emergency situations, direct to the Sheriff.

There should be a duty to divulge information, where it is deemed necessary for an investigation. Powers to require information should be made available, but only used in circumstances that are certified by the 'competent person' and/or the Chief Environmental Health Officer. An appeal should be made directly to the Sheriff.

Question 4

Statutory Powers for Health Protection

Views are invited on:

4.1 whether legislation should provide for the introduction of quarantine orders for a period of up to 21 days, with provision for renewal or extension
4.2 whether quarantine orders should only be applied where the criteria in paras 6.9 and 6.12 are met
4.3 whether exclusion orders should apply more widely to include, e.g. work, social and religious events, neighbours, travelling and other activities
4.4 whether exclusion orders should:
i) apply to specified states and/or organisms and or activities
ii) have penalties for non-compliance
4.5 whether there should be penalties for non-compliance
4.6 whether compensation payments should extend to all groups liable to be excluded under exclusion orders or affected by other orders

The Council supports these proposals.

4.7 whether the payment of compensation should become the duty of the NHS, rather than the LA as currently, given the proposed transfer of powers in relation to people to the former; if recommended, this change would require NHS Boards to be insured against compensation claims

The Council supports these proposals.

4.8 whether legislation should provide for the introduction of detention orders, covering:
a) the removal to a suitable place of those who risk spreading disease by virtue of being a contact or those with an infectious disease who refuse to comply with a quarantine order or medical advice
b) an appeal system

The Council supports this proposal.

4.9 the proposal not to seek powers to require a person to have medical treatment

The Council does not support this proposal. The Council's view is that, in certain circumstances, the 'competent person' should have the power to require a person to have medical treatment, if this is in the public interest.

Question 5

Environmental Health Concerns and Nuisance

Views are invited on:

5.1 whether it is perceived that there is a gap in legislation to deal with threats from the environment
5.2 if so, what are your views on introducing provisions on "environmental health concern" in new public health legislation: these provisions would be totally separate from the Environmental Protection Act 1990
*5.3 should any of the components of the Public Health (Scotland) Act 1897 outlined in **Annex H** be retained or amended*
5.4 whether the definition of an "environmental health concern" could be:
"any exposure pertaining to the physical environment of any premises, which is:
(a) discernable to the unaided senses;
(b) of such a nature, so located; and
(c) having such temporal characteristics as to engender material discomfort or be prejudicial to the psychological or physical health and wellbeing of a person without unusual sensitivity to that particular exposure"
If you consider that there is a better term than public health 'concern' which covers the issues described, then please let us know
5.5 whether the new system of environmental health concern management could include:
a) public (individual or group) report to the local authority
b) joint assessment by local authority and NHS public health staff of the risk, based on the precautionary principle and agree actions with the community
c) proportionate action by local authority, based on adequate legal sanctions, including abatement or prohibition orders similar to those used currently, or in food standards legislation
5.6 whether the time is also right to expand the statutory nuisance regime in the Environmental Protection Act 1990 to include light and insect pollution; and are there any other areas of nuisance that should be added now.

The Council believe there is a gap in legislation which deals with nuisance threats from the environment. These gaps were as a consequence of the revocation of the Public Health (Scotland) Act 1897 nuisance provisions (sections 16-19) and their replacement by section 79 of the Environmental Protection Act 1990. It was at this juncture that Scotland experienced a gap in nuisance provisions.

EPA 1990 is UK legislation drawn up by English legislators. Section 92 of the Public Health Act 1936 which formerly provided English and Welsh LAs with nuisance provisions was repealed by section 79 of the EPA 1990, and if one looks at the wording of both Acts it is clear that EPA 1990 is almost a straight lift from the 1936 Act. This in itself is not a problem, however, the 1936 Act contains further nuisance provisions in section 259 which still apply in

England and Wales. These apply to any pond, pool, ditch, gutter or watercourse prejudicial to health or a nuisance". Scotland has therefore been operating with an inferior nuisance provision from the rest of the UK.

The Council believe the proposals for new Public Health legislation in Scotland provides an ideal opportunity to address the deficiency in nuisance provisions in Scotland.

The Council firmly believe that nuisance provision should be enshrined within Public Health legislation. The ideal position would be to revoke the nuisance provisions in the EPA 1990 as they relate to Scotland and encompass nuisance provisions in the new Public Health legislation for Scotland. This would resolve issues in relation to the term 'environmental health concerns' which would probably take years of case law to eventually determine what it legally means. It also provides the opportunity to address the Scottish deficiencies in relation to nuisance provisions and strengthen the provisions to take account of new and emerging threats.

If this approach is impractical from a legislative perspective (i.e. Scotland tampering with UK legislation) the Council would support the embodiment of 'environmental health concerns' in the new Public Health legislation to strengthen existing provisions and closing gaps and also to address new and emerging threats.

