



**Environmental Health  
and Trading Standards**

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

If calling please ask for:  
Mr. A. Oswald, Tel. 01382 436201  
e.mail:  
albert.oswald@dundeecity.gov.uk  
Our Ref AJO/IMD/003.07  
Your Ref  
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Dear Sir,

### **Public Health Legislation in Scotland: A Consultation**

We welcome the general approach contained in the document. However, the new duties contained in the proposals will require additional resources for the environmental health function.

In this response an attempt has not been made to cover all questions and has been restricted to what are considered the main issues.

#### **Chapter 3. Q.1 – Organisational Authority**

- 1.1 Assigning legislative powers in relation to people to NHS Boards makes sense, given that NHS has the lead role on the investigation and control of communicable diseases such as SARS, TB etc.

In other circumstances, however, a range of statutory controls are required including power over the activities carried out by people within premises. Whilst Health Protection Plans would provide a means for describing local arrangements for joint working, national guidance is required to ensure consistency.

In Table 1 of Annex C, the duty of the local authority to co-operate with NHS Boards should be accompanied by a duty on the latter to consult local authorities as appropriate.

- 1.2 The provisions in Tables 1 and 2 should be updated and retained in new legislation
- 1.3 A statutory requirement to produce Health Protection Plans (HP Plans) should be introduced. These should be seen as high level strategic plans and be linked to contingency/emergency planning objectives.

The extent to which the HP Plan is incorporated within Community Plans or Health Improvement Plans/Local Delivery Plans is a tactical consideration. Many of the strands within existing Health Improvement Plans rightly focus on health inequalities whereas Health Protection issues affect all sections of the community. It is also true that the need

for health improvement in relation to diet and exercise cuts across nearly all sections of the community.

There may be a case therefore, for local authorities adopting an overarching Health Policy covering health protection, health inequalities and health improvement.

- 1.4 The list of issues to be covered in Plans/Statements described at 3.17 could be strengthened by including a requirement on local authorities to maintain a competent workforce.

Providing a 24-hour, 7-days a week service will have an obvious impact on staff and their conditions of service.

Environmental health functions are already subject to a wide range of governance measures and external scrutiny. Any proposal to introduce new measures for the general public health function would have to take this into account.

- 1.6 Whilst there may no longer be a need to have a DMO, Health Protection should have a defined figurehead possessing competencies outlined in national guidance.

Under current arrangements the obvious location for such a post would be from within existing Health Protection teams in NHS Boards with the local authority having an input to the appointment.

- 1.7 Powers to restrict personal liberty should be defined in statute supported by national guidance. The power to place such restrictions should lie with person(s) appointed under 1.6 above.

- 1.9 Scottish Ministers should have the power to intervene in health protection matters as a last resort and the emphasis should be on providing support.

#### Chapter 4, Q2

The proposals contained in Chapter 4 are broadly supported.

The enforcement powers suggested in the Chapter will have to be read with existing powers. For example, a "reportable hazard" could include information provided by a specialist maintenance company to the management of a shopping mall about conditions which could result in the release of contaminated air into the mall. Upon whom would the duty to notify be placed, bearing in mind the circumstances may amount to a breach of the Health and Safety at Work etc. Act 1974?

Paragraph 4.15 refers to reports being made by organisations testing for hazards to inform a named public health agency of reportable hazards detected on a defined regular basis. This new duty should include the immediate reporting of reportable hazards in circumstances which point to an imminent risk to human health. The draft powers will therefore need to cover a range of risk conditions.

Chapter 5, Q3

The proposals to give public health investigations the necessary powers are broadly supported. A full suite of powers would be required (powers of entry, seizure of materials etc.) and a definition of the competencies required. The powers of the inspector, as defined in S.20 of the Health and Safety at Work etc. Act 1974 would be a good model for defining the power of a public health investigator.

Paragraph 5.7 correctly identifies that the procedure for the release of information needs to be quick and simple. Circumstances will occur where immediate release is essential to avert danger (e.g. a warehouse owner revealing the source of imported materials contaminated with anthrax). Powers to serve a statutory notice on any person in charge of the warehouse requiring the release of information should be introduced. Failure to co-operate with an investigation or comply with such a notice would then be an offence. The investigating authority would then be obliged to have the notice confirmed (or otherwise) as an order by the Sheriff. This would be a procedure similar to that used for Health Emergency Prohibition Notices in food legislation.

Powers to serve such notices should be given to competent public health investigators. This power would be vested in such investigators through a scheme of delegation agreed between the local authority and the NHS Board. The incident/outbreak control team would then have a range of enforcement powers at their disposal including existing environmental health statutes.

Chapter 6, Q4

We agree with the proposals outlined in Chapter 6.

- 4.3 Powers should be available to cover other settings and penalties for non-compliance are required. However, as stated previously such powers may need to be accompanied by a suite of enforcement powers.
- 4.6 Compensation payments should be extended to all groups liable to be excluded or affected by other orders. The criteria for compensation should be set nationally.
- 4.8 Detention orders would be a logical extension to exclusion orders etc. Monitoring of such orders would also be required.

Rights of appeal should be available to the individual. Provision for ensuring a detention order remains in place pending an appeal should be available to deal with situations where failure to detain an individual would pose a serious risk.

Chapter7, Q5

- 5.1 In our view there is a gap in legislation to deal with threats from the environment.
- 5.2 We fully support the concept of "environmental health concern" (EHC) and have no suggestions for improving the term.

The EHC concept would be used where a direct causal link between conditions and prejudice to health may not be apparent but the potential to affect wellbeing does. Where

there is an accumulation of such conditions the potential effect on health may arise through the psychosocial route.

In keeping with original duty to inspect the district for nuisances, we advocate a duty to be placed on local authorities to inspect their area for environmental health concerns. Community consultations could then be used to determine the support for resolving the EHCs.

- 5.5 A new system of environmental health concern management should include the features outlined in (a), (b) and (c).

Any new system should empower local authorities to take action when another agency fails to use its statutory powers to tackle an environmental problem within its jurisdiction. This problem would then fall into the definition of an EHC.

- 5.6 We strongly support the expansion of the statutory nuisance regime to include light pollution and insect infestation. To this we would add problems associated with pigeons, seagulls, urban foxes and grey squirrels (i.e. the creation of an animal related nuisance criteria).

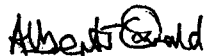
#### Chapter 9, Q7

This summer's spate of cruise ships visiting Scottish ports with viral outbreaks on board highlighted gaps in approach and consistency by port health authorities.

Port health arrangements need to be strengthened to ensure a common approach to public health risks.

There is scope for introducing national standards and this would include a requirement to have adequate arrangements for dealing with port health emergencies.

Yours faithfully,



Head of Environmental Health and Trading Standards