UK PUBLIC HEALTH LEGISLATION

Discussion paper

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1. Introduction

- Clarifying the position on the state of public health legislation in the UK is no easy matter. There appears to be little literature, particularly over the last five years, which takes a critical look at such legislation, either in the UK or globally. This makes it difficult to gauge the profession's attitude to the need for new public health legislation.
- This paper takes a brief look at the current position of UK legislation, the opportunities for, and threats to, new legislation and previous work on the subject, including laws passed in a number of other countries. Finally, it looks at the potential scope of a new UK public health act and some ways of generating a debate about new legislation.

2. Current position of public health legislation in the UK

- The Public Health Act 1984 consolidated much 19th century legislation, designed to resolve what Davies[1] calls a "structural problem," mostly caused by poor sanitation. Subsequent legislation has responded to clinical progress in understanding disease and risk factors. However, the legislation "cannot be used for new and unforeseen threats to health" [2], nor is there any discretion in application.
- Although life expectancy has generally increased across the UK, public health law has failed to address persistent inequalities or improve some of the gaps in life expectancy and healthy life expectancy between the most and least deprived areas of the UK. For example, males living in the least deprived areas of England can expect to live 19.2 years longer in good health compared with those living in the most deprived areas.[3]
- Modelling work forecasts such a growth in non-communicable diseases[4] that the demands they make on the health service for treatment are unsustainable. Prevention of problems caused by poor diet, the misuse of alcohol, obesity, tobacco and lack of physical activity is the most cost-effective way of reducing avoidable demand for health services.
- A list of some of the key current public health legislation is shown in Appendix 3.

3. New legislation: opportunities

i. Balance of disease

Non-communicable diseases (NCDs) now account for the greatest health and social care burden of disease in the UK. Current legislation does not enable action against the rise in NCDs, tackle new communicable diseases for which there are no vaccines or reflect "contemporary medical science or contemporary notions of social justice."[5]

ii. Changing attitudes to health

Davies[i] describes the focus for the 21 century as being on shared responsibility for health and an increased understanding of how individual influences and behaviour affects health. She suggests that a new model of public health is now needed in which healthy behaviours are considered the norm and proposes that this mindset is supported by promoting the value of health and healthy choices as well as minimising those factors that create an environment leading to unhealthy behaviours.

This has already resulted in new legislation in Wales to encourage healthier behaviours, for example the Active Travel Act 2013, requires road schemes to take account of cyclists and pedestrians. The Future Generations Act 2014 builds on this, laying out the responsibility for ensuring that the present and future population is healthier, more resilient, more equal, cohesive and ultimately more prosperous.

iii. Drivers of future change

Alongside an emphasis on healthy behaviours, the Academy of Medical Sciences set up a workshop in November 2014[6] to forecast some of the future drivers of public health. These included the fact that:

- The population's health may be shaped by a healthy life-course approach.
- There is not 'one big driver of change' as the population's health is dependent on the complex interaction of many smaller factors.
- By 2040 the health and wellbeing of the public will be the 'highest law'.
- The design of cities will impact on health and wellbeing, including population density; work, life and play areas; and transport networks.
- Changes in health literacy through education and better understanding of risk.
- Changes to the health of the public may be driven by trends in prosperity in the UK, including the implementation of wellbeing as a measure of societal success.
- Localism and political decentralisation may promote the growth of sharing communities and societies, and also result in greater exposure to global pressures. The extent to which government joins-up decision-making will also affect health.

iv. Political environment

Government over the past 40 years has moved "from social obligation and economic fairness to individual freedom, self-reliance and personal responsibility." [7] As a result, health has become more of a personal and private issue than a public one. The Institute for Public Policy Research[8] suggests that the solution is a relational state where Government does things *with* its people *not to* or *for* them. It argues that central government needs to set high level goals and enable solutions to happen locally, allowing professional autonomy to act on and engage with local understanding of local conditions. The IPPR suggests that central Government could still dictate lines of accountability but instead of setting targets it could agree a "core basket of outcomes" – rather like post-war consensus politics.

The trend towards devolution within the UK would seem to support a more local way of working. This would also allow a collaborative infrastructure with a multi-sectoral approach to working and greater citizen engagement that would be beneficial to public health.

4. New legislation: threats

i. Legislative environment

In January 2013 the government introduced a 'one-in, two-out' (OITO)[9] rule to reduce new regulations that increase costs for business and voluntary organisations. Where there is a direct cost to business to comply with new regulations, departments have to remove or modify existing regulations to the value of £2 of savings for every pound of cost imposed. It does not apply to: taxes, regulation for civil emergencies, some EU legislation, or regulation that has no impact on business.

