

Report

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Report to:	Community Resources Committee
Date of Meeting:	15 September 2009
Report by:	Executive Director (Community Resources)

Subject:	The Public Health etc (Scotland) Act 2008
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ provide a brief overview of the provisions of the Public Health etc (Scotland) Act 2008
- ◆ designate the Chief Environmental Health Officer and “competent” persons in terms of the Act.

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the provisions of the Public Health etc (Scotland) Act 2008 be noted.
- (2) that the Head of Environmental and Strategic Services be designated as the Chief Environmental Health Officer to act on behalf of the Council.
- (3) that powers be delegated to the Executive Director (Community Resources) to designate “competent” persons in terms of the Act and to maintain the list of such designated persons.

3. Background

- 3.1. The Act updates the law on public health enabling the Scottish Government, health boards and local authorities to better protect public health in Scotland. It will also assist the Scottish Government to meet their obligations under the International Health Regulations
- 3.2. The Act also makes provision relating to the use, sale or hire of sunbeds, clarifies statutory responsibility for the provision of mortuaries and post mortem facilities and amends the law on statutory nuisances.
- 3.3. For the purposes of the Act, “protecting public health” means the protection of the community or any part of the community from infectious diseases, contamination or other hazards which constitute a danger to public health; and includes the prevention of, the control of, and the provision of a public health response to such diseases, contamination or other hazards.
- 3.4. “Contamination” means the contamination with or by a biological, chemical or radioactive substance.
- 3.5. “Infectious disease” means an illness or medical condition caused by an infectious agent.

- 3.6. The Act comprises 10 parts, the majority of which have implications for local authorities.

4. Part 1: Public Health Responsibilities

- 4.1. This part of the Act sets out the duties of Scottish Ministers, health boards and local authorities to continue to make provision to protect public health in Scotland. It places a duty on health boards and local authorities to designate “competent” persons to undertake functions assigned to them under the Act. A duty of co-operation is placed on health boards and local authorities in exercising the functions under the Act. Each health board must prepare a Joint Health Protection Plan for its area, and must consult the relevant local authority or local authorities in doing so. The scope and content of the plans must be prepared in accordance with the guidance issued by Scottish Ministers.
- 4.2. Part 1 also sets out the Scottish Ministers powers of intervention if health boards or local authorities fail to exercise functions in an acceptable manner, including power to direct other persons or organisations to undertake the function, and to direct the allocation of resources.
- 4.3. Powers and functions in the Act are assigned corporately to health boards and local authorities, but the legislation also sets out where input at a specific level of professional competency is required for the protection of public health. Health boards and local authorities are required to draw up lists of “competent persons” for their areas. The qualifications, training and experience of such persons will be set out in Regulations made by Scottish Ministers.

5. Part 2: Notifiable Diseases, Notifiable Organisms and Health Risk States

- 5.1. This part makes provision for the notification of specific diseases and the notification of specific organisms. The diseases and organisms to be notified are specified in schedule 1 of the Act. Notification is necessary to alert the public health authorities to diseases and organisms which present a risk to public health and which may require an urgent public health response.

6. Part 3: Public Health Investigations

- 6.1. The majority of public health incidents can be investigated without using statutory powers. However, where there are problems, e.g. because someone is being uncooperative, or premises are vacant, it may be necessary to use statutory powers so that the cause of the incident can be found quickly and effectively to avoid the wider public health being put at risk. This part defines a “public health investigation” and sets out the powers available to investigators. The powers are available only in defined circumstances set out in the Act and where there are reasonable grounds to suspect that those circumstances are likely to give rise to a significant risk to public health. The powers include power of entry, power to ask questions and power to take samples for analysis. If necessary, an investigator can apply for a warrant to enter premises from the local JP or Sheriff, although this is not necessary in emergency situations.
- 6.2. Part 3 also makes provision about offences and the compensation arrangements for any loss or damage incurred in the course of an investigation.

7. Part 4: Public Health Functions of Health Boards

- 7.1. The functions assigned to health boards predominately revolve around public health issues as they relate to people e.g. restricting a person from undertaking activities, powers to quarantine someone, etc.

8. Part 5: Public Health Functions of Local Authorities

- 8.1. This part sets out the powers available to local authorities to order or undertake a range of public health measures in relation to premises and things, including disinfection and decontamination, in order to prevent or prevent the spread of infectious disease or contamination. If necessary, a local authority can apply for a warrant to enter premises from a local JP or Sheriff, although this is not necessary in emergency situations.
- 8.2. Local authorities also have a statutory duty to provide, or ensure the provision of, the facilities or equipment necessary to disinfect, disinfect or decontaminate premises or things, the destruction of such things and the means of transport for transporting things to facilities and equipment. Part 5 also provides for the recovery of expenses by local authorities in certain circumstances and the availability of compensation in defined circumstances.

