

Public Health Legislation Consultation Response from the Healthy Environment Network

Response to legislation in general

The Healthy Environment Network includes organisations and professional groups within Scotland with the ability to influence the environment to improve health. Members of the network include the statutory, regulatory, voluntary, health and academic sectors. The Healthy Environment Network welcomes plans for this new legislation and commends the great deal of effort which has gone into drafting this document.

The Network advocates a consultative approach with stakeholders, similar to the one used successfully for the Smoke-free public places and mental health legislation, in developing this proposed Bill and taking it through Parliament. The Network agrees with the general approach and principles, which should inform the development of the legislation as set out in paragraph 2, subject to the following points.

Question 1: Organisational authority

Question 1.1: The proposal to assign legislative powers in relation to people to NHS Boards and for property and premises to Local Authorities.

Paragraph 3.8- 3.12 and Annex C

Viewed from the perspective of simplicity and clarity, the proposal to assign responsibility for people to NHS Boards and for premises and property to Local Authorities has merit. The Network, however, has concerns that too arbitrary a statutory division might inhibit, in practice, the desired collaborative approach to health protection, which it considers one of the strengths of current working arrangements. The need for leadership and the clear identification of statutory responsibility are fully acknowledged but it will be important to avoid a 'silo' approach to health protection and for the legislation to recognise that, in practice, both NHS Boards and Local Authorities are often jointly involved in tackling health protection matters. In short, the issues involved in dealing with people and premises often converge, for example, in the home safety field or where infestation of premises leads to human sickness. The Network therefore recommends that the legislation should, alongside any specific assignment of responsibility, impose a clear statutory duty on Local Authorities and NHS Boards to co-operate in the health protection field. At the practical level, the proposed Health Protection Plans should facilitate this approach. It would be useful if such plans also outlined working relationships with other organisations, such as the Scottish Environment Protection Agency (SEPA) and Health Protection Scotland.

The Network proposes that there should be a requirement for Local Authorities and NHS Boards to employ an adequate number of appropriately qualified and trained staff to deal with environmental health and health protection issues. In addition to co-operating with each other, there should also be a requirement that they support other Local Authorities and NHS Boards when circumstances demand the need for additional skilled resources.

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

The Healthy Environment Network welcomes the concept of the Health Protection Plan, and propose that this should have similar standing to the Joint Health Improvement Plan. The Plan should be mandatory, with a requirement for regular updates. A provision to this effect should be written into the Bill. As proposed below, the regulations should provide the detail of what such Plans should contain.

However, legislation – whether primary or secondary - cannot cover all situations and supplementary guidance such as “Dealing with assertions of human health risks or effects associated with

environmental exposures: A systematic approach" (accessed from <http://www.documents.hps.scot.nhs.uk/environmental/general/dealing-with-assertions-of-human-health-risks.pdf>) or the current guidance on dealing with outbreaks and codes of practice will be helpful to cover certain circumstances. The Mental Health (Care and Treatment) (Scotland) Act 2003 provides a good example of the use of codes of practice.

The effectiveness of the current situation is underpinned by close collaborative working between Local Authorities and public health. It has taken many years to develop the appropriate levels of mutual trust to achieve this degree of collaborative working and the expectation is that the legislation will be so couched as to enhance such working, while recognising the need for flexibility, clarity and understanding of working relationships. The Network therefore proposes that the legislative package (ie primary and secondary legislation) should indicate the areas in which Local Authorities and NHS Boards should take the lead, and allow specific agreements meeting local needs to be described in Health Protection Plans.

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

The Health Protection Plan should include, but not be limited to, the topics outlined in the consultation. In particular, it should refer to the importance of effective communication between the relevant authorities and to others, such as the media. The Network proposes that the Health Protection Plan should be seen as overarching, with sub-plans covering issues such as major incident plans, outbreak management plans, and emergency plans. It should also set out agreed working arrangements to address specific issues. The Network welcomes the proposal that regulations rather than primary legislation should specify the areas to be covered in plans. The need will be to allow local flexibility to deal with local issues within an agreed general framework which the regulations can set.

Plans should include input from other relevant organisations – e.g. national and local organisations. Multi-agency health protection groups which embrace local medical, veterinary and environmental health interests would also ensure ownership of the Plans and assist implementation. To ensure engagement at senior level, it should be a requirement that Plans are approved at elected member level in Local Authorities and at Board level in NHS Boards. Joint Local Authority/NHS Board committees at such levels would be a useful mechanism for mutual discussion of draft Plans, for ironing out any residual problems, for approving the document and for keeping it under review.

The Network proposes that plans should be quality assured at a national level by the Scottish Health Protection Advisory Group.

Question 2 Notification problems

Question 2.1c] does not require consent for notification since it will be a legal requirement to notify and report to NHS Boards and other appropriate authorities

The network agrees with this, and sees this as an important requirement.

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.

There are concerns with the wording of this. The Network suggests that there is a clear separation between requirements for public sector samples (for instance, those samples referred by a public sector organisation or on public health grounds) and those which are generated within the private sector as part of routine monitoring of processes, and proposes that these are dealt with separately within the legislation (see below).

There is a need to restrict private sector reporting to a small range of potentially hazardous contaminants and particular circumstances. The network identified the following needs:

- To conduct a risk assessment to determine whether an immediate alert is required

- To provide guidance to back up legislation
- For an agreed framework for communication.

There is a need to define “significant risk to human health”

Question 4 Statutory powers for Health Protection

The Network supports the approach as outlined.

Question 5

The Network agrees that there is a gap in legislation to deal with threats from the environment. This is a consequence of the revocation of the Public Health (Scotland) Act 1897 nuisance provisions (sections 16-19) and their replacement by section 79 of the Environmental Protection Act 1990 (EPA). In England and Wales, there is further coverage of Public Health Nuisance in sections of the 1936 Public Health Act which were not repealed by the 1990 Act. However these do not apply to Scotland. The relevant sections apply to ‘any pond, pool, ditch, gutter or watercourse prejudicial to health or a nuisance’. Scotland has therefore been operating with an inferior nuisance provision since 1990.

It is important to have provision which is sufficiently flexible to allow a speedy response to new issues of concern as they arise and the Network therefore welcomes recognition of the potential psychological impact of environmental concerns. In order to circumvent problems which may arise as a result of having provision in two separate Acts, the Network proposes that the relevant sections of the 1990 EPA should be repealed and all aspects of ‘nuisance’ dealt with comprehensively in the new public health legislation. Provided a suitable comprehensive definition of nuisance can be found, this would resolve issues in relation to the term ‘environmental health concerns’ which could take years of case law to eventually determine what it legally means.

If this approach is impractical from a legislative point of view, the section on ‘environmental health concerns’ would require to be assimilated into the new legislation to strengthen existing nuisance provision, close gaps, and address new and emerging threats. This would require a broader definition than that outlined in the consultation, as, for instance, the requirement for detection by unaided senses would not allow for action on issues such as carbon monoxide levels generated within one set of premises and seeping into attached residential units.

Addressing statutory nuisance issues may also be improved by closer working between Local Authorities and SEPA where it is a site regulated by SEPA.

Annex B: Organisations involved in Public Health

The first row of this table does not appear to recognise the current Health Protection Scotland role in supporting routine chemical risks and incidents. The Network suggests that the first row is divided into two – one to cover outbreaks and one to cover incidents. It also proposes that ‘delivery’ is distinguished from ‘support’.