

West Dunbartonshire Council

Public Health Legislation in Scotland – Consultation

1. Introduction

The Consultation is mainly concerned with health protection which is the basis of all environmental health activity. Technological advances and globalisation increase pressure on the environment and create the risk of exposure to new threats. New legislation must be flexible to provide protection to any new and emerging issues.

2. Legislative Framework

A precise division of authority between local authorities and NHS Boards for the domains of people, premises and property does not reflect the practicalities of risk situations. There is a requirement for clarity in respect to accountability, powers and penalties, but these should be approached with more flexibility than is suggested in the consultation document. Inflexible demarcation may lead to conflict in terms of priorities and hinder co-operative joint working.

3. Organisational Authority

The role of Health Protection Scotland is recognised and accepted.

Greater clarity is required in relation to responsibilities and powers in respect to people. WDC supports the view that the responsibility for actions in relation to exclusions should sit with NHS Boards. However, the 'people domain' is inextricably linked to premises and property and responsibility for enforcement/regulation in this area should therefore remain with local authorities. Elements of the people domain will involve local authorities in some circumstances and NHS Boards in others. It may be preferable that the legislation is not prescriptive in this area but should require local authorities and NHS Boards to reach agreement and include local arrangements in Joint Health Protection Plans.

West Dunbartonshire Council fully supports the requirement for Joint Health Protection Plans but would suggest that plans are aligned to local authority (or local groupings of authorities) boundaries rather than NHS Board boundaries. This would allow for flexibility to reflect local working arrangements and local authority structures. They should be separate but complementary to Joint Health Improvement Plans. There are a number of existing joint structures that could be used to host the joint health protection plan, e.g. Joint Future arrangements between NHS Boards and Local Authorities, integrated models of Community Health Partnerships, or Community Planning Partnerships. Arrangements for collaboration between Designated Medical Officers and local authorities should be set out in Health Protection Plans. In practice, decisions are currently made through close co-operation and joint discussion between DMO's and CEHO's. This should not change. DMO's and CEHO's must both be appropriately qualified. Qualifications should be defined in legislation or guidance.

4. Information & Management

West Dunbartonshire Council would suggest that a system of notification from Accident & Emergency departments in relation to home accidents and injuries be introduced. Home accidents are responsible for many injuries and ill health conditions, and the new legislation should reflect this area of concern.

The potential extension of the range of information to be gathered and reported may require steps to reduce the likelihood of 'over reporting'.

The consultation document refers to the cultural issues which may be raised in the reporting process and this should be addressed through the process of impact assessment which is being developed to ensure that public authorities respond appropriately to 'equalities' issues.

5 Public Health Investigation

Environmental Health Officers already possess powers to require information in some circumstances. The Chief Executives of NHS Boards have no powers within local authorities and it would therefore be preferable for the Director of Public Health (DPH) as the Designated Medical Officer for the NHS Board to have the power to certify the need for information.

6. Statutory Powers for Health Protection

Issues of quarantine and exclusions should be taken on the basis of up to date clinical advice. Both should be enshrined in legislation.

Exclusions of individuals and compensation should be the responsibility of NHS Boards but in certain circumstances decisions should be made after consultation with the relevant local authority.

7. Environmental Health Concerns

The Society of Chief Officers of Environmental Health has described the history of nuisance legislation and the resulting deficiencies.

West Dunbartonshire Council believes the proposals for new Public Health legislation in Scotland provides an ideal opportunity to address deficiencies in nuisance provisions in Scotland. Nuisance provision should be enshrined within Public Health legislation.

We support the inclusion of 'environmental health concerns' in the new Public Health legislation to strengthen existing provisions, close gaps and address new and emerging threats.

Any provisions must consider fairness, consistency and proportionality. The provisions should provide a degree of flexibility in terms of any specific concerns and be sustainable in the face of social change.

Some areas specified in Annex H may not be necessary depending on how the new legislation is drafted in respect of 'environmental health concern'. This is an area which could be addressed through authorities' power to advance well being.

The definition of 'environmental health concern' may require some legal redrafting, Assessment of risk should lie with the local authority as the regulator but in practice it should consult with NHS public health staff when necessary.

The legal process should be graduated but allow swift action to achieve resolution when required but also must be proportionate. Careful consideration will require to be given to the drafting of sanctions.

8. Mortuaries and Cremation

No comment, the legislation should concentrate on what standards are acceptable rather than be concerned about ownership.

9. Port Health

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

Glasgow City Council provides this service on behalf of West Dunbartonshire Council. This arrangement is satisfactory.

10. Safeguards

There is no significant history of difficulty for authorities in enforcement against their own services but any potential conflict can be addressed within local enforcement policies and in Joint Health Protection Plans. Complaints against an authority could be referred to an independent body such as the ombudsman or there may be a role in this regard for a body such as the Society of Chief Officers of Environmental Health or the Royal Environmental Health Institute of Scotland.

The passing of information beyond the health protection team by a competent person (depending on circumstances) should be allowed within the legislation. This would be beneficial where there is a need to share information in areas such as Social Work where multi-agency involvement in dealing with clients is commonplace.

11. Conclusion

WDC welcomes the review of Public Health legislation and advocates a consultative approach with stakeholders, similar to that taken with the smoke free legislation, to develop the legislation and ensure that it will work in practice.

This approach will result in a successful outcome which will serve the public well for future generations.