

## PUBLIC HEALTH LEGISLATION IN SCOTLAND: A CONSULTATION

### QUESTION 1

#### Organisational Authority

##### Views are invited on:

*1.1 the proposal 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*

The proposal to streamline organisational authority appears to be a positive step. However greater clarity is required in relation to responsibilities and powers in respect of people. People are inextricably linked to premises and property and regulation of the people domain should remain with Local Authorities where applicable.

*1.2 whether the provisions in Tables 1 and 2 in Annex D could usefully be updated and retained in new legislation*

We agree that the provisions could usefully be updated and retained in new legislation as per the tables

*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*

We would agree with the introduction of the Joint Health Protection Plan within the local Community Planning framework. The Joint Health Protection Plan should be a discrete plan, separate from the Joint Health Improvement Plan.

*1.4 whether the issues to be covered in Plans/Statements should include the matters covered in paragraph 3.17*

We would agree that the issues covered would be a basis for the proposed plans

*1.5 whether the AIDS (Control) 1987 Act should be considered for repeal in Scotland*

Not in a position to comment.

*1.6 (a) whether the provision and statutory role for a DMO should be retained in new legislation*

The provision and statutory role for a 'Designated Medical Officer' should be retained. Should the competencies /qualifications change for this role the title would have to be changed.

*1.6 (b) if the role is retained should this role be a joint appointment between LA and NHS*

If the health improvement plan identifies this as beneficial the role should be a joint appointment. A joint appointment would also ensure collaboration and communication on health protection matters.

*1.6 (c) if the role is retained, should we define qualifications/professions eligible to fulfil this role*

Agree

*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*

*1.8 if so, whether these qualifications should be defined in regulations or guidance*

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

Certain outcomes, including those which restrict liberty should require input from a competent person with defined qualifications. These should be defined in regulations or guidance to allow change if circumstances change.

## Question 2

### Notification Options

Views are invited on:

*2.1 a new system of statutory notification to public health agencies, which:*

*a) has two lists: one on notifiable conditions and the second on reportable hazards*

*b) identifies three types of notifiable conditions:*

- diseases, e.g. tuberculosis*
- organisms, e.g. Clostridium botulinum*
- "health risk states", e.g. close contacts of SARS cases*

*c) does not require consent for notification since it will be a legal requirement to notify and report to NHS Boards or other appropriate authority*

*d) includes the option to place a statutory duty on doctors to inform the patients of the notifiable condition as soon as possible*

*e) defines a "reportable hazard" as any micro-organism or environmental hazard*

*f) places a statutory duty on public and private sector organisations involved in testing for the presence of micro-organisms and environmental hazards in human, water, food and environmental samples to report on a defined regular basis to a named public health agency, the numbers and details of samples in which a reportable hazard is detected*

*g) specifies the reportable hazards and the details required, including to comply with EC and WHO requirements*

*h) specifies a time limit for notification and reporting in regulations*

*i) specifies a penalty for not notifying in regulations*

*j) discontinues current arrangements for payment of a fee per notification to general practitioners.*

**We would agree with the above proposals.**

*2.2 proposals for developing an additional notification system for non-communicable diseases that:*

*a) defines the "statutory reportable conditions"*

*b) places a statutory duty on public and private sector organisations involved in caring for individuals suffering from the disease or investigating its extent in a population to report on a regular basis the numbers and details about those suffering from the disease and specified factors involved in its causation*

*c) specifies the diseases and the details required or the specific measurable factors leading to their occurrence to be reported*

*d) does not require consent for notification since it will be a legal requirement to notify and report*

*e) specifies a time limit for notification and reporting in regulations*

*f) specifies a penalty for not notifying in regulations.*

**We would agree with the above proposals.**

*2.3 the proposal that the key issues to be considered prior to making a new condition or hazard reportable should be:*

- a) cultural and moral sensitivities*
- b) public health significance*
- c) current ethical and legal guidance*
- d) commercial considerations*
- e) resource and quality issues.*

We would agree with the above proposals.

*2.4 whether to continue to exclude sexually transmitted infections from any new notification system and whether any other disease or condition be excluded*

Not in a position to comment.

*2.5 whether there are there any other legislative options for surveillance which should be considered.*

Not in a position to comment.