This presents difficulties for the Department of Health whose overall purpose does not include business regulation since only costs to business and not benefits to public health can be included in the OITO calculation. Lost sales are considered a direct impact and therefore measures to control tobacco (or any future 'sugar tax') could be counted as legislation 'in.' As the Department of Health is in currently deficit for OITO, a UK public health act would need to be an additional exemption to this rule.

ii. Response of public health profession

The public health profession is currently unable to instigate positive, evidence-based actions to address the complex public health problems in localities because of the emphasis on national, industry-led measures. Having to focus efforts on proving initiatives such as the Responsibility Deal, are not delivering sufficient improvements in health choices is forcing the public health profession into negative ways of working.

5. Previous work

- In 2013 the UK Health Forum[10] considered the ability of public health laws to address the impact of non-communicable diseases through: health impact assessment; statutory duties to reduce health inequalities; a focus on disease prevention; and by strengthening community action on health protection and health improvement. The study concluded that legislation setting out measures in these four areas provides national governments with powerful means of tackling NCDs.
- In 2003, the Nuffield Trust[11] investigated the case for a new health of the people UK act. It found that the legislative frameworks did not adequately address public health issues (alcohol misuse and traffic accidents, domestic fire injuries, child pedestrian traffic accidents, unwanted teenage pregnancy or communicable diseases) or the underlying determinants of health. It reported a lack of a coherent and cross-cutting approach to population health protection and improvement and proposed new legislation based on the precautionary principle.
- Following the Nuffield's report, the Law Commission raised concerns that public health legislation "may fail to allow the authorities to take action."[12] Although it focused on the UK's ability to tackle communicable diseases, the Commission believed the present law required modernising, partly to avoid breaching the Human Rights Act. As a result, the Commission made a rare recommendation that the Government should either look to reform public health law directly or do so through another agency.

6. Public health legislation globally

- In the last 15 years, a number of public health acts have been passed and enacted around the world that appear to take some steps to respond to current public health issues. Appendix 1 provides a list of international legislation and notes key features.
- The aims of these acts vary. For example, legislation in Queensland and New South Wales focuses on protecting the public from communicable diseases and how to manage emergency situations. Legislation in South Australia and Victoria is more in line with acts passed in Quebec and British Colombia in Canada in taking a broader approach to promote the conditions in which people can be healthy and reduce the inequalities that affect wellbeing.
- Legislation in both Sweden and Norway set the context respectively as being either to create "social conditions for good health on equal terms for the entire population" or for 'societal development' in the country. The Future Generations Act in Wales is in line with this, aiming to improve the wellbeing of both its present and future population.
- New Zealand's 2007 public health bill sets out "…to help attain optimal and equitable health outcomes for Māori and all other population groups." Health inequalities are also addressed specifically by legislation in France, Sweden and the states of both South Australia and Western Australia.
- Quebec and Sweden appear to be unique in setting an obligation to ensure that legislation has no negative impact on health. Provision for non-statutory health impact assessments is made in public health legislation in Norway, British Colombia (Canada), New Zealand and two states in Australia (South Australia and Victoria). The study from the UK Health Forum[x] also finds that although health impact assessments are increasingly popular in the USA, they are rarely mandatory. A white paper in 2007 from the European Commission[13] proposed mandatory health impact assessments for Commission's policies as well as establishing a core value of reducing health inequalities. However, the white paper has not progressed beyond consultation.
- Five pieces of legislation (France, South Australia, Victoria, Western Australia and Wales) set their public health measures against a number of basic principles. Common to all of them are prevention and collaboration or partnership while the precautionary approach underpins legislation in South Australia, Western Australia and Victoria.
- Both France and Sweden set out public health objectives. Sweden's original 2003 bill defined 11 objectives (later amended in 2008), dividing these into three areas of good living conditions; health promoting living environments and habits; and alcohol, illicit drugs, doping, tobacco and gambling. France set an initial 100 objectives that aim to reduce morbidity or mortality of identified diseases; reduce risky behaviours; reduce social inequalities; improve the healthcare process; and increase public health knowledge and surveillance.

- In May 2015 the *Lancet,* in conjunction with the O'Neill Institute for National and Global Health Law at Georgetown University in Washington DC, launched "a high-level Commission to define and systematically describe the current landscape of law that affects global health and safety."[14] The Commission will investigate the incentive created by international processes for countries to look at domestic public health laws.

