Consultation

Public Health Law

SUMMARY

The Government of Jersey is seeking views on the development of a new public health law for Jersey to replace the current Loi (1934) sur la Santé Publique.

This document provides an overview of key issues which are under consideration, as opposed to a detailed description of the law. More detailed information will be provided at a later date.

Section 1: Background: provides an overview of Jersey's public health challenges and the role of the law in helping to address those challenges.

Section 2: Proposed new law: provides an overview of the proposed key elements of the new law and sets out questions for stakeholders to consider.

The questions are focused on matters which are subject to ongoing consideration, as opposed to matters which are broadly settled because they arise from, for example, requirements to comply with international obligations.

WAYS TO COMMENT OR ASK QUESTIONS

You can comment by completing the online survey or via email or post using the details below.

Email: publichealthlaw@gov.je

Post: Public Health Law – Public Consultation
Strategic Policy, Performance and Population
Government of Jersey
19-21 Broad Street
St Helier
Jersey
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Closing date for comments: Friday 30th July 2021

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☐ Yes, attributed

☐ Yes, anonymously

☐ No

Name, email address and organisation to attribute comments to, where applicable:

SECTION 1: BACKGROUND

Strengthening the role of public health in Jersey

Improving the health and wellbeing of Islanders

1. Good health is something we all value. Our own health matters and so does the health of our community, because only a healthy community can be a happy, thriving and prosperous community.

2. 'Health' can mean different things to different people but broadly speaking it refers to our state of physical, mental and social well-being and not merely an absence of disease or infirmity.[1] When looking to measure how good our health is, we typically tend to focus on life expectancy and, whilst this is an important measure of health, it is also necessary to measure the quality of life by considering how long a person can expect to live in good health. This is known as healthy life expectancy.

3. A number of factors affect our health, such as our genetics and lifestyles. There are also the social and environmental conditions in which we are born, grow, live, work, and age – these are often described as the social determinants of health. Whilst good quality health care is a determinant of health, most of the social determinants of health lie outside the health care system, such as good quality education, sufficient income, good working and employment conditions and adequate housing. The social determinants are considered more important than health care in influencing health.

Public health's role

4. According to the World Health Organisation ('WHO') *"Public health refers to all organized measures (whether public or private) to prevent disease, promote health and prolong life among the population as a whole. Its activities aim to provide conditions in which people can be healthy and focus on entire populations, not on individual patients or diseases."*[2]

5. Three principles underpinning a public health approach can be highlighted from this definition:

    - a focus on the health of the population as a whole;
    - a sense of collective responsibility and organised action; and
    - an emphasis on creating good health opportunities and preventing ill health.

[1] World Health Organisation definition - Constitution (who.int)
[2] WHO Regional Officer for Europe - Strengthening Public Health Capacity and Services in Europe: A Concept Paper Microsoft Word - WHO_PH Concept Paper v 11.10.2011

6. Public health work is often thought to consist of three distinct but overlapping areas:
    - health improvement - which means promoting healthy lifestyles and healthy environments as well as tackling inequalities, for example, smoking cessation programmes;
    - health protection - which means prevention, preparedness for, screening and response to infectious diseases and other threats to health, for example childhood vaccination programmes; and
    - health service improvement - which involves providing public health expertise and support to help shape the effective planning and delivery of healthcare, for example evaluating a service to see which intervention or service is most effective in improving health for particular groups of people.

7. All three areas are supported by public health intelligence (information and data) which includes:
    - the surveillance and monitoring (the continuous, systematic collection, analysis, and interpretation of health-related data) of population health and the determinants of health and wellbeing;
    - support for evidence-based practice, from research; and
    - assessment of the effectiveness of policies, programmes and services.

8. Public health, although less visible to the public than hospitals and GPs, is absolutely crucial to improving for improving people's health, both individually and across the whole population, reducing health inequalities (the difference in health status between individuals or groups), and the future sustainability of our health care service, as envisioned by the Government of Jersey' recently published *Jersey Care Model*[3].

Public health challenges

9. Generally, we are living longer and enjoy better health. However, if we want to ensure that healthy life expectancy increases, then there are challenges to be addressed.

