

03-013



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Your Ref: -

Sean Doohan
Scottish Executive Health Department
Public Health Team
3E(S), St Andrew's House
Regent Road
Edinburgh EH1 3DG

21 December 2006

Dear Mr Doohan

PUBLIC HEALTH LEGISLATION IN SCOTLAND: A CONSULTATION

Thank you for providing the Scottish Environment Protection Agency (SEPA) with the opportunity to comment on the above consultation document. SEPA welcomes this opportunity to contribute to a review of public health legislation to ensure that it is fit to address new challenges in public health, and to consolidate the existing legislation to ensure it is fit for purpose.

Attached in Annex 1 are specific comments addressing the questions contained within the consultation document. SEPA has chosen only to comment on the questions where we believe we have a locus. Overall, we believe that strong alignment between public health and environment protection is crucial and that both the common history and our evolving collaboration can and should be strengthened and, where possible, simplified for the benefit of all in Scotland.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record. If you require further clarification on any aspect of this correspondence, please contact Paula Charleson, Policy Advisor (Human Health), SEPA Corporate Office, at the address shown below.

Yours sincerely

Campbell Gemmell
Chief Executive



Chairman
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ANNEX 1

Question 1: Organisational authority

Question 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*

SEPA believe that the development of local Health Protection Plans or Statements will be extremely useful in clarifying the interaction between the NHS Boards, the Local Authorities and other organisations whose duties and activities contribute to health protection. It is important that the document has joint ownership between the local authorities and NHS Boards, and it may be important to allow other organisations to agree or sign up to parts of the plan, including SEPA. Support being 'branded' may prove valuable.

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

The list contained in 3.17 is comprehensive and appropriate. However it should also include the responsibilities for other relevant agencies and organisations that have statutory and non-statutory powers with respect to Public Health within the jurisdiction of the relevant plan. This should include national organisations such as SEPA, and Health Protection Scotland, as well as other local organisations. Often one of the challenges in dealing with a multidisciplinary area such as public health is understanding the role and interface between each organisation. If this is written down clearly in a plan, based on the legislation proposed here, and ensuring clarity where there is flexibility then it makes it easier for all organisations to understand their role.

In some cases it may be appropriate to develop local and national guidance to supplement legislation to cement good working arrangements. A good example of this is "Dealing with assertions of human health risks or effects associated with environmental exposures: A systematic approach" June 2000, reprinted November 2002.¹ This document sets out a clear structured approach for dealing with health concerns associated with environmental exposures. It advocates a joint working approach and is intended to assist public services bodies, particularly NHS Boards and LAs in determining an appropriate response and in subsequently defending any decisions taken. It is perhaps a model that should be taken up more formally through the Health Protection Plans.

It may be appropriate to have the Health Protection Plans addressed or agreed through the existing Medical/Veterinary/Local Authority liaison groups that exist in different formats around the country, generally chaired by the Director of Public Health or the Consultant in Public Health Medicine for Communicable Disease & Environmental Health.

Question 2: Notification Options

Question 2.1f) *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 the details of samples in which a reportable hazard is detected.*

SEPA is keen to be informed if this duty will have any impact on any of its reporting mechanisms. For example, SEPA is required to undertake a number of sampling programmes and analyses and must

¹ <http://www.documents.hps.scot.nhs.uk/environmental/general/dealing-with-assertions-of-human-health-risks.pdf>

report these in order to fulfil National or EC requirements, some of which may fall under the definition of reportable hazards as given in paragraph 4.14, and re-iterated in 2.1e), for example cyanobacteria monitoring, from blue-green algal blooms, or bathing waters sampling.

Question 3: Investigation Options

Question 3.1 Legislation should make it a statutory duty to divulge information during public outbreaks and incidents.

SEPA agrees that information regarding public outbreaks and incidences should be made public when they are in the interests of the public. SEPA aims to be an open and transparent organisation and believes other public organisations should also strive to do so. It is not clear why there is any need for legislative change. There are already mechanisms in place, such as the Freedom of Information Act that control when and what information should be made readily available.

Question 4: Statutory Powers for Health Protection

SEPA has no comment.

Question 5: Environmental Health Concerns and Nuisance

Question 5.1- 5.6 whether it is perceived that there is a gap in legislation to deal with threats from the environment. (And proposals to address it).

It is the local authorities, rather than SEPA, who regulate statutory nuisance under Part III of the Environmental Protection Act 1990 ("EPA"). There is, however, some overlap between matters constituting statutory nuisance and matters regulated by SEPA (such as odour under PPC Permits). The way in which this overlap is managed is presently addressed by section 79(10) of the EPA. This is, however, perhaps an opportunity to clarify the intention behind section 79(10) of the EPA. This section provides that the local authority requires the consent of the Secretary of State to institute summary proceedings in respect of certain statutory nuisances "*...if proceedings in respect thereof might be instituted under Part I or under regulations under section 2 of the Pollution Prevention and Control Act 1999.* For the avoidance of any doubt, SEPA should be grateful for confirmation such consent is only required if the statutory nuisance itself constitutes an explicit breach of a condition actually in the Part I EPA authorisation or PPC permit. SEPA assumes this is the case, rather than such consent always being required if a statutory nuisance arises from an installation which happens to be subject to an EPA Part I authorisation or PPC Permit, even if there is no condition explicitly covering such a statutory nuisance. For example, SEPA assumes that if, as proposed, the list of statutory nuisance is amended to include insect pollution, such consent would only be required if insect pollution were expressly prohibited by a condition in the authorisation or permit, but should be grateful for confirmation of this.

It would be a good opportunity to consolidate powers held by Local Authorities and individuals to take action under statutory nuisance in order to make the powers and actions more transparent to all concerned. It would also be a good opportunity to ensure local authorities and SEPA are able to work together to maximise the opportunity to protect human health by laying out joint working arrangements between the organisation in this respect perhaps as part of the proposed Health Protection Plan.

The proposed definition given in section 5.4 may be difficult to quantify or bound, and may not be required. Simply amending or consolidating existing nuisance legislation may be simpler and clearer.

Question 5.6 enquires whether the time is right to expand the statutory nuisance regime in the EPA to include light and insect pollution. Assuming the intention is to add these to the list of statutory nuisance defined in the EPA, this would appear to be an issue for the local authorities rather than SEPA to comment on, given the local authorities rather than SEPA are responsible for regulating such statutory nuisances. SEPA would, however, have no objection to such a proposal, and can see its advantages.

There now appears to be some overlap between statutory nuisance and Anti-social Behaviour Orders (ASBOs), for example in dealing with persistent nuisance bonfires on premises. Perhaps there is an opportunity to clarify this overlap as well.

SEPA has no further comments on the additional questions.