

Consultation Response Form



Introduction

Being transparent and providing accessible information to individuals is key to the Department of Health's (DoH) commitment to building trust and confidence in our ability to process the information you share with us.

It is important therefore to note that your response, along with all other responses to this consultation, may be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

How will your information be used and shared?

The information you provide will be processed to generate a report, which may be used by a Health Minister to help inform decision-making on policy proposals to inform a new Public Health Bill. It will be shared only with the relevant officials within the Department of Health in order to produce the report. It is intended that the report will be completed in Autumn 2024, prior to the Bill's introduction into the Assembly legislative programme.

How long will we keep your information?

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule [Good Management, Good Records](#).

CONSULTEE DETAILS

| | |
|--|----------------------|
| Name (Optional) | Belfast City Council |
| Organisation and job title (if applicable) | |

Please provide details of your postal and / or e-mail address if you wish to be advised of any outcome of the consultation.

| | |
|---------------------------|--|
| Postal Address (Optional) | |
| E-mail Address (Optional) | |

I am responding: as an individual
on the behalf of an organisation as an (please tick a box)

| | |
|--|---|
| If replying as an individual, please indicate if you do not wish for your identity to be made public | Yes <input type="checkbox"/> No <input type="checkbox"/> (please tick a box) |
|--|---|

| | |
|---|--|
| Whilst not essential, it would assist the Department in analysing responses if responding on behalf of an organisation, you could provide details of who your organisation represents and, where applicable, how the views of members were assembled? | |
|---|--|

Views are invited on the following questions:

THEME 1: STRUCTURE AND PURPOSE OF THE BILL (pages 7 – 9)

Principles, statement of intent and objectives

Q1. Do you agree or disagree with the proposed statement of intent?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

Belfast City Council (“the Council”) broadly agrees with the principle of the statement of intent to ensure the capability to prevent, protect against, control, and provide response to public health threats, whether infection or contamination is appropriate and necessary and agrees that this should be included in the preamble to the Bill. The Council considers that it is appropriate for the Department to acknowledge and endeavour to implement international obligations. In addition, an explanatory note/memorandum to be read in conjunction with the Bill would provide a valuable interpretation aide and would be welcomed to assist organisations/statutory agencies who are tasked to fulfil any of the functions detailed in the Bill.

However, the detail of how this will be achieved in response to the wide range of potential scenarios needs to be fully understood **before** the Bill is drafted with linkages to existing legislative powers identified from a District Council perspective. In these circumstances the Council cannot provide a more informed or detailed response to the consultation until such times as there is the appropriate consideration of how any additional duties or powers can be resourced and implemented on a permanent basis.

All hazards approach

Q2. Do you agree or disagree with the definition of “infection and contamination”?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

The definition of infection and contamination proposed is “any infection or contamination which presents or could present significant harm to human health.”

The Council agrees with an “all hazards” approach and welcomes public health legislation in this jurisdiction being brought into line with other jurisdictions in the UK. This allows all significant risks to human health to be considered, managed, and controlled to protect public health.

THEME 2: ORGANISATIONAL RESPONSIBILITIES (pages 10-14)

Scope

Q3. Do you agree or disagree that other existing public health legislation, i.e. environmental health legislation, sufficiently describes the functions, duties and powers of Ministers and statutory bodies needed to deal with any public health incident?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

The consultation states that the proposed bill will replicate and enhance the powers of the 1967 Act and in relation to public health investigations, the PHA will be able to authorise others to undertake specified duties. Public health legislation in other UK jurisdictions places powers and duties on local authorities which enables the relevant authorised bodies to undertake health protection functions and investigations. For example, the taking of air, water, and land samples. Councils in Northern Ireland have a range of duties and powers which may be invoked to protect public health during an incident, but there are limitations to what scenarios these duties and powers may cover e.g. public health issues such as controlling some infectious diseases in day care facilities or nurseries. In addition, councils have very limited powers in response to scenarios related to chemical hazards containment and cleanup. The Fire and Rescue Services (Emergencies) Order (Northern Ireland) 2011 extended NIFRS’ role to include statutory responsibility for Chemical, Biological, Radiation and Nuclear (CBRN) and as such this would need to be considered within the context of a public health incident.

