NORTH LANARKSHIRE COUNCIL

REPORT AGENDA ITEM No. 22

To: PLANNING AND ENVIRONMENT COMMITTEE		**Subject:** PUBLIC HEALTH LEGISLATION IN SCOTLAND – A CONSULTATION
From: DIRECTOR OF PLANNING AND ENVIRONMENT		
Date: 31 January 2007	Ref: RS/58/902	

1. Purpose of Report/ Introduction

1.1 The Scottish Executive issued a consultation document in October 2006 proposing changes to the core public health enforcement legislation in Scotland. The document asked questions about the strategic management of public health legislative provisions and proposed changes to update the legislation presently in force, and it required comments to be returned by 12 January 2007.

2 Background

2.1 The enforcement of public health legislation is divided between Local Authorities, Government and the National Health Service. Responsibilities are divided generally between health improvement, health protection and health service improvement and planning. This consultation is concerned with health protection and how this important public health activity can be delivered in future.

3 Proposals/Considerations

3.1 The consultation makes many suggestions on changes to current legislation and practice. Protective Services prepared a response on behalf of North Lanarkshire Council and submitted it prior to the closing date for comments on 12 January 2007.

3.2 The main changes proposed which impact on activities where there is a Local Authority involvement are mainly positive, and appear to be directed to enabling the Local Authority to address public health issues in a more proactive and effective manner.

3.3 A copy of the full response submitted by North Lanarkshire Council is appended to this report, but the main issues are:

1. There is a proposal to assign legislative powers in relation to people to NHS Boards and for property and premises to local authorities. In general this is acceptable and makes sense in the practical application of health protection measures, however it must be noted that a simplistic separation of responsibility does not detract from the fact that people are linked to property and the practical operation of these powers will require to be agreed through the Health Protection Plan arrangements discussed later in the consultation.

2. It is proposed that 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 response by North Lanarkshire Council supports this proposal and states that this should be separate from and have equal status to the Health Improvement

Plan. Both of these plans should be directly linked to the Community Plans for each Local Authority area.

3. Views are sought on whether the provision and statutory role for a Designated Medical Officer (DMO) within NHS Health Boards to carry out legislative duties in health protection on behalf of Local Authorities should be retained in new legislation. The functions undertaken by the DMO are very important and the arrangements have operated well for many years and the retention of the DMO is supported.

4. Views are sought on introducing provisions on "environmental health concern" in new public health legislation. These provisions would be totally separate from the nuisance provisions in the Environmental Protection Act 1990 and would help to enhance public health protection as they would remove the need for the law to be amended as new environmental concerns are identified, and would introduce prohibition and improvement powers to more effectively address problems without delay. However, effective enforcement will require adequate resources to be provided to Local Authorities to ensure enforcement and training of enforcement staff.

4 Sustainability Implications

4.1 The recommendations to the committee are consistent with policy and there are no sustainability implications.

5 Corporate Considerations

5.1 The recommendations to the committee are consistent with policy and there are no personnel, finance or property implications in this report.

6 Recommendations

6.1 That the committee endorses the response to Public Health Legislation in Scotland: A Consultation.

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For further information please contact Robert Steenson on 01236 616534.

PUBLIC HEALTH LEGISLATION IN SCOTLAND: A CONSULTATION

North Lanarkshire Council Response

The response by North Lanarkshire Council is arranged in order of the questions detailed in the consultation document. In general, the proposals are welcomed as an overdue and worthwhile updating of the Public Health legislative framework. North Lanarkshire Council does have reservations about some of the proposals and these are detailed below.