Inequalities in health

10. Just looking at a generalised picture of the health of our population means we will not see the whole picture. Averages hide the fact that the benefits of good health are not shared by all.

11. Differences in the health of individuals and groups are called health inequalities. These differences can be due to our genes, our ethnicity, or the choices we make, for example whether we eat a healthy diet or smoke. However, the social determinants of health also have an important influence on differences in our health. Where these

[3] Jersey Care Model for Health and Community Services (gov.je)

determinants lead to systematic differences in the people's health, these health inequalities are unfair and unjust because they are avoidable. They do not occur randomly or by chance. They are socially determined by circumstances largely beyond an individual's control. These circumstances disadvantage people and limit their chance to live longer, healthier lives.

12. When health inequalities are mapped across a population it highlights that not only do the poorest people have the poorest health. The richest people are slightly healthier than the second richest people, who are in turn slightly healthier than the third richest, etc. Social inequalities in health are therefore a matter of concern for all of us.

13. We know that there are health inequalities in Jersey. For example, there are differences in levels of childhood obesity depending on where children live in Jersey and whether they go to a fee-paying or non-fee-paying school; also the likelihood of an Islander smoking will depend on their job.[4] In 2019, the Government of Jersey published the Jersey Health and Wellbeing Framework (JHWF) which sets out a system for working across government and the wider community, to address the root causes of preventable illnesses such as heart disease, diabetes, anxiety and cancer. Understanding where further inequalities may exist and what the causes are, in order that they can be addressed, is a key commitment of the Government as set out in the JHWF and reflects the positions of many highly developed and affluent nations, including the UK, Canada, Australia and Norway.

The rise in non-communicable diseases

14. Public health practice traditionally focused on communicable diseases (diseases that can be spread from one person to another, for example tuberculosis) and environmental health (which is focused on the natural and built environment which affects our health, for example: quality of drinking water). Although communicable diseases and environmental health require an ongoing response, neither are major causes of death and illness in Jersey. Today, the major causes of ill-health are noncommunicable diseases (diseases that are not passed from person to person), such as cardiovascular disease, diabetes, cancers, mental illness and addictions.

15. It is estimated that between 2016 and 2036[5], Jersey will see the following increases in ill health:
    - diabetes up by 42%
    - stroke up by 64%
    - dementia up by 100%
    - chronic kidney disease up by 74%
    - chronic obstructive pulmonary disease up by 50%

[4] Government of Jersey (2020) A Health and Wellbeing Framework for Jersey
[5] Statistics Jersey, 2017. Disease projections 2016-2036 report. Available at: https://www.gov.je/News/2017/Pages/DiseaseProjections2016to2036.aspx NB: -These projections were purely based on demographic changes and assumed a constant age specific rate of each condition.

- mental ill health by 29%.

16. Many of these diseases are related to four main risk factors:
    - poor diet
    - misuse of alcohol
    - smoking
    - lack of physical activity.

17. There is also an important relationship between mental and physical health. Poor physical health increases the risk of developing mental health problems, and vice versa. Mental health problems are common in people with longer-term conditions Additionally certain groups in a population are exposed to adverse social, economic and environmental circumstances and therefore are also at higher risk.

18. These risk factors can be changed, which means that many of the incidents of illness are preventable. Addressing these risk factors, and the social and economic conditions which affect them, is key to improving and protecting the health for all Islanders. Furthermore, it is the most cost-effective way of reducing demand on our health services.

Re-emerging and emerging threats to our health

19. Whilst, as noted earlier, the threats from infectious disease and environmental health are not generally major causes of death at this point in time, the Covid-19 pandemic has shown the ongoing necessity to detect and control infectious diseases.

20. Furthermore, we need to consider the resurgence of diseases previously thought to be in decline, for example, tuberculosis and measles; new strains of super-bugs that are resistant to antibiotics; the risk of bioterrorism and sudden major events which may cause widespread chemical and radiological contamination. Protecting our health remains a critical endeavour, requiring increased efforts in preparedness, and modern and flexible tools to respond effectively.

