

PUBLIC HEALTH LEGISLATION SURVEY 2016

Final results

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Summary

The survey questioned the public health community's attitude to and wish-list for current public health legislation. 38 responses were received, with about half of respondents being in an English-based organisation. Just under half were from local government and just under a third from non-profit organisations. No responses were received from any statutory agencies. Four responses were received from Scotland and one from Wales.

The majority of respondents were in favour of a review of legislation, calling this 'long overdue' and citing the historical nature of some of legislation. 13% of respondents felt it would be unhelpful to do a review, believing it would give the misleading impression that there was too much legislation rather than not enough. Over half of respondents did not feel confident either in understanding or using legislation at UK level. Respondents from Scotland reported higher levels of confidence in using Scottish-specific legislation.

Five pieces of legislation and one of guidance were cited as causing public health difficulties. These were: Housing and Planning Bill 2016, Landlord and Tenant Act 1988, Licensing Act 2003, Housing Act 2004, Local Government Act 1972 and National Planning Policy Guidance.

70 unique issues were identified, 29 of which are potentially related to difficulties in using current legislation and therefore may be of interest to the Law Commission to investigate. The most frequently cited issues were around planning, the role and accountability of the Director of Public Health, housing, and health protection.

About the survey

- The survey was circulated widely to the public health community through members of the UK Public Health Network from February – April 2016. Individual members of the Network policy leads group were contacted in order to encourage views from Scotland and Wales.
- The survey asked 10 questions about the public health profession's attitude to, and wish list for, current public health legislation. Questions covered legislation at UK, jurisdiction and regional levels, along with any particular areas of current concern. A list of questions is given in [Appendix 2](#) – the full survey is available on [request](#).
- The survey was designed to inform a proposal to the Law Commission to undertake a review and timed in order to fit the Commission's deadlines for submissions.

Response

- 38 people completed the survey to some extent.
- 14/26 of respondents were based in an English organisation and 7/26 in a UK-wide organisation. 7/26 respondents were from organisations in Scotland and 1/26 was in an organisation in Wales - this was apparently from a respondent within the commercial sector. No responses appear to have been received from Northern Ireland.

- 11/26 respondents were from local government organisations; 8/26 from non-profit organisations; 2/26 from membership/professional organisations and 3/26 from the NHS or its equivalent. There was also one response from academia and one from the commercial sector. There was no response from any statutory agency.

Headline results

- 30/38 felt that an independent review of current public health laws would be “very helpful” or “helpful.” Comments indicated that it was *“long overdue,” “it’s a mess of historical developments and fudges,”* and that it *“should have a broad remit, and consider all current laws which impact on public health decision making processes.”*
- 5/38 felt that a review would “not be helpful” or “not worth doing.” Comments indicated that it would be *“Very unhelpful due to political decisions to get rid of rafts of legislation some of which may well be helping to protect some of the most vulnerable members of society”* and the *“need to think about the political ramifications and risks of this during probable further red tape challenge around legislation [OITO].”*
- Opinion was divided over confidence in understanding current legislation. 19/35 felt they were “not very confident” or “not at all confident” while 13/35 felt they were either “very confident” or “confident.” Two respondents felt they lacked *“a broad understanding of public health legislation.”* One respondent reported: *“I used to understand the legislation around health protection reasonably well, and similarly felt reasonably confident around procurement law, however increasingly these seem like grey areas with little precedent to guide us.”* Other respondents noted: *“I don’t know what I don’t know”* and *“its a legislative mountain and really who has time to climb that,”* and *“it is very confusing as there are so many acts and parts to it and some date back centuries ... [but] a full review .. is about looking at what is public health, what impacts on it, who is responsible.”*
- 18/36 felt “not very confident” or “not at all confident” in using legislation as applied to public health at UK level and 19/36 reported the same lack of confidence in using legislation as applied to public health at jurisdiction level.
- 10/36 respondents felt “very confident” or “confident” either in using public health legislation UK levels and 12/36 at jurisdiction level. One respondent noted: *“I don’t know of any UK wide public health legislation. As health is a devolved area, all the legislation relevant to our area of work is Scottish specific.”*
- 5/36 and 8/36 respondents respectively offered no opinion over confidence in using public health laws as they applied either to their jurisdictions or the UK as a whole, with comments noting that this was *“not the role as an organisation.”*
- Few respondents made a distinction between legislative powers required at UK level and jurisdiction or regional levels. One respondent noted that *“implementation may differ at regional or local level.”* 5/15 requests highlighted the need to improve local

powers to enable local responses and make more effective use of local powers (such as the use of byelaws) as well as embedding protection for public health in the devolution agenda.

