

Recipient List at Annex D

4 June 2008

Dear Consultee,

**PUBLIC HEALTH ETC. (SCOTLAND) ACT
DESIGNATION OF COMPETENT PERSONS REGULATIONS 2008 (DRAFT)**

This letter invites comments on draft regulations which set out the qualifications and other requirements of Health Board and Local Authority competent persons to carry out the functions assigned to them in the Public Health etc. (Scotland) Bill. The draft regulations are at **Annex A**, and a questionnaire for completion and return is at **Annex B**.

Background

The Public Health etc. (Scotland) Bill is currently under the scrutiny of the Scottish Parliament. The draft Bill can be viewed at <http://www.scottish.parliament.uk/s3/bills/03-PublicHealth/index.htm>, where its progress can also be followed. Although the Bill has yet to finish its Parliamentary stages, we thought that it would be useful to let stakeholders have sight of our proposals at this time to help inform debate.

Under current arrangements, the standard of health professional competency to act under public health legislation derives primarily from a doctor filling a certain post in public health (usually a consultant in public health medicine) and / or meeting a competency standard as a Designated Medical Officer (DMO). This title was created to carry out the functions requiring medical input in the Public Health (Scotland) Act 1897 and is used to refer to doctors, designated by the NHS Board and deemed suitably qualified to carry out legislative duties in health protection on behalf of the local authority. There is no equivalent “competency” standard for environmental health officers in local authorities.

The Public Health etc. (Scotland) Bill assigns functions to health boards and local authorities on a corporate basis, and provides for a limited transfer of functions from local authorities to health boards. The Bill defines the actions for which professional input is required (such as when powers are used to restrict personal liberty or impose obligations on individuals in relation to their premises), and provides that these functions must be carried out by

'competent persons'. In circumstances where personal liberty and property, for example, are being affected, it is right to ensure that the person recommending action has the necessary professional skills and expertise to do so.

Sections 3 and 5 of the Bill provide that health boards and local authorities must designate a sufficient number of competent persons for the purpose of exercising the public health functions assigned to them in the Bill, and that Scottish Ministers may prescribe the qualifications, experience and training of such competent persons in regulations. These draft regulations set out the proposed qualifications, experience and training required to carry out the functions set out in the Bill.

The content of the regulations was developed following deliberations of a working group of experts in public health including representation from Health Protection Scotland, British Medical Association, the Directors of Public Health Group, the Society of Chief Officers of Environmental Health, Consultants in Public Health Medicine, the Health Protection Nurse Specialist Network, the Scottish Affairs Committee of the Faculty for Public Health and the UK Public Health Register.

The draft regulations are attached at **Annex A** for your consideration. We have included at **Annex B** a list of questions on the regulations that consider practical issues, to seek feedback to ensure that the regulations will work in practice. We have also included, at **Annex C**, further information into the current arrangements of Designated Medical Officers and the fact that the regulatory body for public health is content for non-medical specialists to take on senior roles within the NHS. We believe that this is key to widening the category of persons who may be designated by health boards as competent persons. A recipient list is attached at **Annex D**, and further information is provided about the Scottish Government Consultation Process at **Annex E**, for information.

Responding to this consultation paper

We are inviting written responses to the regulations on the qualifications of the competent person by **4 SEPTEMBER 2008**. Please respond using the attached questionnaire to:

e-mail: sean.doohan@scotland.gsi.gov.uk or

Sean Doohan
Public Health and Well Being Directorate
Room 3-ES, St Andrew's House
Regent Road
Edinburgh
EH1 3DG

If you have any queries contact Sean Doohan on 0131 244 5662.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations (**SEconsult**: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholders, individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk



Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** at the end of **Annex B** as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, these will be made available to the public in the Scottish Government Library by 2 October 2008. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SG Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered prior to finalising the regulations. We will inform stakeholders of the outcome of the consultation and the timetable for introduction of the regulations, pending enactment of the Public Health etc. (Scotland) Bill.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Sean Doohan, whose contact details are above.