The role of law in public health

21. Many of the 20th century public health achievements – motor vehicle safety, control of infectious diseases, safer workplaces and tobacco control – have been realised in part through legislative controls.

22. The law can be used to establish standards around treating disease, respond to health threats and create conditions that allow people to lead healthier lives. It can do this by establishing public health functions and powers; creating safeguards and protections for when those powers are applied; allowing the collection of information; and providing for the monitoring and regulation of certain activities. As such, public health law can provide a legal foundation, and a framework, for public health activity.

23. In Jersey, the core public health legislation is the Loi (1934) sur la Santé Publique ("the 1934 Law"), which provides for the role of the Medical Officer of Health and limited powers to manage and control the spread of infectious diseases. It is supported by a limited range of other primary and subordinate legislation dealing with health protection at our borders, in the environment and the community.

24. The 1934 Law is from a time when life expectancy was lower, diseases such as cholera were common, and housing and sanitation was only of a basic standard. As such, it does not provide the powers necessary to respond to modern public health incidents or public health emergencies, as acutely highlighted by the Covid-19 pandemic. Nor does it further the public health agenda by placing statutory duties on Government to consider or address preventable illnesses and health inequalities.

SECTION 2: PROPOSED NEW LAW

25. It is envisaged that the new public health law will introduce a new statutory role of Director of Public Health, modernise existing health protection arrangements and update the reporting requirements related to notifiable conditions.

26. In addition, consideration is being given to broadening the scope of the legislation to incorporate health improvement provisions to help address the public health challenges we now face as a society.

27. Whilst the new law may be broader in scope, it is not the intention to capture areas of public health policy or practice where other fit-for-purpose legislation is in place (for example, environmental public health and animal health). Attempting to incorporate these laws into one new law would arguably be an unnecessary use of resources to achieve minimal additional value for Islanders.

Protecting our health

28. Public health legislation can help secure and sustain public health by defining the responsibilities of the government and organisations and the rights of individuals.

An all-hazards approach

29. Due to the changing nature of the risks and hazards that threaten our health, limiting health protection provisions to infectious and contagious disease - as per the 1934 Law - would not enable us to protect the health of Islanders adequately or effectively.

30. It is proposed that the new law should take a broad 'all-hazards' risk-based approach to public health protection i.e. the scope of health protection matters in the law will be

widened to encompass a range of hazards, in so far as those hazards present a significant risk to public health.

31. The WHO's International Health Regulations 2005 (IHRs) define 'disease' as an illness or medical condition caused by infection or by contamination (for example, chemical or radiological). The purpose of the IHRs is to prevent, protect against and control the spread of disease and to provide a public health response that is appropriate to the risk whilst avoiding unnecessary interference with international traffic and trade.

32. The IHR's apply to Jersey and if we are to comply with them, our new law should provide the powers to protect people's health from, for example, the aftermath of a chemical spill, an outbreak of tuberculosis, or a global pandemic.

Improving our ability to manage public health risks

33. Protecting public health requires flexible powers that allow us to respond to a very wide range of circumstances, be that day-to-day management of small-scale incidents (for example an outbreak of tuberculosis) or large-scale outbreaks where disease or contamination could have much wider implications. It is proposed that a new public health law for Jersey should help us effectively address these issues by:

Enhancing the framework for routine public health action

34. It is proposed that the law will introduce a framework for public heath action which:

    - enables action to be taken in situations where infection or contamination presents, or could present, significant harm to human health, and where voluntary cooperation is not forthcoming;
    - provides adequate powers that, where necessary and appropriate, enable restrictions or requirements to be imposed in order to protect peoples' health;
    - clearly defines the circumstances in which these powers can be applied – i.e. in relation to people, property, things or premises, plus the associated criteria; and
    - provides appropriate safeguards to protect those who are subject to health protection powers.

Introducing public health emergency powers

35. The Covid-19 pandemic exposed significant gaps in Jersey's legislative powers for responding to major public health risks. Due to the absence of a suitable legal framework, during 2020 and 2021, numerous pieces of legislation needed to be developed, at pace and with limited time for consideration by Ministers and the Assembly. This is clearly not a preferred model for the management of public health emergencies.