Councils in other UK jurisdictions have much broader responsibilities whereas the Northern Ireland context is configured differently with these responsibilities straddled across many different statutory agencies including a range of NI Government Departments. It is therefore important that the proposed Bill has regard to this landscape as opposed to just replicated the GB legislative provisions.

It is important to note that whilst Environmental Health professionals can demonstrate a range of expertise and transferrable skills across our legislative remit, other agencies such as DAERA, HSENI, NIHE, FSA also have regulatory powers or responsibilities which may be relevant in a managing a health protection incident. Health and safety enforcement is split between HSENI and District Councils by sector as laid down in the Enforcing Authority (NI) Regulations 1999. HSENI have the same enforcement powers as council Environmental Health Officers in the premises for which they have enforcement responsibility.

Councils have enforcement responsibilities under health and safety legislation relating to risks arising in specified premises from work activities affecting employees and others that could be affected e.g. risk to public from legionella.

It is likely that not all future situations / scenarios will fall neatly within current legislative frameworks operated across the range of statutory stakeholders, so where PHA are “directing” in serious situations, therefore we are strongly of the view that there needs to be accompanying funding streams made available to execute such “directions”.

As new and novel hazards continue to emerge, it is essential that capability and capacity issues are adequately addressed and funded, not only to ensure the emerging issue is competently tackled but also to ensure the sustainability of that expertise and continued capacity to deliver the “authorised” organisation’s normal legislative remit in tandem.

In determining roles and responsibilities, it is also important to consider that local conflicts of interest may arise for local authorities in dealing with any incident on local authority premises.

Within the timeframe of the consultation and in the absence of a funded dedicated resource the Council is not in a position to authoritatively determine whether its environmental health legislation sufficiently describes the functions, duties and powers of ministers and statutory bodies needed to deal with any public health incident and would expect the Department for Health to undertake a full analysis through its legal advisers to determine such information in advance of this and any future consultation. For example, any expectations to carry out disinfection, disinfestation and decontamination will require new work such as specialist advice and services as these are currently not within the remit of councils to deliver. Indeed, it is questionable whether councils are best placed to assist with incidents of contamination given the “All Hazards” approach which could extend to incidents where the council have no current role, and which requires a multi-agency approach involving access to highly specialised and costly services.

Additionally, the role of the Civil Contingencies Group (Northern Ireland) (CCG (NI) and its associated structures and framework will need to be considered in response to any threat that may occur within Northern Ireland that requires a coordinated multi-agency response.

Any proposal that will place additional responsibilities (budget and people resources) and burdens on councils, and therefore the rate payer, will have to be addressed in the context of bringing forward these proposals and a Regulatory Impact Assessment will be required if any additional powers are passed to councils. A permanent central funding arrangement should be considered for this purpose.

Monitoring and surveillance

Q4. Do you agree or disagree that there is no requirement to replicate in the Bill the provisions in the Health Security (EU Exit) Regulations 2021 in relation to monitoring and surveillance?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

The Council agrees that monitoring and surveillance is an important element of protection public health and if the Department is satisfied that such powers already exist in Health Security (EU Exit) Regulations 2021, and that the existing powers are fit for purpose for the “all hazards approach,” that there is no need to replicate the same legislative provisions in the Bill.

It is noted in paragraph 24 that it is proposed that provision is made to confer on PHA and other persons functions in in relation to the monitoring of public health risks.

Further information is requested on who said ‘other persons’ or agencies are proposed to be.

THEME 3: PUBLIC HEALTH POWERS (page 14- 66)

Notification Policy

Q5. Do you agree or disagree with the proposed “all hazards” approach to notification?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

The Council agrees that notification is the first step and therefore a necessary element of the proposed “all hazards” approach. Consequently, it would logical that an “all hazards” approach to notification is necessary to meet the objectives of the new Bill. This may have resource implications and should be considered as part of a regulatory impact assessment.

Q6(a). Do you agree or disagree with the duties to be placed on registered medical practitioners?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

The Council considers this is a matter for the relevant health / medical professionals to provide comment on the proposals.

Q6(b). Do you agree or disagree with the types of information that registered medical practitioners must notify?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

The Council considers this is a matter for the relevant health / medical professionals to provide comment on the proposals.

