

Attached are the proposals and responses to the questions raised by the Scottish Executive's proposal to update public health arrangements in Scotland as they are relevant to Environmental Health.

Consultation Point 1.1

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.

Response

The proposal is agreed but there has to be some flexibility in the area of NHS Boards and people. Often illness in people can have links to premises and whatever system is put in place should allow for the exchange of information between the NHS Boards and local authorities.

Consultation Point 1.2

Whether the provisions in Tables 1 and 2 in Annex D could usefully be updated and retained in new legislation.

Response

This point is agreed.

Consultation Point 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 delivery plans.

Response

This point is agreed.

Consultation Point 1.4

Whether the issues to be covered in plans/statements should include the matters covered in paragraph 3.17.

Response

This point is agreed with the Chief Environmental Health Officer being identified as the post which will lead in exercising statutory powers on behalf of the local authority.

Consultation Point 1. 6a

Whether the provision and statutory role for a DMO should be retained in new legislation.

Response

This point is agreed but would ask that the statutory role of the Chief Environmental Health Officer should also be laid out in the new legislation.

Consultation Point 1.6b

If the role is retained should this role be a joint appointment between local authorities and NHS.

Response

This point is agreed. The appointment should be made jointly between the Local Authority and the Health Board.

Consultation Point 1.6c

If the role is retained should we define qualifications/professions eligible to fulfil this role.

Response

Yes, the qualifications should be defined and this should be expanded to include the qualifications necessary for the Chief Environmental Health Officer.

Consultation Point 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.

Response

This point is agreed that a suitably qualified person with appropriate background and training should consider cases where there are significant legal implications.

Consultation Point 1.8

If so, whether these qualifications should be defined in Regulations or Guidance.

Response

This point is agreed.

Consultation Point 1.9

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

Response

This point is agreed.

Chapter 6 - Consultation Point 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.

Response

This point is agreed within clearly defined boundaries such as paragraph 6.9 and 6.12 of the consultation.

Consultation Point 4.2

Whether quarantine orders should only be applied where the criteria in paragraph 6.9 and 6.12 are met.

Response

This point is agreed.

Consultation Point 4.3

Whether exclusion orders should apply more widely to include, example work, social and religious events, neighbours, travelling and other activities.

Response

This point is agreed however it would be expected that they would be difficult to enforce.

Consultation Point 4.4

Whether exclusion orders should, 1) apply to the specified states and/or organisms and/or activities; and 2) have penalties for non-compliance.

Response

These points are agreed.

Consultation Point 4.6

Whether compensation payments should extend to all groups liable to be excluded under exclusion orders or affected by others.

Response

This point is agreed.

Consultation Point 4.7

Whether the payment of compensation should become the duty of the NHS rather than the Local Authority 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.

Response

This point is agreed.

Consultation Point 4.8

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

Response

This point is agreed however there are some concerns in relation to an individual's rights of liberty. Detention should be done within clearly defined boundaries in law with accountability mechanisms built in to subordinate legislation.

Consultation Point 4.9

The proposals not to seek powers to require a person to have medical treatment.

Response

This point is agreed as such a power would most likely contravene a person's individual civil rights.

Chapter 7 - Consultation Point 5.1

Whether it is perceived that there is a gap in legislation to deal with threats from the environment.

Response

This point is agreed. There is a gap in legislation to deal with things like the loss of amenity, e.g. waste left by travelling people, the debris resulting in an eyesore, common areas and the problems of fly tipping. Houses not quite dirty but that are unsatisfactory. Overfeeding of birds. Animals kept in unsuitable small areas within densely populated areas.

Consultation Point 5.2

If so, what are your views on introducing provisions on Environmental Health concerns in new public health legislation? These provisions would be totally separate from the Environmental Protection Act 1990.

Response

This point is agreed that there is a need for legislative provision to deal with Environmental health concerns but it should not be new "public health" legislation but rather new provisions to deal with what are essentially amenity issues having a public health component.

Consultation Point 5.3

Should any of the components of the Public Health (Scotland) Act 1897 outlined in Annex H be retained or amended?

Response

Legislation dealing with common lodging houses is no longer required. There is a need to consolidate all public health legislation within one legal framework or Act.

Consultation Point 5.4

Whether the definition of an Environmental Health concern could be (any exposure pertaining to the physical environment or any premises, which is a) discernible 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 physiological or physical health and well being 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.

Response

It is felt that the definition is too complex and should use simple language. The consultation definition is too wide and open to debate and have attempted the following as a more straightforward and unambiguous term e.g. Environmental Health concern is; (any other matter of an Environmental or public health nature which would give reasonable cause for concern, anxiety or distress to any person resident in the vicinity thereof.

The issue is fraught with difficulty as it could result in Local Authority being burdened with many complaints and unreasonable expectations of the public particularly where complainers are inordinately sensitive. For this reason guidance and clear, unambiguous sanctions available to the Local Authority must be forthcoming.

Consultation Point 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.

Response

Disagree with joint assessment for what would not be serious public health risks, specific problems should be dealt with by appropriate agencies e.g. Local Authority or in some cases SEPA.

Robust guidance could identify the appropriate authority depending on the issue.

Consultation Point 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.

Response

No as the matters raised would now fall within the new definition of Environmental Health concern.

Chapter 9 - Consultation 7.1

How well you consider the current port health arrangements work in Scotland.

Response

The current port health arrangements work well in Scotland.

Consultation 7.2

How might they be strengthened?

Response

They could be strengthened by increasing the powers to detain foods for sampling at the port of entry.

Chapter 10 - Consultation Point 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.

Response

This point is agreed.

Consultation Point 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.

Response

Provided each of the options are fully and robustly described, any one would be acceptable. In Local Authority cases the independence of the EHO should be clearly emphasised.

In hospital situations there is case for Local Authority EHOs undertaking routine independent inspections and investigating outbreaks of acquired infections.

Consultation Point 8.3

Outbreak and incident reports that should be circulated to a defined audience.

Response

This point is agreed.

Additional Comments

Legislation which the consultation seems not to have considered is the National Assistance Act 1948 in relation to the burial or cremation of unclaimed bodies.

Section 50 (1) of the Act provides that the local authority must arrange the funeral of any person who has died in their area if it appears that no-one else has made arrangements to dispose of the body. This was traditionally rationalised as Environmental Health's role to prevent public health nuisance from decaying corpses. In that respect it would be hard to argue that it is not a public health function.

Given the proposals in Chapter 3 to assign legislative powers in relation to people to NHS Boards there is an argument that this function should now pass to them.

Regardless of this point the legislation is now almost 60 years old and while it was designed to prevent public health nuisance, it now being abused and local authorities are being used as a source of funding for funerals. Examples of this occur through family ostracism, where a corpse is unwanted even though there may be close living relatives. In other cases elderly people have died while under the care of a nursing or residential home and the local authority has been left to arrange the funerals.

It is fully understood that where there is no social security or hospital or care home or family support or close relative that from a public health point of view the funeral has to be paid for. Given the assumption that as a result of the consultation this function falls to NHS Boards I would suggest the following change to Section 50 (1) of the National Assistance Act 1948. It shall be the duty of every NHS Board to which this sub-section applies to cause to be buried or cremated the body of any person who has been found dead in their area provided that the person was not under the care of any other public or private care or support organisation including support by members of the dead person's family at the time when they died and it appears that no suitable arrangements have otherwise been made. This would be consistent with the main thrust of these public health proposals in allocating responsibility for people related matters to the NHS.