

Public Health Law

Consultation Feedback Report

1. Background to the consultation

The aim of the consultation was to seek islanders' views on the development of a new public health law for Jersey to replace the current Loi (1934) sur la Santé Publique.

The consultation paper provided an overview of Jersey's key public health challenges, namely health inequalities, the rise of non-communicable disease (such as heart disease and diabetes), and the re-emergence and emergence of threats to our health (such as the resurgence of disease like measles, and the increase in antibiotic resistant). The consultation paper also briefly described the potential role of the law in helping to address those challenges.

The consultation paper presented an overview of the proposed key elements and scope of the new law. A number of questions were posed for respondents to consider. The questions focused on matters where consideration is being given to the necessity for, and / or scope of, legal provisions. The questions did not focus on matters where it is already known that legal provisions are required, including where provisions are needed to ensure compliance with international obligations.

For example, the consultation paper referenced health protection matters as these are relevant to the scope of the new law, but there were no associated questions posed as it is given that the new law needs to cover these aspects. Islanders' views will be sought on detailed proposals relating to health protection during a second stage of consultation.

The consultation process

The public health law consultation ran from 15 June to 30 July 2021.

Islanders were invited to submit their response via an online consultation survey, in writing, or via email to a dedicated email address.

A consultation paper setting out key background information was published to assist people in providing their responses to the consultation.

281 respondents completed the online consultation survey with a further 76 respondents submitting comments by email.

2. Consultation findings

A summary of the feedback received is provided below.

Where people answered a question via the on-line survey, the responses to each question are presented as a percentage (%). It is not possible to do so where people responded via email because, in most cases, those respondents only addressed some of the issues raised.

The key issues and themes that arose from the consultation are set out in the next section of the report and are illustrated using a selection of the comments received.¹ These comments are presented in blue. This report does not include an exhaustive list of all points raised or comments submitted due to the number of the comments.

It is also worth noting that a large number of the comments received both in the online survey and in emails did not relate to the questions asked in the consultation document but were rather general reflections about the proposed law.

Note: Limits on the consultation process

The feedback from the consultation process provides valuable insight into respondents' views about the new Public Health Law.

In reviewing the feedback received, it is important to note that this reflects the views of people who responded to the consultation. The feedback is not statistically sound and does not necessarily represent the views of islanders as a whole.

2.1. Improving our health – Health in All Policies approach

The consultation set out proposals intended to ensure that Government public policy promotes public health by assessing the impact of new public policies on health in order to avoid or minimise harm, improve the health of the population and reduce health inequalities between different groups.

The public were asked “should there be a process to evaluate the impact on public health when new policy or legislation is being developed?”

82% of respondents who answered this question thought that there should be a process. Of those who said ‘yes’:

- 71% thought this should be for every new policy or law regardless of the subject area; and
- 29% thought this should only be for new laws or policies which potentially impact public health.

14% of respondents to this question did not agree that such a process was needed and 4% stated that they were unsure.

In the comments provided, some respondents felt that such a process would be necessary to understand the implications of new policy or legislation and / or ensure effectiveness:

“The social determinants of public health are diverse and often overlooked by those without a medical background. This will ensure that the ramifications of all new policies are thoroughly investigated. It will improve public health education and encourage a collaborative approach across all policy areas.”

¹ The comments included within this report are from emails received and online survey responses. Comments have not been amended unless to correct spelling and punctuation for ease of reading, as auto correct facilities were not available as part of the online survey software.

“Unless correct analysis is undertaken to assess health impacts any new policy or legislation is unlikely to be effective for the population as a whole.”

Others highlighted the need for proportionality for any new process to ensure it is proportionate, and to ensure a balance between quality of life with limited interference on people’s autonomy.

“To undertake this process for every law and policy may prove disproportionate, in terms of effort. A parametrised approach would be more pragmatic, where only those laws which may impact public health are required to undertake an assessment.”

“Evaluation of public health should be considered with any new policy or legislation but with a perspective of keeping a high quality of life with as little restrictions as possible.”