7. Scope of new legislation

- As Martin[2] states, the UK does not have "an umbrella piece of legislation" that sets out the basic principles or clear objectives for public health. In looking at the case for a new public health act, the Nuffield Trust proposed "a statutory duty of care for population health" that would fit alongside "a statutory human right to public health."[11]
- This statutory duty could be based on principles that reflect the present political, cultural and socioeconomic environments. These should focus on the assessment and management of risk as well as establishing a framework for prevention to protect those who are healthy and support those who are disadvantaged.
- Such principles could follow the model of equalities and humans rights legislation and introduce the concepts of protected characteristics to reduce health inequalities, in the same way in which population characteristics are now protected. This would help ensure that no single government department 'owns' public health. Mandatory health impact assessments and a health in all policies approach, as outlined in the WHO's 2010 Adelaide Statement,[15] would support this.
- Mechanisms to shift industry from responsibility to obligation, for example by establishing a principle of paying for consequences, would ensure that industry helps to protect the health of the population. Alongside this, public health professionals would benefit from the ability to respond quickly to counter any industry actions that impact on public health without requiring new or additional legislation.
- New legislation would also enable appropriate risk management by enabling the identification of future and emerging threats to public health. Horizon scanning has begun to identify issues with the potential to need public policy intervention. It highlights the need to "change the traditional policy-making cycle"[16] to become more open as well as avoiding knee-jerk responses to unexpected crises. Reserving public health powers for both Government and local authorities could enable early engagement to address such issues.
- The statutory duties laid out in the Health and Social Care Act 2012 for the Secretary of State for Health to reduce inequalities apply only to the health service in England. A new UK public health act would need to be enacted as primary legislation in order to enable appropriate action across the whole of the UK. Such an act would then facilitate the introduction of secondary legislation as required for specific measures. Appendix 2 shows how national primary and secondary legislation might fit together.

8. Implementation

Alongside scoping of any new act, the UK Public Health Network will need to generate interest in potential new legislation from government ministers, advisors and political parties.

Within Parliament

- **Individual MPs**
  Engaging with both MPs and peers who speak in relevant debates, table, or answer questions will be helpful in exploring the issue. Such engagement needs to be across the political spectrum in order to gain cross-party support for a UK public health act. The expertise and long-standing experience of Network members in engaging with both Houses will be of great value in securing political support for new legislation.

- **All Party Parliamentary Groups (APPG)**
  All Party Parliamentary Groups bring together members of the Commons and Lords with a common interest. Although informal, they can be effective in raising the profile of an issue but there is no requirement for Government to respond to APPG reports. The most relevant groups may be the APPG Health in All Policies; and APPG Primary Care and Public Health. However, current APPG priorities are likely to focus on addressing specific issues such as obesity.

- **House of Commons Select Committees**
  Select Committees provide formal accountability to government departments. They examine spending, policies and administration and report their findings to the Commons. Government is obliged to respond to Select Committee recommendations within 60 days. Select Committees choose their own inquiries so an approach to current members of the Select Committee on Health or the Public Accounts Committee could be considered.

Outside Parliament

- **Organisational support**
  By bringing together those umbrella organisations with a broad remit for public health across the UK, the Network has a collective authority and ability to garner support from professional and third sector public health organisations, including single topic organisations as well as other membership bodies. A public health profession united across its many facets will be required in order to be persuasive of new legislation.

- **Law Commission**
  Recent correspondence with the Law Commission suggests that some of their concerns raised in 2005 were allayed through the 2008 Health & Social Care Act. However, the Commission is about to start a new programme of law reform and may be willing to consider the issue again should the Network wish to make the case that present public health legislation is inadequate. Law Commission recommendations are directed to the Lord Chancellor and relevant Secretary of State.

- **Royal Commission**
  A Royal Commission can be a useful way of raising public interest in an issue without making it political. Although there is no requirement for Government to adopt findings, Royal Commissions have occasionally resulted in legislative change. Requests for a Royal Commission are raised through the relevant Secretary of State.