36. The new public health law presents an opportunity to learn from Covid-19 and improve our state of preparedness and our ability to respond to future public health emergencies. It is proposed that the new law will:

    - introduce a statutory requirement on the Minister/s or the Director of Public Health to develop and maintain preparedness plans for public health emergencies;
    - provide a broad range of powers for use in response to public health emergency situations;
    - establish an appropriate threshold and clear accountability for use of those powers; and
    - provide appropriate safeguards to protect people who are subject to those powers.

Border health protection

37. Being able to act at our borders to manage public health risks is important. Current border health protection measures focus on travellers and crew; however, we need to be confident that our border control measures are sufficient to protect the wider community from public health threats.

38. The current legal framework for managing infectious diseases at our borders is provided by the Public Health (Vessels and Aircrafts) (Jersey) Law 1950, the Public Health (Aircraft) Order 1971 and the Public Health (Ships) Order 1971, which collectively provide for:

    - powers of entry and inspection of aircraft or ships;
    - examination of any person suffering from or exposed to an infectious disease;
    - quarantine of any person suffering from or exposed to an infectious disease;
    - restriction on people boarding or leaving aircraft or ships; and
    - detention of aircrafts or ships.

39. Whilst these powers are extensive, work is nevertheless required to bring the law into line with our obligations under the IHRs. We need to ensure we have the necessary powers for emergency situations (such as during a pandemic); and that we adequately protect individuals subject to such powers.

Improving our health

40. The following section sets out a number of areas where legislation could, and in other jurisdictions has, been used to help improve our health and influence wider factors which affect our health.

<u>Health in all policies approach</u>

41. The social determinants of health (those factors outside of healthcare) can affect people's health for good or ill. Nearly all these determinants are influenced by public policy across areas as diverse as housing, education or transport. The way public policy is designed may potentially determine if people's health is protected or damaged.

42. A way to ensure that public policy promotes public health is to assess the potential impact that new policies will have on health in order to avoid or minimise harm, improve the health of the population and reduce health inequalities between different groups.

43. This approach is called 'Health in All Policies'. It supports government and others to address the social determinants of health (which are also key drivers of health inequalities) as it requires collaborative working across policy areas.

44. Adopting such an approach could help us address many of the public health challenges outlined in this paper and ultimately reduce health inequalities. It could reduce the potential for policies to be harmful to health and could improve understanding of how poor health develops and how it can be prevented.

45. A method called Health Impact Assessment (HIA) is often used to support an overall 'Health in All Policies' approach. HIA is a process which requires a Minister, or another person, to consider, when developing any new policy: if, or how, that policy impacts on the population's health; whether that impact will be beneficial or detrimental; and what steps should be taken to reduce any harm and promote benefit. HIAs are also an important mechanism for understanding the impact of a policy on health inequalities, by identifying how different groups of people i.e. children, people with disabilities, black and minority ethnic groups, may be affected and considering, in particular, how to maximise the benefits to groups with poorest health, and mitigating the effects on those who will be disadvantaged.

46. In terms of non-communicable diseases, there are clear links between policy decisions in sectors such as agriculture, energy, housing and transportation and the risk factors for disease. These include, for example: agricultural policies which promote healthy food production; energy and housing policies which relieve fuel poverty and reduce the risk of respiratory and heart diseases; and transport policies which facilitate physical activity, helping to combat rates of obesity and diabetes.

47. HIAs can be a useful tool when used proportionately as part of the policy making process. A HIA may be undertaken in isolation in order to examine how a policy, or proposed policy, impacts on the health of people, or a HIA may form part of a broader impact assessment process that includes environmental impact and any impact on the rights of children; indeed, it will often be the case that a policy which impacts health – whether to the benefit or detriment of people's health – impacts the environment and children's rights or vice versa.

Consultation Questions

Q2: Should there be a process to evaluate the impact on public health when new policy or legislation is being developed?

☐ Yes – for every new policy or law regardless of subject area

☐ Yes – for new policies or laws which potentially impact public health

☐ No

☐ Not sure

Comments

Q 3: If you answered yes, should this process be required by law?