Yours faithfully

Lucy Smith

Lucy Smith
Public Health Bill Team

SCOTTISH STATUTORY INSTRUMENTS

2008 No.

PUBLIC HEALTH

The Public Health etc. (Scotland) Act Designation of Competent Persons
Regulations 2008

<i>Made</i> - - - -	2008
<i>Laid before the Scottish the Scottish Parliament</i>	2008
<i>Coming into force</i> - -	2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 3(4) and (5), and section 5(4) and (5) of the Public Health etc. (Scotland) Act 2008, and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Public Health etc. (Scotland) Act Designation of Competent Persons Regulations 2008 and shall come in to force on

(2) In these Regulations—

“the Act” means the Public Health etc. (Scotland) Act 2008;

“Health Board competent person” is given the meaning in section 3 of the Act;

“Local authority competent person” is given the meaning in section 5 of the Act;

“Health Board” and “Special Health Board” are as defined in the National Health Service (Scotland) Act 1978;

“Local Authority” means a council constituted under section 2 of the Local Government Etc. (Scotland) Act 1994;

“UK Public Health Register” means the register of public health specialists established in 2003 by the Faculty of Public Health, the Royal Institute of Public Health and the Multidisciplinary Public Health Forum.

List of Health Board Competent Persons

2.—(1) Each Health Board in Scotland must maintain a current list of health board competent persons for that Health Board area to carry out the functions conferred by the Public Health etc. (Scotland) Act 2008 and any other enactment.

(2) A person who is in receipt of the relevant qualifications set out in Regulation 3 may be listed as a Health Board competent person if a Health Board designates that person as a competent person for that Health Board’s area.

(3) A person shall be listed as a health board competent person for as long as the health board considers the listing appropriate.

Qualifications for Health Board Competent Persons

3. For a person to be eligible for designation as a Health Board Competent Person, that person must—

(a) be employed by a Health Board in Scotland; and

- (b) be a registered medical practitioner on the General Medical Council's Specialist Register for public health medicine with a minimum of 6 months' work experience in health protection; or
 - (c) be a registered medical practitioner who has held a substantive consultant post in the UK NHS in public health medicine prior to 1st January 2008; or
 - (d) be a nurse, registered with the Nursing and Midwifery Council, with a minimum of 2 years work experience in health protection; or
 - (e) be accredited as a public health specialist on the UK Public Health Register, having gained access to the Register by the training route, with a minimum of 6 months' work experience in health protection; or
 - (f) be accredited as a public health specialist on the UK Public Health Register, having gained access to the Register by the portfolio route, with a minimum of 2 years' work experience in health protection.
4. For the purposes of these regulations 'work experience in health protection' means—
- (a) work experience in a health protection team in an NHS Board, or equivalent; or
 - (b) work experience in health protection in a Special Health Board in Scotland or Special Health Authority in England and Wales, or equivalent.

List of Local Authority Competent Persons

5.—(1) Each local authority in Scotland must maintain a current list of local authority competent persons for that local authority to carry out the functions conferred by the Public Health etc. (Scotland) Act 2008 and any other enactment.

(2) A person who is in receipt of the relevant qualifications set out in Regulation 6 may be listed as a local authority competent person if a local authority designates that person as a competent person for that local authority area.

(3) A person shall be listed as a local authority competent person for as long as the local authority considers the listing appropriate.

Qualifications for Local Authority Competent Persons

6. For a person to be eligible for designation as a local authority competent person that person must—
- (a) be employed by a local authority in Scotland; and
 - (b) be an environmental health officer, accredited by the Royal Environmental Health Institute of Scotland (or equivalent body), with a minimum of 2 years' experience working as an environmental health officer within a local authority or equivalent.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
2008

**PUBLIC HEALTH ETC. (SCOTLAND) ACT
DESIGNATION OF COMPETENT PERSONS REGULATIONS 2008 (DRAFT)**

QUESTIONNAIRE ON DRAFT REGULATIONS

1. Are you content that the qualifications, training and experience outlined in the draft regulations are sufficient for the competent persons to be able to carry out the functions set out in the Public Health etc. (Scotland) Bill?

