

**Terrence Higgins Trust**



**Public Health Legislation in Scotland**

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**A consultation response**

**January 2007**

## TERRENCE HIGGINS TRUST

### PUBLIC HEALTH LEGISLATION IN SCOTLAND

#### 1. INTRODUCTION

- 1.1 Terrence Higgins Trust (THT) is the largest HIV and sexual health charity in the UK, with centres across Scotland, England and Wales. THT offers a wide range of services to, and campaigns on behalf of people living with, affected by and at risk of HIV or sexual ill health.
- 1.2 THT welcomes the opportunity to comment on this legislative review. As the UK continues to be affected by global health issues, maximising coherence between international and national level policy on public health will be increasingly important. It is also vital that public health legislation complements and supports health improvement strategies, and that the impact of the legislative framework on long-term public health as well as crisis management is also considered.
- 1.3 Our response to this consultation will focus on the sections dealing directly with HIV and sexual health, and on generic proposed changes to the legislative framework that may also impact on these issues.

#### 2. CHAPTER 3: ORGANISATIONAL AUTHORITY

- 2.1 This section invites views on the assignment of legislative powers in relation to people, property and premises, the continued relevance of the AIDS (Control) 1987 Act and the role of the Designated Medical Officer (DMO) or similar post.
- 2.2 Question 1.1  
Accountability must be an underlying principle in the exercise of all legislative powers and public duties. In the case of both NHS Boards and Local Authorities, it should be clear how any decision to exercise legislative powers in the area of public health has been reached, and protocols to challenge any such decisions must also be in place. Decisions of this kind must be taken objectively and should not be influenced by local politics or short-term populism.
- 2.3 THT recommends that safeguards be put in place within any revised legislation to ensure the objective scrutiny of decisions to exercise legislative powers.
- 2.4 Question 1.5  
THT acknowledges that some of the original provisions of the AIDS (Control) 1987 Act have since been either superseded or duplicated elsewhere.
- 2.5 However, THT believes that despite these changes, the core functions of the 1987 Act are still valuable, in particular, those relating to the monitoring of local funding and scrutinising how well local health services are responding to a changing epidemic.
- 2.6 Evidence from England shows that following the recent allocation of *Choosing Health* money for sexual health to PCTs, a significant proportion of the money was not spent on sexual health services due to competing priorities<sup>1</sup>. As the funding environment in Scotland

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<sup>1</sup> Independent Advisory Group on Sexual Health and HIV (2006) *Choosing sexual health: where did the money go?*

continues to change, and with the National Sexual Health Advisory Committee's review of funding priorities currently taking place, it is essential to ensure that HIV services in Scotland receive adequate funding and that accountability for local resource allocation is maintained.

2.7 THT strongly recommends that before any decision is made to repeal the 1987 Act, an alternative statutory mechanism is put in place to ensure a continued coherent overview of changing epidemiological data and to scrutinise local funding of HIV services.

2.8 Question 1.6

Appropriate professional advice should be sought whenever a decision about the exercise of legislative powers is made. In particular, THT agrees that where the exercise of powers would involve any restrictions of personal or civil liberties, then the professional input of a competent and professionally accountable person should be required.

2.9 The individual filling the role of the DMO and providing this input has, in the past, been a doctor, and so has been professionally regulated by and accountable to the General Medical Council.

2.10 THT agrees that as the competencies set by the Faculty of Public Health continue to develop, and the involvement of non-medical professionals in public health increases, it may not always be necessary for the DMO or similar post-holder to be a doctor. However, whether the primary organisational responsibility for the exercise of legislative powers falls to an NHS Board or a Local Authority, the designated individual whose expert input is sought must be:

- appropriately qualified and competent
- professionally regulated and registered
- accountable to a professional body.

2.11 Defining the above parameters in legislation would remove the need to specify particular qualifications or professions. However, if the specific qualifications or professions eligible to fill this post were defined in legislation, then there must also be provision for regular review of eligibility criteria, in order to ensure that the most appropriate experts are always available to provide input.

**3. CHAPTER 4: INFORMATION AND MANAGEMENT**

3.1 This section invites views on the continued exclusion of Sexually Transmitted Infections (STIs) from the list of notifiable conditions in Scotland.

3.2 Question 2.4

THT strongly recommends that HIV and other STIs should remain excluded from the list of notifiable health conditions.

The consultation document does not explicitly state what notification would entail, but THT notes that the Public Health (Notification of Infectious Diseases) (Scotland) Regulations 1988 make provision for the compulsory reporting of a patient's personal and identifiable details, including name and address.

Making HIV and other STIs notifiable in this way would provide no clear public health benefit, and in fact is likely to be detrimental to HIV prevention and health promotion work.

Figures released in 2006 showed that 32% of people living with HIV in the UK remain undiagnosed<sup>2</sup>. Encouraging people to access voluntary HIV testing and sexual health check-ups is a key part of strategies to reduce HIV incidence and improve sexual health.

*Confidentiality is extremely important to anyone accessing HIV or sexual health services because of continued stigma. Undermining confidence in confidentiality by making it compulsory for patient's personal details to be reported after an HIV or STI diagnosis will deter people from coming forward to access services, and is likely to increase the number of people with undiagnosed HIV or STIs. This is a particular issue for those most at risk from HIV and poor sexual health (men who have sex with men, migrants, injecting drug users and young people), who are often already marginalised and less likely to access mainstream health services.*

HIV and STIs differ considerably from other infections which are currently notifiable, and are not transmissible through casual contact. Notification of a person's HIV or sexual health status to public health authorities, with no need for personal consent as described in the consultation would not enhance prevention of onward transmission. Sexual health and HIV services offer contact tracing, which enables sexual partners to be invited to attend for screening on a confidential and often anonymous basis.

The UK currently has an excellent system for the monitoring of HIV and sexual health epidemiology, which provides high quality data that informs long-term health promotion strategies. THT does not believe that introducing compulsory reporting of the patient's personal details would enhance data collection.

#### **4. CONCLUSIONS AND RECOMMENDATIONS**

4.1 THT believes that good public health legislation should support and enhance long-term health promotion and health improvement strategies.

4.2 THT recommends that:

- organisations or individuals involved in the exercise of public health legislative powers should be regulated and accountable for any decision to exercise such powers
- before a decision is taken to repeal the AIDS (Control) 1987 Act in Scotland, robust alternative provision for monitoring HIV service funding decisions must be in place
- HIV and other Sexually Transmitted Infections should not be made notifiable conditions.

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<sup>2</sup> Health Protection Agency (2006) *A Complex Picture: HIV and other STIs in the UK 2006*