☐ Yes

☐ No

☐ Not sure

Comments

<u>Taking action on non-communicable diseases</u>

48. Reducing the impact of non-communicable diseases (for example, heart disease and diabetes) requires coordinated efforts across government and other sectors. Legislation alone is not the answer, but, as experience with tobacco control has shown, appropriate legislative provisions can support effective public health action.

49. Historically, the law has been used to manage specific disease threats or issues, such as alcohol or tobacco, however, in jurisdictions such as Canada and South Australia, public health law provides for a more flexible approach to the management of emerging risks associated with non-communicable diseases.

50. Under the British Columbia Public Health Act (2008), Government can bring forward 'health impediment' regulations which place restrictions on activities that may result in long-term, cumulative exposures to chemicals or other hazards. To date, regulations have been introduced to regulate trans fats in restaurants and cafes, and tanning services for children. Consideration is also being given to developing regulations that restrict access to vending machines with unhealthy food by children, or advertising of unhealthy food to children.

51. The South Australian Public Health Act 2011 provides the Minister of Health with the power to declare a particular non-communicable disease to be of significance to public health, allowing for the development of non-mandatory codes of practice in relation to preventing or reducing that disease. Such codes may relate to an industry or sector (e.g. supermarkets), a section or part of a community (e.g. children) or an activity, undertaking or circumstance (e.g. serving alcohol). They may also relate to goods, substances and services; advertising and marketing; manufacturing, distribution, supply and sale; building and infrastructure design; or access to certain goods, substances or services. A report is then published to highlight who is complying with the code.

52. These two laws demonstrate the potential for legislation to creatively and flexibly regulate or control activities that impact the occurrence of non-communicable disease as and when that impact is understood. Should the principle of providing a mechanism for taking action on non-communicable diseases be supported, then work to develop an appropriate model for Jersey, (e.g. how a decisions are made and by whom, and what action can be taken) will be undertaken with key stakeholders.

Consultation Questions

Q4: 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?

- ☐ Strongly agree
- ☐ Slightly agree
- ☐ Slightly disagree
- ☐ Strongly disagree
- ☐ Not sure

Comments

Q5: 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 practise for industry sectors, certain activities, or community groups to prevent or reduce the disease?

- ☐ Strongly agree
- ☐ Slightly agree
- ☐ Slightly disagree
- ☐ Strongly disagree
- ☐ Not sure

Comments

Key Enablers for Public Health

Leadership

53. A new statutory post of Director of Public Health ("DPH") will be established in the new public health law replacing the existing Medical Officer for Health ("MOH") role. The move to a DPH is designed to ensure a broad range of public health skills and experience are applied to the role and reflects the global shift away from a purely medicalised model of public health.

54. The professional body for the public health profession, the Faculty of Public Health of the Royal Colleges of Physicians, has recognised that public health specialists do not need to be doctors, if they can demonstrate a similar level of knowledge and competency, and meet accreditation requirements, which are equivalent to those set for doctors as specialists by the General Medical Council.

55. Retention of a statutory senior public health role in the law underscores the importance of public health in government and society and ensures high level leadership and advocacy to improve, promote and protect public health.

56. The law will be updated to clearly articulate the legal powers, duties and functions of the DPH, including the requirement to act as principal adviser on public health to the Council of Ministers. The DPH will also be required to publish an annual report on the state of public health in Jersey. This will not preclude the DPH from publishing other reports on issues of public health concern as they arise.

57. The law will also provide for a Deputy Director of Public Health ("DDPH") who will act in the absence the DPH. The DPH will be able to delegate legal powers, duties or functions to the DDPH.

Information

58. Achieving public health objectives requires accurate and timely information. Information provides the basis for all public health policies, programmes and services; furthermore it allows government and others to respond to emerging threats. Surveillance and monitoring of the health of the population and of health risks are key areas of public health activity that provide the evidence required for effective action.

59. Surveillance and monitoring in this context means the continuous, systematic collection, analysis and interpretation of health-related data.

Information for protecting our health

60. Statutory notification of infectious diseases (a legal requirement for certain people to report the existence of certain diseases) has been a crucial health protection measure in Jersey since the introduction of the 1934 Law, in common with many other jurisdictions.