Health Board competent person

Yes
No

Local authority competent person

Yes
No

Comments

2. Are you content that the competent persons will be regulated by professional regulatory bodies as well as by health boards and local authorities?

Yes
No

Comments

3. Given that the regulations, as currently drafted, will allow individuals to be identified as competent persons in more than one health board or local authority, do you believe your health board or local authority will be able to designate an appropriate number of competent persons?

Yes
No

Comments

4. Are there other professionals you consider would be appropriate to undertake the role of the competent person, and what qualifications do they have?

Health board competent person

Yes
No

Local authority competent person

Yes
No

Comments

5. The draft regulations provide that health boards and local authorities must maintain lists of competent persons. We envisage that these will be signed off at Board or Chief Executive level, and that this would be contained in guidance. Are you content that this process provides sufficient accountability at a local level for designation of competent persons?

Yes
No

Comments

Do you have any other general comments?

PLEASE RETURN COMPLETED QUESTIONNAIRE AND RESPONDENT INFORMATION FORM TO:

**SEAN DOOHAN,
PUBLIC HEALTH AND WELL BEING DIRECTORATE
ROOM 3ES, ST ANDREW'S HOUSE, REGENT ROAD
EDINBURGH,
EH1 3DG**

RESPONDENT INFORMATION FORM**PUBLIC HEALTH ETC. (SCOTLAND) ACT
DESIGNATION OF COMPETENT PERSONS REGULATIONS 2008 (DRAFT)**

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
- (b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?
- Yes (go to 2b below)
- No, not at all We will treat your response as confidential

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available
- Yes, make my response available, but not my name or address
- Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3 The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

- Yes
- No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

- Yes
- No

PUBLIC HEALTH ETC. (SCOTLAND) ACT DESIGNATION OF COMPETENT PERSONS REGULATIONS 2008 (DRAFT)

Background

1. Under current arrangements, the standard of competency to act under public health legislation derives primarily from a doctor filling a certain post in public health (usually a consultant in public health medicine) and / or meeting a competency standard as a Designated Medical Officer (DMO). This title was created to carry out the functions requiring medical input in the Public Health (Scotland) Act 1897 and is used to refer to doctors, designated by the NHS Board and deemed suitably qualified to carry out legislative duties in health protection on behalf of the local authority.

2. The Public Health etc. (Scotland) Bill assigns functions to health boards and local authorities on a corporate basis. The Bill also defines the actions for which professional input is required (such as when powers are used to restrict personal liberty or impose obligations on individuals in relation to their premises), and provides that these functions must be carried out by 'competent persons'. Sections 3 and 5 of the Bill provides that health boards and local authorities must designate a sufficient number of competent persons for the purpose of exercising the public health functions assigned to them in the Bill, and that Scottish Ministers may prescribe the qualifications, experience and training of such competent persons in regulations. The Bill provides for a limited transfer of functions from local authorities to health boards.

3. The Faculty of Public Health of the Royal College of Physicians, the professional body responsible for standard setting in public health, has recognised that public health specialists need not be doctors if they are able to demonstrate a similar level of knowledge and competency and meet accreditation requirements that are equivalent to those set for doctors as specialists by the General Medical Council. In the longer term this means that consultant posts in the NHS that had previously been held by doctors who have a clinical background will be open to non-clinicians who are able to demonstrate skills and experience to a required standard. The Public Health Register was established in 2003 to provide regulation for senior level public health specialists who do not have a clinical background (such as epidemiologists and people who have trained in health improvement), but are able to demonstrate competence against a set of key criteria. Individuals on the Public Health Register are eligible to apply for consultant posts in the.