“A short screening tool for every policy or legislation, plus more in depth impact analysis for those which impact public health.”

For those who felt a process was not necessary, their concerns broadly related to the administrative burden and resource implications of such a process, or the view that it was something that should already be being undertaken and, therefore, does not require a formal process.

“Impact assessments will require additional managers. This is overall, a waste of resource....”

“The regulatory burden is already stifling innovation and growth creation, adding further compliance costs only makes the island a less competitive environment. The island has better health outcomes than main other countries in Europe already.”

“Assessing and flagging any potential impacts on public health arising from proposed new legislation should be the responsibility of the Health Minister and his/her team. There is no need for an extra layer of bureaucracy to formally review all legislation for potential public health impact.”

“No – I do not think it is required to add such extra bureaucracy into the production of new policies, or laws.”

“The evaluation process mentioned should already be in practice in the minds of the people making these decisions. To not consider public health impact when making all legislative decisions is negligence and does not require a special box ticking operation and quota, just dedicated considerate people.”

The next question was specifically for those people that had answered ‘yes’ to the previous question. They were asked if they thought that the process should be required by law. It should be noted that a greater number of people responded to this question than answered ‘yes’ to the previous question, meaning that some of the responses are from those who did not agree with the proposal in the first place. Therefore, caution should be applied when interpreting the results.

Of those who responded to this question:

- 73% of people felt the process to evaluate the public health impact of policy or legislation should be required by law;
- 20% of people did not agree; and

- 7% were unsure.

The most commonly cited reason for making an assessment process mandatory was the need to ensure that the evaluation process was undertaken and that it was not vulnerable to changes in government over time.

“Requiring an impact evaluation by law emphasises its importance and provides protection for individuals who could potentially be adversely affected.”

“Otherwise it won't be done.”

“If you want the idea to work fully, the requirement must be made a law.”

“If not required by law there is always the possibility impact evaluation is waved if it suits the agenda.”

“Absolutely yes. Politicians come and go, so any decisions proposed must be thoroughly thought through, researched and the impact evaluated and this must be done by not just a handful of politicians.”

Those respondents that didn't agree with the process being required by law expressed the view that whilst the process was important, it should already be being undertaken and, therefore, does not require a legal mandate. Other comments suggested that accountability through scrutiny processes were more appropriate than a legally mandated process.

“I don't believe this needs to be a legal framework.”

“I personally think it shouldn't be necessary to legislate - but it should absolutely be an important part of policy and legislative development. If legislation is the only way to achieve this then I guess it should be.”

“A law should not be necessary, people need to be held accountable if their negligence causes harm, a legal box ticking exercise to obfuscate responsibility is not a solution to bad decision making.”

“No. We should not be mandating such assessments by law. Ministers are ideally scrutinized by their peers in the assembly. This should suffice to challenge propositions/actions that do not have good justification, or unexpected harms.”

“I believe this can be achieved under the term 'best practice' & scrutiny panels.”

2.2. Taking action on non-communicable diseases

The consultation looked at non-communicable diseases (heart disease, diabetes etc.) and the potential role of legislation in reducing the impact of such diseases through enabling action to manage associated risk factors. The consultation provided examples of how this was achieved in law in other jurisdictions such as Canada and Australia.

People were asked if the new law should enable a declaration to be made that a particular non-communicable disease was of significance to public health. (This would be done in order to enable actions to manage or reduce associated risks known to cause the disease).

Of the people who responded to this question:

- 50% slightly or strongly disagreed;
- 40% slightly or strongly agreed; and
- 10% were unsure.

“Non-communicable disease is often determined by social factors and has an enormous impact on the overall public health and life expectancy of the general population. Often it is preventable and the public need evidence-based health education programmes to reduce the burden of disease. This is the responsibility of Public Health. Prevention is always better than cure.”

*“However I have no issues with a law that describes allowing the health minister or their officers to *propose issues* as significant, to the states assembly to be granted such an elevated status. Including some formal mechanism around maintaining a register, and regular reporting on what is being done to tackle that issue.”*

“Most of these health issues are avoidable through good diet and exercise. We should do everything in our power to reduce the amount of these health issues.”

