

Sean Doohan
Scottish Executive Health Department
Public Health Team
3E(S) St Andrews House
Regent Road
EDINBURGH
EH1 3DG

Please ask for:

Our Ref:

Your Ref:

E-Mail:

Date:

Ken Jones

KJ/DS

kjones@scotborders.gov.uk

9 January 2007

Dear Sir

**PUBLIC HEALTH LEGISLATION IN SCOTLAND
CONSULTATION DOCUMENT ISSUED 26 OCTOBER 2006**

Further to your letter of 25 October 2006, and enclosure relative to the above, please find detailed below Scottish Borders Council's response to the proposals contained within the consultation. The responses contained in this letter are in the order set out in the consultation document.

1. Organisation Authority

- 1.1 Whilst not disagreeing with the basic principle of assigning legislative powers in relation to people to N.H.S. Boards and for property and premises to Local Authorities, further clarification is required as to what exactly is intended by this. In a number of cases it is very difficult to separate people from property and premises. Detailed guidance in this matter would be required to ensure clarity is provided.
- 1.2 Agree that the provisions contained in tables 1 and 2 in Annex D could usefully be updated and retained in the legislation. With the constantly changing environment within Scotland, it is felt that although these powers may be used very rarely, they are still useful to have available if required.
- 1.3 There should be a requirement to produce a local Health Protection Plan which should be clearly aimed at Environmental Health provisions and be separate from community plans etc.
- 1.4 Agree that the plan should include the matters covered in paragraph 3.17 and could then be developed as necessary.
- 1.5 I have no strong feelings regarding the AIDS (Control) 1998 Act.
- 1.6 a), b) and c) – I feel that DMO's and CEHO's must both be appropriately qualified with the qualification being defined either in legislation or in guidance. The issue of a joint appointment could be dealt with in the Health Protection Plan.
- 1.7 Agree that legislation should be necessary in these cases and that the person should be appropriately qualified with defined qualifications.
- 1.8 /

2.

Sean Doohan

9 January 2007

1.8 Answered in 1.6 above.

1.9 Agree that powers for Scottish Ministers should follow the principles already established in legislation.

2. Notification Options

The questions asked in this section are generally for health practitioners to address, and will effect Health Boards rather than Environmental Health Departments. I do not propose to comment on the proposals.

3. Investigation Options

3.1 Agree that it should be statutory to divulge information during public health outbreaks or incidents, but only where it does not prejudice the investigation of the outbreak, and where confidentiality of a person or family can be maintained. Not to do so could lead to unwelcome media intrusion on a particular family, which could add to the difficulties they may already be experiencing.

3.2 A, B & C agreed.

3.3 As the Chief Executive of the NHS Board does not have authority within the Local Authority it is felt that this responsibility should be left to the Consultant in Public Health Medicine. There may also be a case for including within this the Chief Executive of the appropriate Local Authority, as they are likely to be involved.

3.4 Agreed.

4. Statutory Powers for Health Protection

4.1 Agreed.

4.2 Agreed.

4.3 Agreed.

4.4 Agreed.

4.5 Agreed.

4.6 Agreed.

4.7 Agreed.

4.8 Agreed.

4.9 Agreed.

5. Environmental Health Concerns and Nuisance

5.1 Yes it is perceived that there are gaps in the legislation to deal with threats from the environment /

3.

Sean Doohan

9 January 2007

environment. As previous public health legislation was formed in 1897, society has moved on somewhat from then and gaps have appeared.

5.2 Agree that provisions on Environmental Health concerns should be provided for in new legislation.

5.3 It is felt that the requirements contained in Annex H could be repealed, especially if as suggested in 5.2 Environmental Health concerns are included in the legislation.. This could deal with any matter which is likely to arise.

5.4 I would generally agree with the definition but would move the word "psychological" contained within 5.4(c) . The reason for this is that it is extremely difficult to determine whether someone has a psychological issue or whether they are just being a vindictive neighbour. As such I would prefer that we deal only with matters which we can normally address.

5.5 Agree with the provisions contained within a), b) and c).

5.6 Agree with the proposals contained within 5.6 and would add spreading of sewage sludge and a provision whereby if someone's actions is prejudicial or possibly prejudicial to the health of another person, then this could be dealt with, i.e. where a person decides to turn the water supply off and the water serves another persons property.

6. Mortuaries Option

6.1 Agreed.

6.2. Agreed.

6.3 Agreed.

7. Port Health

Scottish Borders Council does not have any ports within their authority. I do not wish to comment on this section.

8. Safeguards

8.1 Agree that the legislation should contain provisions similar to Regulation 12 in England and Wales.

8.2 Local Authorities already have a number of complaints procedures within their organisations. There is also the Local Government Ombudsman where complaints can be referred to. In view of this I do not see a necessity to have another investigating body.

8.3 Agreed.

9. Tasks and Defences Option

9.1 Proposed statutory split is satisfactory.

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4.

Sean Doohan

9 January 2007

9.2 Agreed.

9.3 Agreed.

9.4 Agreed.

9.5 Agree that in certain circumstances these provisions would be welcomed and should be enshrined in legislation.

In addition I would like to request that a provision be contained in the proposed new public legislation which requires a person to provide information to a Local Authority or to a Health Board. This legislation would be similar to that which exists within England as contained within Section 16 of I think the Local Government Act 1974, which makes it an offence not to provide details of ownerships of property etc. This provision is at present lacking in Scotland and would be very useful in order that proper service of notices is undertaken. At present if a notice is served incorrectly or on the wrong person and work is carried out in default, then it is possible that payment will not be made to the Local Authority as the notice can be deemed not to have been competent. It is therefore essential that information regarding ownership details can be obtained from relevant persons, and if it is not provided then it would be an offence not to provide this information.

Scottish Borders Council welcomes the proposed new public health legislation and are confident that by working in conjunction with partners, especially the Health Boards, then the health of the nation could be safeguarded and it will be improved.

Yours faithfully



KEN JONES
Environmental Health Manager