9. Conclusions

- Although the health of a population contributes to its country's economic and social prosperity, no single, current piece of international public health legislation appears to have a perfect solution. The rising burden of non-communicable diseases suggests a need for new public health legislation to enable the profession to respond effectively.
- Persistent health inequalities arise from complex problems – the causal factors for which are interrelated. Tackling such complex problems requires a well-developed collaboration from a number of sources and is unlikely to be achieved either by central bureaucracy or by a market approach.
- Strategic legislation could set out the framework for the equitable wellbeing of present and future generations. Opportunistic legislation risks benefiting particular interest groups, such as industry, without protecting communities or populations adequately.
- To meet both current and emerging situations, new UK-wide legislation would need to:
  1. Health-proof government policies, including mandatory health impact assessments and a health in all policies approach.
  2. Enable national and local action to address complex issues.
  3. Prioritise public health, removing the barriers to policy-making such as OITO.
  4. Reduce health inequalities.
- Consideration should also be given to defining the principles on which these objectives would function. These would include, but may not be limited to:
  1. Sustainability:
     Protect and improve wellbeing by integrating public health, social, economic and environment systems to the benefit of present and future generations.
  2. Precautionary:
     Lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.
  3. Prevention:
     Prevention is preferable to remedial measures.
  4. Partnership:
     Developing and strengthening partnerships to achieve identified public health goals.

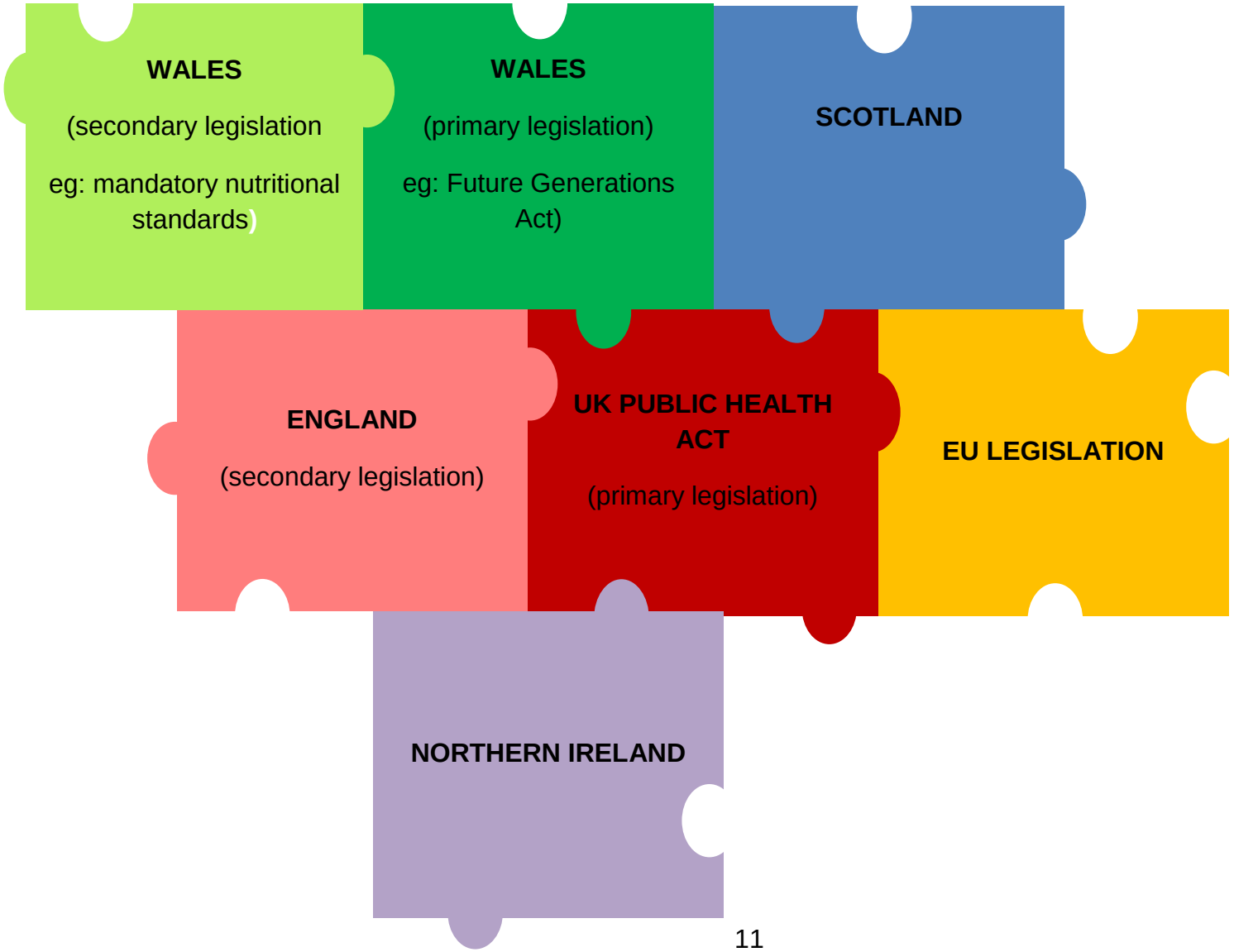
For discussion

- How can the UK Public Health Network shape and scope a new public health act that enables public health to respond to present, emerging and future challenges?
- What are the steps to be taken to prepare such a piece of legislation?