For some who did not agree, this was on the basis that non-communicable diseases were about health at an individual level and, therefore, not of relevance to public health.

“This is not a decision to be made by the legislature. I cannot state strongly enough that it is not the executive or legislatures business to make decisions on personal health.”

“There is no need for the law to be involved with people's freedom of choice. Non-communicable diseases are mostly lifestyle.”

Others felt that non-communicable diseases relate to lifestyle factors or an individual's personal choices; matters in which government should not interfere. Some hold the view that the best approach to addressing non-communicable diseases is to increase awareness and understanding through education.

“Some of these illnesses could be caused by own choice - by individuals with capacity, with own consent and with full awareness of the potential outcomes. We cannot take away personal choice and responsibility. There is no need for this - if there are concerns with a specific area then education and awareness are always the best solutions.”

“All illnesses and diseases have an impact on everyone due to the support that person needs and therefore the impact that has on costs, taxes, social contributions etc so everything has to be considered. People however have the freedom to live their lives as they choose but hopefully with all the information and education to know how best to do that to live a happy and healthy life.”

“A non-communicable disease is a matter that all individuals should be self responsible for managing. It is not the responsibility of law to interfere on every aspect of an individuals life choices (e.g. diet or exercise). The only exceptions that may be outside the control of an individual are those that relate to addictive substances, such as tobacco and alcohol and

these consumables are already controlled along with illicit drugs. Public education is and should remain the primary strategy.”

People were then asked if, following a declaration that a specific non-communicable disease is of significance to public health, the law should provide for government to develop codes of practice for industry sectors, certain activities or community groups to prevent or reduce the disease.

Of those responding to the question:

- 62% disagreed or strongly disagreed;
- 32% agreed or strongly agreed; and
- 5% were unsure.

Again, the main themes emerging from the comments of those who disagreed were about personal choice and autonomy.

“Law should not be able to dictate what should be an informed personal decision. If there are Laws around this then they should protect the individual sovereignty of personal choice.”

“The government’s job as far as Health interventions are concerned is to advise not to dictate.”

“I don’t like the idea of laws being imposed on organizations unless there are matters of safety involved.”

“Legislating for non-communicable disease is unnecessary. It strays into the areas of personal choice and autonomy. Public Health education should be sufficient, combined with individualised discussion with GP/Health Advisors.”

“Individuals should be provided with guidance with regards to health matters but regulation or codes of practice forcing change are not desirable in a free and open society. Guidance may be wrong or change over time and codes of practice enforce outcomes that may, on reflection, be non-desirable. I am deeply concerned about an over bearing approach to public health measures in a largely well balanced community already.”

It was suggested that legislation was unnecessary as measures should already be in place.

“Why do you need to “declare” these conditions of “significance to public health” to be able to provide codes of practice to offer help and support? Surely as we know these are conditions that affect not only individuals health, but impact the health system and have socioeconomic effects, we should have codes of practice and support in place already?”

Some of those who were supportive of the proposals also highlighted the role of personal choice and others emphasised the importance of a collaborative approach with all stakeholders in the development of codes of practice.

“I agree - measures taken to mitigate the visibility of tobacco products and highlight the dangers of things like smoking is a good idea (but people will CHOOSE and THAT’S the point).”

“If a non-communicable preventable disease such as cancer, heart disease or diabetes is of significance then absolutely the government should support the reduction and prevention of these diseases.”

“As long as there is thorough communication and discussion with people in that sector through meetings where it wouldn’t destroy their business and livelihoods of the community. There is risk and danger in everything we do, it’s up to the individual to decide the activities with risk of disease, as long as audience education is available to these individuals of the risks.”

“voluntary codes of practice may assist with improvement but all stakeholders must be represented in preparing and agreeing them. at no time should such codes even be considered to become law in the future. Overkill!”