The UK Public Health Register

4. The UK Public Health Register (formerly the UK Voluntary Register for Public Health Specialists) was established in 2003 to promote public confidence in specialist public health practice in the UK through independent regulation. The Public Health Register provides professional regulation to specialists in public health who come from a variety of backgrounds, and registration is designed to ensure that multidisciplinary specialists in public health are appropriately qualified and competent.

5. Whatever their professional background, all such specialists on the Public Health Register have a common core of knowledge, skills and experience, and work at a senior or strategic level of management. Registration on the Public Health Register is comparable to registration with the General Medical Council (GMC) Specialist Register for public health

physicians or the General Dental Council (GDC) Specialists list in dental health for dentists, by enabling individuals to be considered eligible for consultant posts within the NHS.

6. The Public Health Register is a legal entity and every new consultant in the UK NHS must be registered with either the Public Health Register or be on the GMC Specialist Register. Doctors on the GMC Specialist Register are required to undertake ongoing continual professional development. Once re-validation of the GMC Specialist Register has been established, the Registers will have a parallel process of demonstrating continual professional development.

7. There are currently 3 routes to membership of the Public Health Register. The first is by completion of an accredited 5 year training programme (identical to that undertaken by doctors to gain access to the GMC Specialist Register). The second route is by retrospective recognition through a portfolio of evidence that demonstrates a person's eligibility for the Public Health Register. The third route requires membership to the GMC or GDC's Specialist Registers in public health (i.e. membership of the GMC or GDC register automatically enables membership to the Public Health Register).

8. Public health, as recognised by the Wanless report and by *Better Health, Better Care* (pages 20, 24) requires the knowledge and skills to act on areas other than direct biomedical subjects. With the continued development of training for public health specialists it is appropriate to consider individuals who do not have a clinical background as being potential health board competent persons for the functions set out in the Bill. The role of a competent person is not one of diagnosing or treating patients, but more one of risk assessment and risk management, a person having the knowledge and skills in health protection and the ability to take a leadership role and work with colleagues from other disciplines and specialities (including legal colleagues).

Recipient List

Chief Executives NHS Boards
 Chief Executrices Local Authorities
 Consultants in Public Health Medicine Group
 Directors of Public Health
 Directors of Public Health Group
 Chief Environmental Health Officers
 UK Register for Public Health Specialists
 Society of Chief Environmental Health Officers
 British Association For Sexual Health And HIV
 British Medical Association
 Community Practitioners And Health Visitors Association
 COSLA
 Crown Office
 Faculty Of Public Health Medicine
 Food Standards Agency
 General Medical Council
 Health And Safety Executive
 Health Protection Agency
 HIV Scotland
 Health Protection Scotland
 Information Commissioners Office
 Law Society of Scotland
 Napier University
 NSCA Scotland
 Nursing And Midwifery Council
 Public Health Infection Control Nurses Group
 Other UK Health Departments
 Royal College Of General Practitioners Scotland
 Royal College Of Midwives
 Royal College Of Nursing Scotland
 Royal College Of Pathologists
 Royal College Of Physicians And Surgeons Of Glasgow
 Royal College Of Physicians Of Edinburgh
 Royal College Of Psychiatrists
 Royal College Of Surgeons Of Edinburgh
 Royal Environmental Health Institute Of Scotland
 Royal Pharmaceutical Society Of Great Britain
 Scottish Affairs Committee of the Faculty for Public Health
 Scottish Clinical Virology Consultants Group
 Scottish Council On Human Bioethics
 Scottish Environmental Protection Agency
 Scottish Interfaith Council
 University Of Edinburgh
 University Of Glasgow
 Working Group on Qualifications of the Competent Person
 Public Health Legislation Reference Group

THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses¹. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed on the Scottish Government website-
<http://www.scotland.gov.uk/Consultations/>

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

¹ <http://www.scotland.gov.uk/consultations>