Q 1	Organisational Authority
1.1	**The proposal to assign legislative powers in relation to people to NHS Boards and for property and premises to local authorities, as set out in Tables 1 and 2 in Annex C.**
	It is apparent that changes in the assignation of powers are necessary and North Lanarkshire Council agrees with the proposals as detailed in the consultation. However, it must be noted that a simplistic separation of responsibility does not detract from the fact that people are linked to property and the practical operation of these powers will require to be agreed through the Health Protection Plan arrangements discussed later in the consultation.
1.2	**Whether the provisions in Tables 1 and 2 in Annex D could usefully be updated and retained in new legislation**
	Generally agree with the proposals listed in Tables 1 and 2 of Annex D
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**
	There should be a requirement to produce a Health Protection Plan (HPP), and this should be separate from and have equal status to the Health Improvement Plan. Both of these plans should be directly linked to the Community Plans for each Local Authority area.
1.4	**Whether the issues to be covered in Plans/Statements should include the matters covered in paragraph 3.17**
	All of the matters covered in para 3.17 should be included, and there should be additional requirements for consultation and customer involvement in the preparation and finalisation of the plans.
1.5	**Whether the AIDS (Control) 1987 Act should be considered for repeal in Scotland**
	The requirements of this Act should be included in the proposed HPP arrangements.
1.6a	**Whether the provision and statutory role for a DMO should be retained in new legislation**
	The functions undertaken by the DMO are very important and the arrangements have operated well for many years. The retention of the DMO is supported.
1.6b	**If the role is retained should this role be a joint appointment between LA and NHS**
	No.
1.6c	**if the role is retained should we define qualifications/professions eligible to fulfil this role**
	Yes.
1.7	**Whether legislation should require that certain outcomes, including those which restrict liberty, need input from a competent person and, in particular, a professional with defined qualifications**
	Yes. It is essential that decisions of this nature are taken by appropriately qualified persons.
1.8	**If so, whether these qualifications should be defined in regulations or guidance**
	The qualifications should be defined in regulations, to provide a clear indication of the importance of such qualifications and to provide a regulatory requirement for compliance which would not be provided by guidance.
1.9	**Whether powers for Scottish Ministers to intervene in public health matters should follow the principles already established in legislation**
	The principles already established are satisfactory and the new provisions should mirror these arrangements.

	Notification Options
2.1 a-j	**A new system of statutory notification to public health agencies**
	These proposals appear sensible and satisfactory, but NHS Boards and clinicians are better placed to comment in detail.
2.2 a-f	**Proposals for developing an additional notification system for non-communicable diseases**
	These proposals appear sensible and satisfactory, but NHS Boards and clinicians are better placed to comment in detail.
2.3 a-e	**The proposal that the key issues to be considered prior to making a new condition or hazard reportable**
	These proposals appear sensible and satisfactory, but NHS Boards and clinicians are better placed to comment in detail.
2.4	**Whether to continue to exclude sexually transmitted infections from any new notification system and whether any other disease or condition be excluded**
	NHS Boards and clinicians are better placed to comment in detail. However, any proposal to make sexually transmitted infections notifiable may have a negative impact on control measures and therefore should continue to be excluded from any notifiable requirements.
2.5	**Whether there are any other legislative options for surveillance which should be considered**
	NHS Boards and clinicians are better placed to comment in detail.
	Investigation Options
3.1	**Legislation should make it a statutory duty to divulge information during public health outbreaks or incidents**
	This is a sensible proposal as the initial stage of any outbreak investigation is generally recognised as the key phase and any measure to prevent delays is welcome. However, any decision to require information to be divulged should be based on whether it is considered to be "in the public interest" to do so, and it should be remembered that Local Authorities already have powers to require the release of information. Information sharing between NHS Boards and Local Authorities should be agreed as part of the HPP process.
3.2	**The triggers necessary for such action**
	All of the triggers suggested are appropriate.
3.3	**The need for such information should be certified by the Chief Executive of the NHS Board, or a case made by the competent person, or whether this should be the Sheriff**
	It would be more appropriate for the Director of Public Health or the Chief Environmental Health Officer for the Local Authority to certify, and if there is a requirement for a Sheriff to do so there would have to be a fast track arrangement agreed with Sheriff Clerks to ensure that delays are avoided.
3.4	**An appeal system or structure should be available against the duty to divulge, involving either reference to the chair of the NHS Board, and thereafter to the Sheriff, if necessary, or in emergency situations, direct to the Sheriff**
	Some form of appeal process requires to be included but time must be an important factor here and therefore an appeal should be heard and dealt with as a matter of urgency – probably within 12 hours, or preferably less, after any initial decision, and protection of public health should be the principal factor in dealing with appeals. For this reason, and to remove secondary processes and issues of whether NHS or Local Authority representatives should be involved, all appeals should be heard by a Sheriff.
	Statutory Powers for Health Protection
4.1	**Whether legislation should provide for the introduction of quarantine orders for a period of up to 21 days, with provision for renewal or extension**
	Yes. This could become an important aspect of health protection, and would be an essential tool for the prevention of spread of infectious disease.