61. The purpose of notification is to enable quick investigation and response to cases of infectious disease that pose, or potentially pose, a risk to human health. In order for a response to be effective, notification needs to be timely. Notification data can shape policy and practice such as identifying the need for new interventions (e.g. outreach for specific groups), informing the planning of healthcare services or monitoring the effect of existing interventions (e.g. immunisation).

62. It is proposed that a new law retains the statutory requirement for notification of certain conditions, but does so in a modern and flexible framework that:

    - requires notification of a broader range of threats to public health (in line with proposed all-hazards approach);
    - better defines who is under a duty to report;
    - specifies timeframes and provide flexibility on methods of reporting (to allow for technological changes);
    - creates flexibility with regard to what information is to be reported; and
    - where necessary, introduces measures to ensure notification takes place.

Understanding our population's needs

63. In order to effectively respond to the needs and challenges facing Jersey residents we must first understand what those needs and challenges are. As set out above, the

Jersey Health and Wellbeing Framework provides for the development of a data-driven needs assessment process, the Jersey Needs Assessment.

64. The Jersey Needs Assessment will focus equally on physical and mental health. It will collate what we know from local data and bring together a range of partners from across government, the third and private sectors to agree a comprehensive picture of the health and wellbeing of the Island's population. This will support an analysis of what is and is not working well, where inequalities exist and where opportunities exist for reducing those inequalities. This should help to ensure that priorities reflect what will lead to the best health and wellbeing outcomes.

65. This is a common approach throughout the UK where the process is known as a Joint Strategic Needs Assessment (JSNA) and is a legal requirement for local authorities to undertake.

Consultation Questions

Q6: 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?

- ☐ Very important
- ☐ Fairly important
- ☐ Not very important
- ☐ Not at all important
- ☐ Not sure

Comments

Q7: Do you think the new legislation should require a Jersey Needs Assessment to be produced?

- ☐ Yes
- ☐ No
- ☐ Not sure

Comments

Q8. If you have any additional comments on any aspects of this consultation, please provide them here.

Comments

Strategic Policy, Planning and Performance Department
Public Health Law consultation
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You have the right to request that we restrict the processing of your personal information. You can exercise this right in instances where you believe the information being processed is inaccurate, out of date, or there are no legitimate grounds for the processing. We will always seek to comply with your request but we may be required to continue to process your information in order to comply with a legal requirement.

You can ask us for a copy of the information we hold about you

withdraw your consent to the further processing of your personal data. However, this may cause delays or prevent us delivering a service to you. We will always seek to comply with your request but we may be required to hold or process your information in order to comply with a legal requirement. **You can ask us to correct or amend your information** You have the right to challenge the accuracy of the information we hold about you and request that it is corrected where necessary. We will seek to ensure that corrections are made not only to the data that we hold but also any data held by other organisations/parties that process data on our behalf.	You are legally entitled to request a list of, or a copy of any information that we hold about you. You can submit a subject access request (SAR) using our online form. However where our records are not held in a way that easily identifies you, for example a land registry, we may not be able to provide you with a copy of your information, although we will do everything we can to comply with your request.
Complaints	
You can complain to us about the way your information is being used If you have an enquiry or concern regarding how the Strategic Policy, Planning and Performance Department processes your personal data you can: Telephone: +44 (0)1534 447923 Email: onesppp@gov.je Strategic Policy, Planning and Performance Department 19 – 21 Broad Street St Helier Jersey JE2 3RR **Or you can also complain to the Central Data Protection Unit about the way your information is being used** Telephone: +44 (0)1534 440514 Email: dpu@gov.je Central Data Protection Unit Jubilee Wharf 24 Esplanade St Helier Jersey JE2 3QA	**You can also complain to the Information Commissioner about the way your information is being used** The Office of the Information Commissioner can be contacted in the following ways: Telephone: +44 (0)1534 716530 Email: enquiries@oicjersey.org Office of the Information Commissioner 2nd Floor 5 Castle Street St Helier Jersey JE2 3BT