If the preferred option of repealing EPA 1990 nuisance provisions fails the Council would welcome new provisions totally separate from the EPA 1990 on 'environmental health concern', however, the provisions would require to be underpinned by some robust principles such as fairness, consistency and proportionality. The provisions should provide a degree of flexibility in terms of any specific concerns to provide legislative longevity and relevance as society changes.

The Council suggest the components outlined in Annex H are in part still relevant, however, provided the new provisions on nuisance or 'environmental health concern' were drafted in such a manner that any still relevant matters can be addressed, they could be repealed. Any new provisions should have the capacity to address environmental impacts on health and well being.

The definition of 'environmental health concern' suggested may require some legal redrafting, however, it does cover the territory required.

The new system of environmental health concern management should include public reporting to the local authority.

The decision for joint assessment of risk should lie with the local authority as many issues will not require joint assessment. In practice the LA will consult with NHS public health staff when necessary.

Proportionate action will be essential. The legal sanctions should therefore be incremental and achieve swift action for resolution simultaneously. Resorting to the Sheriff too quickly will result in the legislation being ineffective. Careful consideration will require to be given to the drafting of sanctions.

Question 6

Mortuaries Options

Views are invited on whether:

6.1 the routine responsibility for resourcing and provision of mortuaries in Scotland should become the responsibility of NHS Boards
6.2 the NHS should be allowed to charge the police for the use of mortuaries

*6. 3 the provisions identified in **Annex I** should be updated and retained in new legislation with provision, in particular, made for cremation to take place as appropriate.*

Whilst this is a local authority service provision matter, the Council would comment that only two local authorities provide mortuary services and these appear to work well. In the rest of Scotland ad hoc arrangements exist at local level.

The issue of mortuary provision should be decided at local level and be included in the local Joint Health Protection Plan.

Question 7

Port Health

7.1 how well you consider the current port health arrangements work in Scotland; and
7.2 how they might be strengthened.

In Scotland port health duties are administered by 14 Port Local Authorities covering both sea and airports. The legislative duties tend to be added on to the normal land-based duties of EHOs in these areas. Port health responsibilities have a low profile in some services.

The port health function covers communicable disease control and disposal of the dead, as well as sanitation inspections, water sanitation, fishing and food controls, de ratting, pest control and air pollution issues. All of these include all public health domains.

The service in Scotland generally works well although tends to be more reactive, as there is little capacity within local authorities for more routine surveillance work. Service provision does vary across the country and capacity to respond to incidents is in doubt.

Recently the Scottish Port Local Authority Network (SPLAN) was created to allow a forum for dialogue and to develop consistent approaches to service delivery.

The Council recommends more collaboration on port health matters and greater collaboration across the UK to ensure consistency and improvements in port health/public health.

The role of port health will be strengthened if the word 'health' was inserted into terminology i.e. port health local authority.

The Council would draw attention to the Port Health Benchmarking exercise carried out in 2002 by the UK Association of Port Health Authorities (APHA) and the good practice guides produced.

In addition, the Council would draw attention to the Memorandum of Understanding (MoU) drawn up by APHA with the Maritime and Coastguard Agency on issues relating to food safety and detention of vessels.

Question 8

Safeguards

Views are invited on whether:

8.1 legislation should contain provisions similar to Regulation 12 in England and Wales, allowing the passing on of information beyond the health protection team by a competent person in specific circumstances
8.2 issues of enforcement against one's own organisation should be handled by:
a) a separate health board or local authority
b) a newly-created public health forum or board
c) another arbitrator
d) robust internal procedures that protect and separate conflicts of interest
8.3 outbreak and incident reports should be circulated to a defined audience.

The Council's view is that there should be a presumption of the ability to pass on relevant information to others where it is deemed essential by the 'competent person', in certain circumstances, and only then where there are safeguards in place with regard to human rights.

Outbreak and incident reports are already the subject of reports to NHS Boards and the Councils of local authorities and are therefore, in the public domain.

It would be sensible to share incident reports through appropriate channels to specific professional groups e.g. the Managed Public Health network, to encourage information sharing and learning outcomes

Question 9

Tasks and Offences Options

Views are invited on:

9.1 whether the proposed statutory split between governance and penalties is satisfactory, or whether an alternative approach might be preferable
9.2 whether penalties should only be applied to the non-completion of tasks in List B
9.3 whether legislation should include penalties for non-compliance with tasks
9.4 if so, whether List A infringements might be addressed through the health governance framework, with List B breaches liable to attract either a monetary penalty or, in serious cases, a term of imprisonment
9.5 whether legislation should include provision for any other enforcement measure, such as:
a) electronic tagging
b) video monitoring
c) public health monitoring.

The Council supports these proposals but would comment that there could be issues with the Regulation of Investigatory Powers (Scotland) Act 2000 and the use of monitoring or surveillance measures in legal proceedings.