4.2	**Whether quarantine orders should only be applied where the criteria in paras 6.9 and 6.12 are met**
	Yes. Defined limits to the quarantine powers would be required, and those specified are appropriate.
4.3	**Whether exclusion orders should apply more widely to include, e.g. work, social and religious events, neighbours, travelling and other activities**
	Yes. Limiting certain activities to prevent spread of infection is sensible.
4.4	**Whether exclusion orders should i) apply to specified states and/or organisms and or activities ii) have penalties for non-compliance**
	Yes. Making the orders as flexible as possible can aid greatly in compliance. Without penalties for non compliance the orders would become advisory in nature and rely on voluntary compliance. This would not be appropriate given the reasons for introducing the orders.
4.5	**Whether there should be penalties for non-compliance**
	Without penalties for non compliance any action would become advisory in nature and rely on voluntary compliance. This would not be appropriate given the reasons for taking such action.
4.6	**Whether compensation payments should extend to all groups liable to be excluded under exclusion orders or affected by other orders**
	Yes – if someone is unable to earn an income on account of the fact that they are complying with an exclusion order then it is considered essential that they should be refunded for any loss of earnings. If compensation is not provided then it is considered likely that many people will ignore exclusion orders, or they may be subjected to hardship through no fault of their own. However, careful consideration should be given to the level of compensation to be provided.
4.7	**Whether the payment of compensation should become the duty of the NHS, rather than the LA as currently, given the proposed transfer of powers in relation to people to the former; if recommended, this change would require NHS Boards to be insured against compensation claims**
	As the NHS Board would have responsibility for people as proposed in this consultation, it is appropriate to transfer this duty to the NHS.
4.8	**Whether legislation should provide for the introduction of detention orders**
	If the quarantine arrangements are to be effective this measure must also be introduced to deal with those who refuse to comply. Any penalties as discussed in Q4.4 and Q4.5 would not remove risk of infection spreading and this additional measure is therefore supported. However, strict controls on the use of such powers are essential.
4.9	**The proposal not to seek powers to require a person to have medical treatment**
	Agree – a person should have the right to refuse medical treatment, as long as they can be isolated to remove risk using the powers specified in this chapter.
	Environmental Health Concerns
5.1	**Whether it is perceived that there is a gap in legislation to deal with threats from the environment**
	There is a gap, and the measures proposed address these gaps in the main.
5.2	**If so, what are your views on introducing provisions on "environmental health concern" in new public health legislation: these provisions would be totally separate from the Environmental Protection Act 1990**
	This legislation would help to enhance public health protection as it would remove the need for the law to be amended as new environmental concerns are identified. However, its effective enforcement will require adequate resources to be provided to Local Authorities to ensure enforcement and training of enforcement staff.
5.3	**Should any of the components of the Public Health (Scotland) Act 1897 outlined in Annex H be retained or amended**
	There should be no need to retain any of these provisions if the definition of "Public Health Concern" is carefully drafted to ensure that these issues can be included. In addition, many of the issues relating to lodging houses are now regulated by HMO licensing and registration of private landlords.
5.4	**Whether the definition of an "environmental health concern" could be as specified**
	This definition appears to encompass what is required, however the limiting of the definition to premises could restrict action, and this should be expanded to include premises, property and land. Also, the reference to "prejudicial to the psychological or physical health" should be removed or redrafted to ensure that medical

