

RESPONSE

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

No significant concerns are noted in respect of this proposal other than to note that the success of this approach will depend on the co-operation and communication links between local government and the NHS.

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

It is agreed that the provisions in Tables 1 and 2 in Annex D could be usefully updated as outlined in the table themselves.

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 Delivery Plans

NHS Boards and Local Authorities are required to prepare a significant number of existing plans. These existing plans can be updated to take account of Health Protection. The proposed replacements of the Joint Health improvement plans presents an opportunity to include health protection and further develop co-operation between the NHS and local authorities, which will be necessary for the recommendations to be implemented

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

The list in para. 3.17 would assist in the formulation of a Plan however, adequate funding will be necessary to implement the Plan.

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

Repealing the AIDS (Control) 1987 Act will help reduce some of the stigma associated with HIV/AIDS. An overarching Health Protection Plan could address the same issues for a wider range of Blood Borne Viruses.

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

Yes. The role of the Designated Medical Officer should be retained.

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

To prevent the confusion for the DMO as to whom he/she serves they should be employed by a single organisation most relevant to their function.

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

Yes. Qualifications and eligible professions should be clearly identified in relation to this role.

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.

In line with other Mental Health Legislation the person taking the decision to restrict someone's liberty should be competent to do so. There is also a need to ensure that there is transparency and accountability for decisions taken.

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

If it is a statutory function, then the competencies should be defined by law.

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

Any decisions to allow Scottish Ministers to intervene on Public Health, should be based on current legislation. The circumstances for any interventions should be clearly outlined within the legislation.

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.

(a) Both lists must be flexible enough to enable diseases etc., to be added or removed.

(b) Agree.

(c) Agree.

(d) It is considered there should be a statutory duty on Doctors to inform their patients as soon as practicable .

(e) Environmental and micro-organisms should be defined clearly in the legislation.

(f) Additional funding will be required by both public and private organisations to facilitate their compliance with this legal duty.

(g) No comment.

(h) It would be beneficial if time limits were included in the regulations.

(i) Agree.

(j) Agree.

QUESTION 2 (continued)

Notification Options

Views are invited on:

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.

Proposals a, b and c will require funding to be made available to develop the necessary information systems to enable these proposals to be implemented. It is also noted that if these are implemented there will require to be new auditing arrangements put in place to ensure that the public and private sectors comply.

(d) No comment.

(e) & (f) See previous comments.

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.

In addition to the list (a) to (e) consideration should also be given to the technical resources and the question of adequate human resources.

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

Sexual diseases should not be excluded from the notification system.

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

No 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.

Agreed.

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

No further comment.

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

There is a legal balance required for this new policy between the rights of the individual and the responsibilities of the state. For this reason the local Sheriff should hold the key role.

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.

Any appeal should be heard by the Sheriff Principal. System will require to be developed that allow such appeals to be heard timeously.

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

4.1 & 4.2

Quarantine is an extreme measure and the legislation would have to be completely transparent in stipulating when, where, how and on whom etc. The order should only be issued within the context described in paragraphs 6.9 and 6.12.

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

4.3, 4.4 and 4.5

No comment.

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

Compensation payments should be limited, as in the present legal context. The concern would be that potential compensation liability would act as a deterrent to Health Boards fulfilling their duties.

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

Reluctantly agree.

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

Given the civil liberties implications it is essential if 4.8a were to be introduced that the circumstances were clearly defined in legislation. Again an appeals system will require to be set up in a way that ensured it operated timeously.

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

There is mental health legislation that could be enacted to ensure medical treatment is provided to those who lack capacity to decide for themselves.

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

The legislation should be reviewed and brought up to date to deal with threats from the environment.

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

Provisions introducing “environmental health concerns” should be established.

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

See answer to 5.1 above.

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

It is considered that the definition of “environmental health concern” should include references to psychological and physical health and wellbeing.

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

If the new term "environmental health concern" is legally defined then the enforcement authorities will require legal sanctions which may include the use of abatement or prohibition procedures.

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.

No comment.

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.

In general the suggested approach in 6.1, 6.2 and 6.3 is agreed.

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.

No comment.

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.

Provision should be similar to Regulation 12 which will facilitate the provision of information beyond the team.

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

Robust internal procedures that protect and separate conflicts of interests should be put in place to address action against one's own organisation. These should be subject to external scrutiny to ensure their adequacy.

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

It is agreed that outbreak and incident reports should be circulated.

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

No comment.

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

Agree penalties should be associated with non-compliance of List B.

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

The penalties for not complying with legally defined tasks should be defined in the legislation.

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.

It is agreed that List B breaches should attract legally defined penalties and that these should be defined in legislation.

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

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

No comment.

ENDS