- Five specific pieces of legislation and one piece of guidance were cited as causing difficulties:
 - **Housing and Planning Bill 2016:** does not support rent controls, security of tenure or social housing at reasonable rent.
 - **Housing Act 2004:** the housing health and safety risk rating system does not ensure private rental properties are fit to live in.
 - **Landlord and Tenant Act 1988:** came into force when the private rental market was very low and has no provision for accreditation of landlords
 - **Licensing act 2003:** provides no public health objective to enable protection from harm caused by alcohol, controlling density of fast food / takeaway outlets.
 - **Local Government Act 1972:** the power of local authorities to make byelaws is *“greatly limited by the restriction that it cannot be used in connection with anything already covered under other legislation.”*
 - **National Planning Policy Guidance:** the accompanying Policy Planning Framework has no legal status and the guidance is leading to inconsistent decision-making over local development plans.
- Respondents identified a number of issues with current legislation. A full breakdown is available in [Appendix 1](#). As the same issue was often mentioned by respondents in answer to more than one question, the answers for Q2 on current difficulties, Q6 on expectations of UK legislation and Q7 on expectations at jurisdiction/regional/local levels have been merged to provide an overall indication of areas that are causing issues for the public health community.
- Of the 70 unique public health problems that respondents cited, 29 could be of potential relevance to a review of public health legislation. The most frequently cited issues were: planning, the role and accountability of the Director of Public Health, the legislative environment, housing, and health protection. A breakdown of these issues is given in [Table 1](#). 41 issues related to public health policy and therefore would be outside the scope of the Law Commission.
- Overall, two respondents were concerned how this review *“might be interpreted by government”* and believed that it *“could send a very dangerous message that there is lots of unnecessary public health legislation in place.”* However, there was more support for than against a review. Four respondents expressed an interest in helping to achieve a review, with a desire to see this cover both “traditional” public health issues as well as the laws governing commissioning and data management that may be having an impact on public health practice.

Table 1: issues of potential relevance to a Law Commission review

Area	Issue	No of comments
Planning	• Role of public health as a statutory consultee on planning decisions	2
	• Limit availability of unhealthy foods, including amending the current class use list of commercial premises to provide a more common-sense definition of hot food takeaway.	6
	• Investigate legal status of National Planning Policy Framework as it is leading to inconsistent decisions on Local Development Plans (LDPs) and Supplementary Development Plans (SDPs)	7
Role of DPH and accountability	• Give DsPH statutory right to give impartial public professional advice without fear of reprisal	4
	• Review statutory public health functions of DPH and clarify their responsibility vis a vis PHE, simplifying accountability and structures	3
	• Protection of the public from bogus public health professionals	1
	• Make command and control easy in a crisis and clarify the role of resilience partnerships	2
Housing	• Landlord and Tenant Act 1988 (came into force when private rented sector was tiny compared with now)	1
	Ensure that housing legislation deals with poor standards in the private rented sector - require the improvement of privately rented dwellings to Band B or C SAP rating and address housing health & safety risk rating of Housing Act 2004	7
Health protection	• Address issues with health protection in 2 tier areas and between local authorities & PHE	3
	• Health protection legislation is old (eg definition of 'proper officer')	1
	• Protect from major health threats and for example sugar	2
	• Provision of public health vaccination programmes	1
Legislative environment	• Effective, evidence based law, user friendly	1
	• Require Government to disseminate information about legislation	1
	• Consider not only the legislation pertaining to "traditional" population health problems (for example managing housing and infectious diseases) but also laws governing commissioning and data management and their impact on public health practice.	1
	• Bring together current legislation and to make it publicly available in an accessible form including summary guides to legislation with simple messages devolved to local levels, and as a searchable database.	4
Alcohol	• No effective legislation to protect children from the availability of cheap alcohol	5

