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Police Division 1
 Scottish Executive Justice Department
 Area 1W
 St Andrew's House
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**Re: Blood testing following criminal incidents where there is a risk of infection:
 Proposals for Legislation.**

The Royal College of Nursing (RCN) is the UK's largest professional association and union for nurses, with over 380,000 members, around 35,500 in Scotland. Most RCN members work in the NHS, with around a quarter working in the independent sector. The RCN works locally, nationally, and internationally to promote standards of care and the interests of patients and nurses, and of nursing as a profession. The RCN is a major contributor to the development of nursing practice, standards of care and health policy.

1. Breadth of Consultation

RCN Scotland was alerted to this consultation by HIV Scotland for which we are grateful. It does however beg the question on the breadth of the consultees especially from the NHS and wider health sector. For example the NHS has established partnership working between staff and employers and some health and safety infrastructures. It is not obvious that any of these mechanisms have been used to consult key stakeholders in this proposed draft legislation.

Given the scope of the proposals RCN Scotland is concerned that many key stakeholder groups have not been included in this consultation.

2. Scope of Proposals

RCN Scotland notes that these proposals are wider than the original petition and would apply to criminal suspects and accident victims, and seek to protect nearly all emergency workers including health care workers. It is interesting that the Executive did not consider this as part of the Emergency Workers (Scotland) Bill recently debated in Parliament.

RCN Scotland suggests that the scope of the proposed legislation may be too broad and therefore loses the key thrust of reducing anxiety amongst emergency workers and others who may have become infected with a blood borne virus.

3. Describing the effects of anxiety and stress experienced by workers.

Since the proposals include health care workers quantification and description of the effects of anxiety caused by not knowing whether infection is a real risk would have been expected in such a document. Although the consultation was proposed by one professional organisation it will have an impact (as the proposals are currently drafted) on many more workers organisations, Trade Unions and Professional bodies. All these plus the NHS and many other statutory organisations could (or should) have been asked to quantify the problem before draft legislation was proposed.

RCN Scotland does not believe that the full extent of these proposals has been examined; both the potential benefits and drawbacks.

4. Testing of potential suspects in sexual assault crimes.

RCN Scotland can fully understand why victims of sexual assault would be a particularly at risk group but very little mention is given to the rights of these particular victims. RCN Scotland is not conversant in this area of law but as the nursing profession is predominantly female, with violence and attacks against nurses growing our members are an important frontline staff group.

RCN Scotland is concerned that the special circumstances of the victims of sexual assault and abuse may not have been fully explored.

5. Improving current policy and procedures

RCN Scotland is concerned that other responders have detailed the need for improvements in the policy and procedures in place for police. Equally all those at risk of exposure to blood borne viruses deserve that all policies and procedures are updated regularly and that public sector staff should have access to occupational health services when and where they are needed. Equally the provision of counselling and specialist support services should also be in place.

RCN Scotland would wish to be assured that advice, support and procedural frameworks are reviewed regularly to ensure all staff are properly safe guarded.

6. The case for legislation against voluntary compliance.

RCN Scotland is concerned that the consultation does not set out the case for legislation based on current voluntary compliance. While we recognise the attraction of statutory powers the case is not made in the consultation as to the current voluntary compliance rates. Further since it is not proposed that testing is done using force (where individuals do not give consent) there is no assessment as to whether a fine or term of imprisonment would act as a deterrent for this new crime. Indeed it would not help reduce the anxiety of the potentially infected individual. It may indeed raise their suspicion of the person having something to hide.

RCN Scotland again finds the consultation lacking in its examination of the case for legislation.

7. Protecting our members.

RCN Scotland strongly believes that frontline workers deserve the protection of the law while carrying out their public duty. They deserve to be protected from violence and disease. They deserve policy, procedures, support and equipment which protects them and enables them to do their job safely. Healthcare workers are at more risk, on a regular basis, from a blood borne virus than any other public sector worker.

Many healthcare workers routinely work in environments with client groups at high risk of having a blood borne virus. The nature of that risk may be more understood by healthcare workers. However, the negative effects of anxiety and fear of transmission is likely to be similar for all workers. Very little evidence of this has been set out in this consultation. Neither have the financial and resource implications of this proposed legislation.

Answering the Scottish Executive Questions.

RCN Scotland would strongly suggest that the scope and principles of these proposals need wider consultation, more detailed evidence and more practical descriptions of how legal rights would protect frontline workers.

However, we are supportive of the point in principle that there may be a very small number of cases where such a law would be beneficial.

We also note that while there may be criticism about the effectiveness of current testing and prophylaxis, these may well be areas where scientific advance will bring new treatments and diagnostic tools. Bearing these serious and important points in mind we submit the following responses to the questions.

Question 1

The principle should apply to anyone at risk in the defined circumstances.

Question 2

Subject to a further, wider consultation on the legal safeguards and only in defined circumstances, and if voluntary requests by at least 2 medical practitioners who are independent of the police have failed, should the law and a sheriff be involved.

Question 3

The issue of accidental exposure seems rather as an afterthought in the consultation. However, we agree in general that accidental exposure, while raising the same anxieties, should not automatically have recourse to the proposed legal rights of mandatory testing.

Question 4 & 5

This point probably has our strongest support and all staff deserve this protection.

Question 6

The Scottish Executive needs to consider current legislation relating to children, age of consent and the provisions of the Adults with Incapacity Act.

Once those provisions are made clear in relation to age and capacity to consent they would need to apply irrespective of age.

Question 7

We are concerned by the timescale as set out in 4.12 and feel this should be reduced. However, there would need to be an independent assessment of the 'persons at risk' of infection from a criminal incident. As other respondees have noted the wider understanding of risks of transfer of blood borne viruses must guide the identification of those at risk. It may also be necessary to introduce a medical authorisation to this request process to ensure only those at genuine risk may request the information.

Question 8

Our response overlaps with the answer to Question 6. Generally the criteria are logical but we note other respondents concern over potential discrimination which may arise from the phrase 'reasonable suspicion'.

Question 9

No comment

Question 10

Yes

Question 11 & 12

No. All public sector employers should meet these costs. All costs to victims should also be met out of the public purse. This may be achieved through voluntary organisations and other support services.

Yours sincerely

Pat Dawson
Head of Policy & Communications