9. Part 6: Provision of Mortuaries, etc

- 9.1. This part places a duty on health boards to ensure mortuary provision, including post-mortem facilities, for persons who die in hospital in the Board's area, or who die elsewhere and whose bodies are brought to the hospital. A duty is also placed on local authorities to ensure the provision of mortuary and post-mortem facilities for other deaths, including for Crown Office Procurator Fiscal Service instructed post-mortem examinations. Local authorities and health boards must co-operate with one another in complying with these duties.

10. Part 7: International Travel

- 10.1. Part 7 recognises the particular risks to public health which can arise at points of entry into Scotland. It provides a power to Scottish Ministers to make regulations to protect public health from risks arising from vehicles arriving in or leaving Scotland and to give effect to the international agreement relating to public health.

11. Part 8: Regulation of Provision of Sunbeds

- 11.1. This part regulates the use, sale and hire of sunbeds. It prohibits operators from allowing the use of sunbeds on their premises by persons under 18, from allowing unsupervised use of sunbeds on their premises and prohibits the sale or hire of sunbeds to persons under 18. It also places a duty on operators of sunbed premises to provide information to sunbed users and to display information notices on their premises on the adverse health effects of sunbed use. The information to be provided and displayed will be set out in Regulations made by Scottish Ministers.
- 11.2. This part also provides for offences, penalties and enforcement including the ability of operators to discharge any liability to conviction for an offence through payment of a fixed penalty fine in certain circumstances.

12. Part 9: Statutory Nuisances

- 12.1. This part amends the Environmental Protection Act 1990 for Scotland to include insect infestation, artificial light pollution, and nuisances associated with water on land, as statutory nuisances. It introduces a regulation making power to amend the statutory nuisance regime in the future and enables local authorities to offer a fixed penalty to persons who fail to comply with the requirements of an abatement notice served under the Act.
- 12.2. This part also amends the Water Services etc (Scotland) Act 2005 to remedy an unforeseen dis-application of the enforcement provisions in the 1990 Act as regards sewerage nuisance.

13. Part 10: General Miscellaneous

- 13.1. This part contains general and miscellaneous provisions, including provision about information disclosure, and penalties for offences under the Act. It sets out the procedures that will apply to the making of subordinate legislation. It also deals with the repeat of legislation which is superseded by the Act.
- 13.2. The timeline for commencement of the various parts of the Act is –

Part	Commencement Date
1,3,4,5,6,9 and 10	1 October 2009
8	1 December 2009
2	1 January 2010
7	to be confirmed

14. Implications for the Council

- 14.1. In relation to part 1, the Council will require to designate “competent” persons to undertake functions assigned to them under the Act. The regulations which are at the final drafting stage define “competent” person to undertake local authority functions as Environmental Health Officers who possess the Royal Environmental Health Institute of Scotland Diploma or equivalent and have at least three years post qualification experience.
- 14.2. The Council must engage with NHS Lanarkshire to prepare a joint Health Protection Plan which will require to be signed off by the Chief Environmental Health Officer on behalf of the Council. These discussions with NHS Lanarkshire are already underway and there should be no major implications in preparing the plan. It is proposed that the Head of Environmental and Strategic Services act as the Chief Environmental Health Officer for the Council.

15. Employee Implications

- 15.1. The Council will require to ensure that a sufficient number of “competent” persons are available to undertake the duties set out in the Act and it is proposed that powers be delegated to the Executive Director (Community Resources) to approve a list of designated “competent” persons and the scheme of delegation will require to be amended accordingly. In addition, the new legislation will result in staff requiring to undertake appropriate training.

16. Financial Implications

- 16.1. No new funding is being made available for the implementation of the Act. However, in general terms, the implementation of the Act can be met from within existing resources.

17. Other Implications

17.1. None.

18. Equality Impact Assessment and Consultation Arrangements

18.1. There is no requirement to carry out an impact assessment in terms of the proposals contained within this report.

18.2. The Scottish Government has consulted with all local authorities extensively during the drafting stages of the Act.

Norrie Anderson

Executive Director (Community Resources)

11 August 2009

Link(s) to Council Objectives and Values

- ◆ Improve health and increase and physical activity
- ◆ Improve lives of vulnerable children, young people and adults
- ◆ Improve the quality of life of everyone in South Lanarkshire

Previous References

None

List of Background Papers

- ◆ Public Health etc (Scotland) Act 2008
Guidance on sections 87-89 Provision of Mortuaries

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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