2.3. Understanding our population’s needs

The final questions focused on use of data to better understand the health and wellbeing of the population by undertaking a Jersey Needs Assessment (JNA). A JNA would enable analysis and understanding of the success of public health interventions, where inequalities exist and the opportunities for reducing those inequalities; as well as ensuring that government priorities reflect actions that will support better health and wellbeing outcomes for islanders.

The consultation asked how important a JNA is to evaluate the health needs of Islanders.

Of those who responded to this question:

- 58% of felt it was very important or fairly important;
- 32% felt it was not very important or not important at all; and
- 10% said they were unsure.

A number of comments from those in favour of a JNA highlighted its role in planning and informing priorities:

“A needs assessment is important to inform capacity planning and demand management within the health system.”

“If you don't have it how can you plan or target anything?”

“A periodic consultation enables public officials to identify the needs of the people and to ensure they are met. Therefore, a legal backing is needed for such a tool to work within the law.”

“The collection of appropriate and accurate information is clearly of significant importance. It is also important that the information is sufficiently broad in scope and certainly should cover areas including both physical and mental health and well-being. A Jersey based needs assessment is also appropriate and a sensible step-forward.”

“Evaluation of health needs is crucial - but whether this needs to take a specific form I am not convinced. Unless by JNA you mean the general concept of health needs being assessed and monitored - in which case that is Very important.”

Other comments focused on the JNA's role in providing a holistic picture of the needs of the entire population both now and into the future.

"Such an assessment process can then reach every corner of society as it must."

"Jersey has a significant number of ethnic minority communities whose health needs should be properly assessed."

"We need to ensure we are prepared to support society with its needs in the future as well as at present so yes we do need to evaluate but I do feel we spend too long and waste too much money evaluating and not doing."

Some of the respondents who stated that a JNA is not important expressed the view that, the relevant information already exists; that the new process may create delays; and that it was an unnecessary cost.

"The census would give you this information if the correct questions were asked. It's also well documented that many health needs are not being met /services are not adequately resourced. You dont need another assessment to tell you that."

"Sufficient information already exists and is not acted upon - this could mean adding another process that delays necessary action."

"Jersey has survived perfectly well so far without this. This is an unnecessary cost, spend it on getting the New Hospital built instead."

Others raised concerns that a JNA would draw on personal data, with associated privacy implications.

"I am hugely concerned at the level of surveillance, monitoring and data collection that could be required for this. NO PRIVATE PERSONAL INFORMATION or DATA should be collected that can ever be identified to an individual in any way."

People were then asked whether a JNA should be a legal requirement. Of those who responded to the question:

- 43% agreed that a JNA should be required by law;
- 37% disagreed; and
- 20% were unsure.

Comments that were broadly in favour of the JNA being a legal requirement included:

"Surely it is the starting point? How else can you develop efficient, cost-effective policies and action?"

"Yes on the basis that the Jersey Needs Assessment is to promote islanders' needs and to make sure everyone has access to healthy food and a healthy lifestyle."

"only if it is adopted properly and is transparent and is used for whether really needed, such as mental health/wellbeing"

Some respondents thought a JNA should not be required by law because they believed that the process should already be happening, whereas for others expressed concerns about privacy and autonomy:

“No – government does not need to be prescriptive about producing such assessments. There is probably already the powers within government to collate such data, and create these assessments. There should only need to be a ministerial will and civil service resource to conduct such a review. Arguably such trends should move relatively slowly, so for government to commit to one such JNA review every 5-8 years should be sufficient.”

“I question as to why the requirement should be imposed by statute - its production and publication is surely just a matter of sound policy.”

“Not at the expense of our liberties or freedoms. An assessment and a report is fine. Powers to ameliorate the perceived needs by empowering public health to remove our choices or curtail our activities is most definitely not.”

“I would be concerned about privacy, personal autonomy, choice if this was legislated.”

2.4. General comments

The last question of the consultation asked people to share any further comments they had about a new public health law.