### **Question 3**

#### **Investigation Options**

**Views are invited on whether:**

*3.1 legislation should make it a statutory duty to divulge information during public health outbreaks or incidents.*

*3.2 the triggers necessary for such action might be:*

- a) a significant public health incident or outbreak*
- b) involvement of a notifiable disease, or organism or health risk state*
- c) the seriousness of outbreak or incident in terms of morbidity, mortality or potential health risk*

*3.3 the need for such information should be certified by the Chief Executive of the NHS Board, or a case made by the competent person, or whether this should be the Sheriff*

*3.4 an appeal system or structure should be available against the duty to divulge, involving either reference to the chair of the NHS Board, and thereafter to the Sheriff, if necessary, or in emergency situations, direct to the Sheriff.*

There should be a duty to divulge information, where it is deemed necessary for an investigation. Powers to require information should be made available, but only used in circumstances that are certified by the 'competent person' and/or the Chief Environmental Health Officer. An appeal should be made directly to the Sheriff.

## Question 4

### Statutory Powers for Health Protection

#### Views are invited on:

*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*

*4.2 whether quarantine orders should only be applied where the criteria in paras 6.9 and 6.12 are met*

*4.3 whether exclusion orders should apply more widely to include, e.g. work, social and religious events, neighbours, travelling and other activities*

*4.4 whether exclusion orders should:*

*i) apply to specified states and/or organisms and or activities*

*ii) have penalties for non-compliance*

*4.5 whether there should be penalties for non-compliance*

*4.6 whether compensation payments should extend to all groups liable to be excluded under exclusion orders or affected by other orders*

*4.7 whether the payment of compensation should become the duty of the NHS, rather than the LA 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*

*4.8 whether legislation should provide for the introduction of detention orders, covering:*

*a) the removal to a suitable place of those who risk spreading disease by virtue of being a contact or those with an infectious disease who refuse to comply with a quarantine order or medical advice*

*b) an appeal system*

*4.9 the proposal not to seek powers to require a person to have medical treatment*

**We would agree with the above proposals.**

## Question 5

### Environmental Health Concerns and Nuisance

*Views are invited on:*

*5.1 whether it is perceived that there is a gap in legislation to deal with threats from the environment*

There would appear to be a small gap in current legislation.

*5.2 if so, what are your views on introducing provisions on "environmental health concern" in new public health legislation: these provisions would be totally separate from the Environmental Protection Act 1990*

Environmental health concerns would have to be clearly defined.

*5.3 should any of the components of the Public Health (Scotland) Act 1897 outlined in Annex H be retained or amended*

Agree with retaining components.

*5.4 whether the definition of an "environmental health concern" could be:*

"any exposure pertaining to the physical environment of any premises, which is:

- (a) discernable 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 psychological or physical health and wellbeing 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*

*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*

The phrase environmental health concern requires clarification.

*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.*

We would agree with the above proposals.

## **Question 6**

### **Mortuaries Options**

**Views are invited on whether:**

*6.1 the routine responsibility for resourcing and provision of mortuaries in Scotland should become the responsibility of NHS Boards*

*6.2 the NHS should be allowed to charge the police for the use of mortuaries*

*6.3 the provisions identified in Annex I should be updated and retained in new legislation with provision, in particular, made for cremation to take place as appropriate.*

We would agree with the above proposals. In the Highlands we have temporary mortuaries in outlying areas, basically emergency holding rooms. It would have to be agreed if these type of premises would fall to the NHS Boards for resourcing.

## **Question 7**

### **Port Health**

As stated above, specific measures which need to be brought into place to better reflect IHR are currently being considered.

**However, it would be useful to hear your views on:**

*7.1 how well you consider the current port health arrangements work in Scotland; and*

*7.2 how they might be strengthened.*

Port Health best practice arrangements are currently being developed by the Scottish Port Local Authority to ensure that consistency in approach.

Port health arrangements will be strengthened by the introduction of the International Health Regulations. Clear communication routes and responsibilities should be defined.

## **Question 8**

### **Safeguards**

**Views are invited on whether:**

*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*

We would agree with the above proposal.

*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*

There should not be an issue of enforcement against one's own organisation and should be handled by robust internal procedures.

*8.3 outbreak and incident reports should be circulated to a defined audience.*

We would agree with the above proposal.

## **Question 9**

### **Tasks and Offences Options**

**Views are invited on:**

*9.1 whether the proposed statutory split between governance and penalties is satisfactory, or whether an alternative approach might be preferable*

*9.2 whether penalties should only be applied to the non-completion of tasks in List B*

*9.3 whether legislation should include penalties for non-compliance with tasks*

*9.4 if so, whether List A infringements might be addressed through the health governance framework, with List B breaches liable to attract either a monetary penalty or, in serious cases, a term of imprisonment*

*9.5 whether legislation should include provision for any other enforcement measure, such as:*

- a) electronic tagging*
- b) video monitoring*
- c) public health monitoring.*

We would agree with the above proposals.