Improve local powers	<ul style="list-style-type: none"> • Legal architecture to communicate, implement, review, monitor and evaluate impact and effectiveness 	1
	<ul style="list-style-type: none"> • Powers to develop area wide, cross border and multi-agency policies 	1
	<ul style="list-style-type: none"> • Power to make byelaws is greatly limited by the restriction that it cannot be used in connection with anything under other legislation. 	1
Data	<ul style="list-style-type: none"> • What data are public bodies allowed to share for commissioning services? Could this include the judicious use of potentially patient identifiable data? 	3
Equality	<ul style="list-style-type: none"> • Variations between jurisdictions (eg drink drive limits, equality and human rights instruments) 	3
Procurement	<ul style="list-style-type: none"> • Allow organisations to explore different procurement models based on increasing collaboration and integration between providers 	1
	<ul style="list-style-type: none"> • When do I have to go out to open tender for procurement of a service and is this really in the best interests of the population 	1
Health & safety	<ul style="list-style-type: none"> • Common standards to reduce confusion, eg FSA food safety rating is mandatory in Wales & Northern Ireland (soon) but not in England 	2
Diet & nutrition	<ul style="list-style-type: none"> • Enshrine the right to food in domestic law 	1

Appendix 1: current concerns with public health legislation

Problem	Specific difficulties	No of comments	Policy or legal issue
Licensing	Tobacco licensing needed to restrict smuggled tobacco and	2	Policy
	Give local communities more control over where and when alcohol is sold	6	Policy
	Licensing to remove the point of sale promotion of chocolate / confectionery in shops and restrict availability of sugary drinks	2	Policy
	No public health objective for licensing	9	Policy
	Tighter regulation of fast food outlets & food suppliers	4	Policy
Legislative environment	Develop public health law to address the protection and promotion of individual, family and communities - not only individual	4	Policy
	Effective, evidence based law, user friendly	1	Legal
	Have strong central simple messages devolved to local level	3	Legal
	Requirement of state actors (Government - local and local; public bodies; publicly funded services) to promote and dissemination information about public health legislation	1	Legal
	Consider not only the legislation pertaining to "traditional" population health problems (for example managing housing and infectious diseases) but also laws governing commissioning and data management and how these are having an impact on public health practice.	1	Legal
	Bring together current legislation and to make it publicly available in an accessible form including summary guides to legislation, and as a searchable database.	1	Legal
	Investment of adequate funding to implement, communicate and review legislation	1	Policy
	How do we put pressure on private sector to play their part	1	Policy
Planning	Use planning powers to improve the availability of healthy foods/limit availability of unhealthy foods, including amending the current class use list of commercial premises to provide a more common-sense definition of hot food takeaway.	6	Legal
	Planning Inspectorate (answerable to DCLG) make substantively different rulings when processing ostensibly similar Local Development Plans (LDPs) and Supplementary Development Plans (SDPs) due to divergent interpretations of planning laws, and uncertainties regarding the legal status of the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG).	7	Legal

	What is public health role as a statutory consultee on planning decisions? Enable consultations that 'have teeth.	2	Legal
Alcohol	No effective legislation to protect children from the availability of cheap alcohol	5	Legal
	Limit on blood alcohol level of drivers	1	Policy
	Allow local implementation of minimum unit prices	1	Policy
	The alcohol industry is managing the legislative process, we need to consider how change could be taken forward via higher taxation, MUP etc	5	Policy
	Prevent sale of cheap alcohol	1	Policy
Role & structure	Give statutory right of DPH's to give impartial public professional advice without fear of reprisal	4	Legal
	Protection for public health should be embedded into the localism/devolution agenda	1	Policy
	Review statutory public health functions of DPH and clarify their responsibility vis a vis PHE, simplifying accountability and structures	3	Legal
	Protection of the public from bogus public health professionals	1	Legal
	Make command and control easy in a crisis and clarify the role of resilience partnerships	2	Legal
	Reduce money spent on health board health improvement teams to increase money community has to spend on making changes which support wellbeing	1	Policy
Housing	Landlord and Tenant Act 1988 (came into force when private rented sector was tiny compared with now)	1	Legal
	Provision of accommodation for people with TB with no recourse to public funds	1	Policy
	Introduction of compulsory private landlord licensing/accreditation schemes.	1	Policy
	Housing & Planning Bill 2016 does not address rent controls, security of tenure, availability of social housing	1	Policy
	Ensure that housing legislation deals with poor standards in the private rented sector - require the improvement of privately rented dwellings to Band B or C SAP rating and address housing health & safety risk rating of Housing Act 2004	7	Legal
Health protection	Much of health protection legislation quite old e.g defining proper officer	1	Legal
	Protect from major health threats and for example sugar	2	Legal
	Provision of public health vaccination programmes	1	Legal
	Address issues with health protection in 2 tier areas and between local authorities & PHE	3	Legal
Diet & nutrition	Food standards responsive to emerging evidence	1	Policy
	Enshrine the right to food in domestic law	1	Legal