The majority of general comments received, whether via the on-line survey or via other means including a ‘round robin’ email, focused on the following concerns:

- The potential for the new law to:
 - be used to introduce mandatory vaccinations (particularly the Covid-19 vaccines) and medical treatment;
 - infringe on civil liberties and interfere with personal choice and freedom.
- The use of the wording ‘*where voluntary co-operation is not forthcoming*’² and the reference to ‘*property*’³ within the consultation document which generated associated concern that this may be linked to mandatory vaccination / medical treatment or infringement of civil liberties.

“There is a risk that the final law draft contains disproportionate powers around access to private premises and domestic life within the island. As a preference, stronger border measures such that infectious diseases can be contained at the perimeter would be preferable to any such domestic intrusions into ones right to private family life.”

“There are some parts of this new law which are deeply worrying and disturbing such as Section 34 and the wording used “where voluntary cooperation is not forthcoming” as an example. This proposed new law also makes references to gain access to private property or dwellings as well which is totally wrong and unacceptable!”

² See paragraph 34 of the consultation document (first bullet point)

³ See paragraph 34 of the consultation document (third bullet point)

“Section 34 “where voluntary cooperation is not forthcoming” needs to be removed from the law as well as any reference that gains access to private property or dwellings.”

A small number of respondents expressed frustration about the generality and lack of detail in the consultation paper.

“This consultation is very wide, and insufficient details have been provided.”

Whilst some provided general support for the issues presented in the consultation paper.

“We must not be shy in adopting policies and procedures already implemented in other jurisdictions if they have been seen to be effective. For example that produced by Professor Michael Marmot such as on Health Inequalities.”

3. Next steps

The feedback from the consultation will help inform provisional decisions on issues explored in the consultation paper. Law drafting instructions for a new public health law will then be developed.

These drafting instructions will form the basis of a second public consultation later this year. This second consultation will provide more detailed proposals about all aspects of the new law.

Feedback from the second stage of consultation will be used to further refine proposals prior to law drafters commencing work.

Appendix 1 - Survey Responses

Improving our health – Health in All Policies Approach

2. Should there be a process to evaluate the impact on public health when new policy or legislation is being developed?				
Answer Choices			Response Percent	Response Total
1	Yes – for every new policy or law regardless of subject area		59%	161
2	Yes – for new policies or laws which potentially impact public health		24%	66
3	No		14%	38
4	Not sure		3%	10
			answered	275
			skipped	6

3. If you answered yes, should this process be required by law?				
Answer Choices			Response Percent	Response Total
1	Yes		73%	184
2	No		20%	51
3	Not sure		7%	18
			answered	253
			skipped	28

Taking action on non-communicable diseases

4. How much do you agree or disagree that the law should enable a declaration that a particular non-communicable disease (such as heart disease, diabetes) is of significance to public health?

Answer Choices			Response Percent	Response Total
1	Strongly agree		21%	56
2	Slightly agree		19%	53
3	Slightly disagree		7%	20
4	Strongly disagree		43%	117
5	Not sure		10%	26
			answered	272
			skipped	9

5. How much do you agree or disagree that once declared as of significance to public health, the law should allow government to develop codes of practice for industry sectors, certain activities, or community groups to prevent or reduce the disease?

Answer Choices			Response Percent	Response Total
1	Strongly agree		12%	32
2	Slightly agree		19%	53
3	Slightly disagree		7%	18
4	Strongly disagree		57%	156
5	Not sure		5%	14
			answered	273
			skipped	8

Understanding our population's needs

6. How important do you think it is for Jersey to have a Jersey Needs Assessment that evaluates the health needs of Islanders and whether these are being met?				
Answer Choices			Response Percent	Response Total
1	Very important		33%	91
2	Fairly important		25%	69
3	Not very important		13%	35
4	Not at all important		19%	51
5	Not sure		10%	27
			answered	273
			skipped	8

7. Do you think the new legislation should require a Jersey Needs Assessment to be produced?				
Answer Choices			Response Percent	Response Total
1	Yes		43%	119
2	No		36%	100
3	Not sure		20%	55
			answered	274
			skipped	7