

## **Public Health Legislation in Scotland: A Consultation**

Although much of this document is concerned with health protection issues, the public health responsibilities of protection, improvement and service design and planning are inextricably linked. With reference to health improvement, we would like to offer comment on chapter 3 - Organisational Authority (questions 1.3/1.4) Comment will also be made on chapter 4 – Information and Management (questions 2.2/2.3)

Some general points will be offered on the whole consultation document.

### **Chapter 3 – Organisational Authority**

Questions 1.3/1.4 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 etc.

In principle, we would agree with this recommendation. There already exists the requirement for NHS boards and local authorities to work together on Joint Health Improvement Plans. Extending this collaborative working upholds the ethos of effective partnership working. Health improvement and health protection are inextricably linked under public health and it makes sense to incorporate them under the same vehicle.

This does not, however, negate the amount of preparation and working arrangements that would be necessary to be put in place to produce such a plan or statement. The issues laid down in section 3.17 allude to this. We feel that it is of particular importance to identify flexibility of lead responsibility, and install procedures for information and data collection and sharing.

### **Chapter 4 – Information and Management**

Questions 2.2/2.3 proposals for developing an additional notification system for non-communicable diseases etc.

It is accepted that in recent years there have been concerns on the usefulness of the knowledge base offered by the extent of current reporting on conditions such as cancer, ischaemic heart disease and mental health and the consequent impact in terms of effective health improvement planning and delivery. There is the proposal within the consultation document to place a statutory duty on relevant public and private sector organisations to report on some non-communicable health conditions and, ‘making diseases statutorily reportable in this way would pre-empt the need for individual consent.’

While mindful of the great value and importance of effective health surveillance in the process of reducing morbidity, mortality and promoting health, this whole area needs further consideration. We would like to offer the following comments:

First of all, removing individual consent highlights issues of individual rights. There may be a strong argument for the greater good, but we must be aware that in these instances, given the possible nature of the information collected, there is a danger that the individuals may become identifiable. Indeed, if 'specific measurable factors (*of a disease*) leading to its occurrence' are emphasised (and some of this information may be deemed less useful without causative factors) then not just individuals, but whole communities may become specifically identified. As a result, as well as being positively targeted with resources and services, these communities may also find themselves subject to stigmatisation.

Although the request would be for 'specific measurable factors leading to its occurrence,' this could be quite a grey area and may be open to debate about the nature of such factors. Causative factors may be seen as more relative than objective. There is also the concern that, given such reporting is a statutory duty, there may be the problem of over reporting whereby too much information is disclosed.

In gathering and using such information there may be conflicts with other legislation i.e. data protection.

If such information were gathered, then there would need to be stringent controls as to what information is collected, how identity can be protected (especially in small communities) and how the information is used.

Our overall comment on this section would be that this whole area requires much further consideration and discussion whereby the ethical, legal, and beneficial outcomes of making this information gathering a statutory requirement is fully explored. The document does make note of the considerations that need to be addressed prior to making a new condition or hazard reportable, but we would emphasise that in terms of future health improvement work, this whole discussion area needs to be opened up for further and extensive consultation with organisations and members of the public alike.

### **General points on the consultation document**

The opportunity to contribute to the review of the legislative framework is wholly welcome. We recognise that public health legislation should bring with it a definition of the rights and responsibilities of individuals and organisations, including local authorities, and such clarity is important if we are to meet and appropriately respond to existing and potential public health challenges.

We acknowledge the effort that has been invested in trying to address the issues of domains, accountability and clarity and other areas where the existing framework needs to be strengthened to learn from problems experienced in the past and to ensure it meets the needs of the present and the future. We fully support this process.

It is hoped, however, that by clarifying roles and accountability, for example, we still ensure that there is enough flexibility in the framework to enable organisations and individuals to respond to new challenges as they arise in a dynamic and effective way. In addition, public health is about meeting the needs of the public as a body and as individuals. In the umbrella sense of health protection, but also in the keystones of promoting health, empowerment, tackling inequalities and supporting and responding to individual and societal need which is at the heart of health improvement. We welcome all opportunities for public consultation and engagement.