	Control nutritional quality and make producers change their products to find healthy alternatives	3	Policy
	Removal of vending machines in schools selling high fat / high sugar drinks and confectionery.	1	Policy
Health in all policies	An expectation for public health in all policies, and a requirement for government to embed public health impact assessments and health inequalities impact assessments into all new legislation	2	Policy
	Promote healthy environments	1	Policy
	No duty to promote wellbeing (as in Future Generations Act Wales)	2	Policy
Mental health	Equitable regard for mental and physical health	5	Policy
Equality	Protect children and vulnerable groups	1	Policy
	Extend equality legislation to limit the pay differential between the highest and lowest paid by a single employer.	1	Policy
	Variations in using human rights & equality instruments	2	Legal
Improve local powers	The legal architecture to communicate, implement, review, monitor and evaluate impact and effectiveness.	1	Legal
	Address the public mental and physical issues arising from the conflict in NI	1	Policy
	Powers to develop area wide, cross border and multi-agency policies	1	Legal
	Power to make byelaws is greatly limited by the restriction that it cannot be used in connection with anything already covered under other legislation.	1	Legal
Data	What data are public bodies allowed to share in the interests of commissioning more appropriate services for their population? Could this include the judicious use of potentially patient identifiable data?	3	Legal
Health & safety	Environmental health inspection of catering establishments	1	Policy
	Need product safety legislation to cover ecigarettes	1	Policy
	Common standards between jurisdictions to remove confusion (eg over food labelling)	2	Policy
Health inequalities	Remove postcode lotteries regarding access to statutory health and social care services	1	Policy
	Reduce health inequalities	2	Policy
Taxation	More power to devolved governments to use tax to tackle public health issues	1	Policy
	Imposition of levies on businesses selling substantial proportions of processed foodstuffs to offset the costs of treating obesity.	1	Policy
Tobacco	Smoke free environment	1	Policy
	Protect children from effects of second hand smoke	1	Policy

	No smoking in enclosed public spaces	1	Policy
Procurement	Allow organisations to explore different procurement models based on increasing collaboration and integration between providers	1	Policy
	When do I have to go out to open tender for procurement of a service and is this really in the best interests of the population	1	Policy
Devolution	Differences in legislation between 4 nations of the UK,	1	Policy
Legal highs	Position on legal highs	1	Policy
Marketing	Limit promotion of unhealthy foods and other commodities to children under the age of 16 via all contemporary media	1	Policy
NHS	Support to Clinical Commissioning Groups as a mandated service from public health is very nebulous and notions of 40% are not part of law.	1	Policy
Sexual health	Statutory PSHE provision	1	Policy
Transport	Financial incentives to use public transport	1	Policy

Appendix 2: questions asked in the survey

1. Would it be helpful to you if there was an independent review of current public health laws? (Note: this would assess how easy laws are to use, if there any problems in implementation, any areas of confusion and if there are any gaps)
2. Please give up to three examples of any difficulties or confusion with the law or any gaps in the law of which you are aware. (This may be at UK, jurisdiction or regional levels.)
3. How confident are you that you **understand** public health legislation?
4. How confident are you about **using** the laws as they apply to public health in your jurisdiction (England/Wales/Scotland/NI)
5. How confident are you about **using** the laws as they apply to public health in the UK as a whole?
6. What would you expect UK law to do to improve or protect the public's health across the whole country? Please give examples.
7. What would you expect the law to do to improve or protect the public's health at jurisdiction level (England/Scotland/Wales/NI), devolved regional level or local level? Please give examples.
8. Any other comments about public health legislation as it currently stands, the need for an independent review, views on future legislation etc?
9. What type of organisation do you represent?
10. Please tick the country or countries that your organisation represents.