

COMMENTS ON CONSULTATION DOCUMENT
“PUBLIC HEALTH LEGISLATION IN SCOTLAND”

Question 1 – Organisational Authority

- 1.1 In general we would agree that the responsibilities and powers in respect of people could sit with NHS Boards, in particular exclusions and subsequent compensation. However, there are many situations where people, their premises and property and issues associated with all these domains are intertwined to an extent that the appropriate lead on people may not be immediately obvious. We would suggest that rather than legislative control being prescriptive, it would be preferable for roles and responsibilities to be agreed similar to the co-operative work already well recognised in Incident Control Teams handling risks to public health.
- 1.2 We agree the requirement to update and retain the provisions within Annex D Tables 1 and 2 with the proviso that the Section 96 powers of removal to hospital would seem to be better led by the NHS with local authority input, an example in terms of the people domain as indicated in 1.1.
- 1.3/4 In principle we would support HP Plans if a basic template can be agreed at Executive Level to avoid unnecessary duplication with other plans which it should complement. The issues concerned in Section 3.17 are appropriate, however some are a restatement of the new legislative position proposed.
- 1.5 No comment.
- 1.6 (a,b&c)
The provision of the DMO role should be retained and defined in the new legislative provisions. DMOs and CEHOs must both be suitably qualified with the qualifications being defined in legislation. In particular where liberty could be restricted a professionally competent person should be defined.
- 1.9 Scottish Ministers should retain the power to intervene as already established.

Question 2 – Notification

Having had brief discussions with NHS Public Health colleagues we are aware they intend to make detailed comments on notification, as they are best placed to do so, we have no comments on this question.

Question 3 – Public Health Investigation

It is unclear as to the added value that the proposals in chapter 5 will give. EHOs already have considerable information/investigation gathering powers ranging from taking statements, samples, photographs, removal of equipment and bringing in specialists to assist if required, obstruction of these activities in general is an offence

under various statutes. If the aim is to raise the stakes for obstruction and withholding of information which subsequently shows adverse public health effects then the triggers are reasonable and we would suggest that there already exists a mechanism within ICTs on risk communication and decision making about public health risks being based on a presumption of openness. As far as possible all communications should be based on factual evidence gathered but if there is doubt as to the reliability or completeness the public should be informed and uncertainties acknowledged. It is our opinion to the extent that if information is believed to be being withheld then the Director of Public Health (DPH) or the DMO for NHS Board and local authority should make the decision to proceed as indicated in 5.8.

Question 4 – Statutory Powers for Health Protection

We agree in general to the proposals on quarantine, exclusions and transfer and extension of the compensation payments to NHS Boards. We would still expect there to be consultation on exclusions.

Question 5 – Environmental Health Concerns

- 5.1 We would agree there are occasions which could be addressed for the greater good of the community but fall outwith the scope of current legislation leaving Environmental Services to spend a disproportionate time trying to use the advocacy skills they undoubtedly have to resolve issues which with clearer powers could be more appropriately and swiftly addressed.
- 5.2 Clearly the historical differences between legislation north and south of the border have contributed to some gaps in the Scottish nuisance provisions, however the current proposals provide a way of resolving this situation by consolidation of all nuisance provisions in one “Public Health Statute”, alternatively it seems sensible to incorporate “environmental health concerns” in new Public Health legislation with a view to covering any gaps and historical differences but flexible enough to incorporate new or emerging threats to the public. Either way, the 100+ years of nuisance history and case law should not be disregarded as it has served society well.

We do not consider that it is appropriate for “environmental health concerns” to be reported to the Sheriff within 3 days for 2 main reasons:-

1. This has the potential to overburden an already taxed legal system and,
2. If the problem is such that it requires prompt action, the EPA already allows for this and any new Public Health legislation should enshrine the same degree of protection.

It may be of value to have a prohibition order or an imminent risk provision which would involve a report to a Sheriff. These situations would, in all likelihood, be the exception but the threat of action could resolve many situations before they escalate. Guidance and reporting would clearly be critical but this provision could be a good additional tool in the armoury.

- 5.3 We have no problem with the removal of the components in Annex H subject to the new “environmental health concerns” provisions covering any matters not already incorporated in other legislation.
- 5.4 We think the definition requires some redrafting and simplification but generally covers the aspects expected.
- 5.5 We agree that the issues of “environmental health concern” must be reported publicly in addition it may be worth just clarifying that local authorities still have the powers to act where they have inspected their area and found an “ehc” without the need for a complaint from the public.

In general, local authorities consult with NHS Public Health staff already when concerns on environmental issues which could impact public health occur, the decision for joint assessment can safely lie with local authorities, many situations will not require a detailed assessment.

We believe any legal system of sanctions should be proportionate and incremental as mentioned earlier the options for prohibition notices, imminent risk or improvement notices similar to Health and Safety provisions could prove a novel and helpful approach to public health issues with the ultimate sanction of the Sheriff being a last resort as it already is in the Food and Health and safety fields. Ultimately the desire is compliance not court action.

An area for possible inclusion in the range of Public Health enforcement is the use of Monetary Administrative Penalties which can be extremely useful and a less draconian approach than criminal prosecution for certain types of non-compliance for which they may be more appropriate. The outcome of the Consultation on “Regulatory Justice: Sanctioning in a Post Hampton World” should be taken into account by the Executive when considering the full suite of possible sanctions.

- 5.6 We would welcome the inclusion of light pollution and insects and would also suggest the definition takes into account seagulls and feral pigeons.

Question 7 – Port Health

- 7.1 We believe the current Port Health arrangements do not work well in Scotland with most activity being uncoordinated and limited to food hygiene inspection, deratting or deratting exemptions. Any infectious disease action at ports is in the main reactive with little or no proactive infectious disease control.
- 7.2 We would suggest improved co-ordination of public health functions will require resources to be specifically directed to this area for a period to strengthen the recently established Scottish Port Liaison Network (SPLN) of which Fife is a participant. It is also understood a new ship inspection certificate has been drafted by the Association of Port Health Authorities, endorsed by FSA, LACORS and WHO for incorporation into the International

Health Regulations which we further understand are to come into force in June 2007.

The ship inspection certificate has provision for general public health controls, including infectious disease control and furthermore, the risk rating which requires to be completed after each ship inspection has a requirement that ships are either inspected every 6, 12 or 18 months dependant upon their risk score.

At present many of these ships will not be receiving any inspections whatsoever and therefore if fully implemented this certificate should lead to authorities having a better handle on the control of infectious disease and controls on ships.

How authorities are resourced to carry out this function in a suitable fashion will be critical in terms of whether or not public health at ports is strengthened.

Currently Environmental Services in Fife Council carries out only reactive work at a low level when resources which are already stretched are available, we have no capacity to do additional public health work around ship inspections without new resources, i.e. staff and funding.

Question 8 – Safeguards

- 8.1 We agree in general with provisions similar to Regulation 12.
- 8.2 We already have robust internal procedures which are adequate.
- 8.3 We believe ICT reports are already widely distributed so we are unclear as to the necessity to circulate to a defined audience, information is also freely available under FOI legislation therefore clarity on this proposal is required.

Question 9 – Task Offences and Penalties

We agree with task and offences as proposed in lists A and B.

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