Appendix 1: Public health acts published globally since 2000

Country (State)	Year	Statutory HIA	Optional HIA	Reduce health inequalities	Address wellbeing	Defines public health principles	Other
Australia (New South Wales)	2010	x	x	x	x	x	
Australia (Queensland)	2005	x	x	x	x	x	
Australia (South Australia)	2011	x	✓	✓	✓	✓	
Australia (Victoria)	2008	x	✓	✓	✓	✓	
Australia (Western Australia)	2014	x	✓	✓	✓	✓	Aims at ensuring "intergenerational equity" – maintaining public health for benefit of future generations.
Canada (British Colombia)	2008	x	✓	x	x	x	Concept of health impediments for anything inconsistent with or adversely affecting public health
Canada (Quebec)	2001	✓	x	✓	x	x	Requirement for all government departments to report anything that may threaten population health
Finland	2010	x	x	✓	x	x	
France	2005	x	x	✓	x	✓	Parliament sets 5 year objectives. Sets out mechanism for early warning indicators of potential threats to population health
Greece	2005	x	✓	✓	✓	x	
New Zealand	2007	x	✓	✓	✓	✓	As at 2013, the legislation was still being considered but has not yet been passed
Norway	2011	x	✓	✓	✓	x	
Sweden	2003	✓	x	✓	✓		Updated 2008
UK (Scotland)	2008	x	x	x	x	x	Concentrates on powers and responsibilities around infectious diseases
UK (Wales) Public Health Bill & Future Generations Act	2014 - 2015	x	x	✓	✓	✓	Requires public bodies assess the impact of its objectives on wellbeing goals

Appendix 2: The jigsaw of primary and secondary legislation



Appendix 3: Examples of current UK primary and secondary public health legislation passed since 1960

Title of legislation	Date	Legislation type	Applies
Public Health Laboratory Service Act	1960	Primary	
Public Health Act	1961	Primary	England, Wales
Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland)	1962	Primary	Northern Ireland
Public Health Act (Northern Ireland)	1967	Primary	Northern Ireland
Health Services and Public Health Act	1968	Primary	England, Wales, Scotland
Public Health (Control of Disease) Act	1984	Primary	England, Wales
Road Traffic Regulation Act 1984 (Amendment) Act Order 1999	1999	Secondary	England, Wales, Scotland
Smoke Free (Premises and Enforcement) Regulation	2006	Secondary	England
Smoke Free (Exemptions and Vehicles) Regulations	2007	Secondary	England
Smoke Free (Penalties and Discounted Amounts) Regulations	2007	Secondary	England
Smoke Free (Vehicle Operators and Penalty Notices) Regulations	2007	Secondary	England
Local Government and Public Involvement in Health Act 2007 (Commencement No.9) Order	2007	Secondary	England, Wales
Public Health (Amendment) Act (Northern Ireland)	2008	Primary	Northern Ireland
Public Health etc. (Scotland) Act	2008	Primary	Scotland
Sunbeds Regulation Act	2010	Primary	England, Wales
Wellbeing of Future Generations Wales Act	2014	Primary	Wales
Smoke-free Premises (Wales) (Amendment) Regulations	2015	Secondary	Wales

Legislation by country	Primary/Secondary	Number listed
UK public general acts	Primary	20
UK statutory instruments	Secondary	70
Acts of Scottish Parliament	Primary	2
Scottish Statutory instruments	Secondary	14
Wales Statutory instruments	Secondary	9
Acts of Northern Ireland Parliament/Assembly	Primary	5
Northern Ireland Statutory rules	Secondary	8
Northern Ireland Orders in Council	Secondary	1

Legislation for the UK and its constituent countries is listed at: www.legislation.gov.uk. The above table shows a breakdown of the 129 pieces of legislation that have 'public health' in the title. Many more pieces of legislation will be applicable to public health.

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