	input to the process is not made a requirement, and does not become a complex evidential issue in any cases. The term "Environmental Health Concern" may not convey the serious nature of such issues, and a more appropriate term may be "Environmental Health Breach" or "Environmental Health Violation".
5.5	**Whether the new system of environmental health concern management could include a) public (individual or group) report to the local authority b) joint assessment by local authority and NHS public health staff of the risk, based on the precautionary principle and agree actions with the community c) proportionate action by local authority, based on adequate legal sanctions, including abatement or prohibition orders similar to those used currently, or in food standards legislation**
	Public reporting to the Local Authority is agreed. However, joint assessment by the Local Authority and NHS of risk is unnecessary in most cases and would be undertaken by Local Authority Environmental Health staff whenever appropriate in any case. Given that the responsibility for this issue rests with the Local Authority, risk management should be their duty and they should consult any and all appropriate agencies or persons as part of this duty, and this should not be restricted to the NHS. Detailed guidance on this matter could be issued. Proportionate action should be enhanced by the introduction of a range of sanctions such as those described. However, consideration should be given to drafting legislation which removes or abates "Environmental Health Concerns" as well as punishes those who are responsible without addressing the concern. This will involve providing resources to Local Authorities to remove or abate concerns.
5.6	**Whether the time is also right to expand the statutory nuisance regime in the Environmental Protection Act 1990 to include light and insect pollution; and are there any other areas of nuisance that should be added now**
	Expanding the statutory nuisance provisions would be helpful, but these should not be expanded if the new "Environmental Health Concerns" provisions can deal with the matters concerned. However, the Environmental Protection Act 1990 provisions should be viewed as more serious in nature than the "Environmental Health Concerns" and adding the matters suggested would be welcome. The Environmental Protection Act 1990 provisions should remain and be utilised in tandem with the new proposals.
	Mortuaries and Cremation
6.1	**The routine responsibility for resourcing and provision of mortuaries in Scotland should become the responsibility of NHS Boards**
	There is no real public health benefit to this, although there may be consistency in management. However, it may be of more benefit to concentrate on specifying minimum standards for such facilities rather than who operates them.
6.2	**The NHS should be allowed to charge the police for the use of mortuaries**
	If the NHS operate and maintain such facilities they should be able to charge an appropriate fee to recover costs.
6.3	**The provisions identified in Annex I should be updated and retained in new legislation with provision, in particular, made for cremation to take place as appropriate**
	Agreed.
	Port Health
7.1	**How well you consider the current port health arrangements work in Scotland**
	At present the arrangements are not well co-ordinated and a consistent regulatory framework is required.
7.2	**How they might be strengthened**
	A framework of operating procedures and policies should be introduced, and all port health authorities should be required to participate in a national strategic arrangement to promote consistency and good practice.
	Safeguards
8.1	**Legislation should contain provisions similar to Regulation 12 in England and Wales, allowing the passing on of information beyond the health protection team by a competent person in specific circumstances**
	Agree that a mechanism should be put in place to allow the passing of health information, by a competent person, if necessary for health protection. However, clear rules must be provided as to when and to who this information can be passed and how it will be used and how long it can be stored
8.2	**Issues of enforcement against one's own organisation should be handled by:**

	a) a separate health board or local authority **b) a newly-created public health forum or board** **c) another arbitrator** **d)robust internal procedures that protect and separate conflicts of interest**
	Issues of enforcement and investigation are presently robust and effective and there is no need for change. If the matter involves a complaint however, there may be a case for an independent body to become involved, and this could be facilitated by the local area partnership boards who have representatives of all of the major agencies.
8.3	**Outbreak and incident reports should be circulated to a defined audience**
	The nature of the information in the reports may necessitate a restricted audience for the full report. However, summary reports which do not contain restricted information, such as personal details, business information etc should be made available to anyone.
	Tasks, Offences and Penalties
9.1	**Whether the proposed statutory split between governance and penalties is satisfactory, or whether an alternative approach might be preferable**
	The split is satisfactory.
9.2	**Whether penalties should only be applied to the non-completion of tasks in List B**
	The tasks in list B should be legal duties and therefore penalties should be applied. This would also apply to some tasks in list A
9.3	**Whether legislation should include penalties for non-compliance with tasks**
	The tasks in list B should be legal duties and therefore penalties should be applied. This would also apply to some tasks in list A
9.4	**If so, whether List A infringements might be addressed through the health governance framework, with List B breaches liable to attract either a monetary penalty or, in serious cases, a term of imprisonment**
	List A infringements should be dealt with through the health governance framework, and List B infringements as described above.
9.5	**Whether legislation should include provision for any other enforcement measure, such as a) electronic tagging b) video monitoring c) public health monitoring**
	It is clear that in the public health context a degree of flexibility and a range of enforcement tools will aid enforcement and compliance. Therefore, the use of alternative forms of enforcement would be welcome, but only where there is a demonstrated public health benefit to be derived from its introduction.