Q7(a) Do you agree or disagree with the duties to be placed on operators / directors of diagnostic laboratories?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

The Council considers this is a matter for the relevant health / medical professionals to provide comment on the proposals taking account of benefits of the proposal versus the additional resources required to implement.

Q7(b). Do you agree or disagree with the types of information that operators / directors of diagnostic laboratories must notify?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

Consideration should be given to requiring laboratories to make notifications as soon as possible and no later than 3 days which is consistent with the requirements on medical practitioners (rather than the suggested 7-day target).

Q7(c). Do you agree or disagree that legislation should place a duty on diagnostic laboratories to report negative test results?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

Whilst the reporting of negative results is supported by the government's previous consultation, it could however prove to be an administrative burden during a large scale or regional outbreak, potentially diverting valuable resource.

Q7(d) Do you agree or disagree that legislation should place a duty on diagnostic laboratories to report void test results?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

In the event of a test result being void, it would be helpful for relevant authorities to be made aware of this as soon as possible, so that a repeat sample can be obtained and retested, if necessary. This is not only important for any individual involved, but also for decision makers who need all necessary information in which to act / take action in the given situation.

Offences

Q8(a). Do you agree or disagree that an offence may be placed on an operator / director of a diagnostic laboratory for failure to comply with the proposed duties?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

In order to avoid a dual standard for compliance, it is important that all laboratories across UK are subject to the same sanctions for failing to comply with any duties placed upon them.

Q8(b). Do you agree or disagree that the level of fine is appropriate?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

The level of fine is a matter for the Department to consider.

Powers of entry and investigations

Q9. Do you agree or disagree with the proposed enhanced powers of entry for “authorised officers” of the PHA?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer.

The Council agrees that the scope of the powers of entry must be sufficient for any “Authorised officers” to exercise any duty necessary to achieve compliance with the Bill and carry out any necessary function with a view to protecting public safety and health.

The Council considers that point B should not apply to commercial premises as there should be consistency with existing powers of entry available in other public health and health and safety related legislation linked to commercial premises. This should only apply for residential premises. Inclusion of the definition of a “premises” and any exemptions would be helpful.

Should the Public Health Agency decide to authorise officers outside of the PHA, then this approach should be developed in consultation with other regulators, be comprehensive but limited to those necessary. As stated above the resource impacts and impacts on any burden on Councils to be considered under this change, will need further consultation and engagement.

It recommended that consideration be given to developing an accompanying Code of Practice to sit alongside powers of entry (like that of the Environmental Better Regulation Bill) to ensure the correct and consistent use of such powers. This is of particular importance as the powers referred to in the proposed legislation impinge upon human rights, liberty and property.

The consultation lacks details on who PHA intends to authorise to exercise these functions. There is potential impact on staff resources and budgets for any Department where authorised officers are in required to ‘execute any work’. This may affect ability to deliver upon their own statutory functions and services.

Q10(a). Do you agree or disagree with the definition of “authorised officer”?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees that the definition of ‘authorised officer’ to be included in the Bill will mean any person authorised by the PHA to exercise functions conferred on it under the Bill (whether the person is an officer of the Agency). This will allow organisations to have their officers authorised as necessary. The definition should also be extended to allow for “other persons” who are not necessarily employed by the statutory agencies but who are specialist or experts in a particular field of expertise to accompany authorised officers.

The legislation should include limitations on the power to authorise officers outside of the Public Health Agency. Officers outside of the agency should only be authorised where deemed necessary and where it can be demonstrated that the competency, expertise and adequate resources are available to exercise any functions conferred under this Bill. It should be made clear in the proposed bill that the power to authorise other officers is in the context of co-

operation between public bodies, akin to mutual aid, so that it is not misconstrued as the PHA having the power to compel another organisation to carry out a particular function which the PHA itself can undertake.

Further consultation with any proposed authorised officers / organisation is recommended.

Q10(b). Do you agree or disagree that the Department should specify who the “authorised officers” should be in legislation?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

All relevant department and agencies should be specified as authorised officers e.g. Councils, HSENI, NIFRS, FSA, PSNI, NIEA. This would allow flexibility in response and enable persons with the necessary expertise and equipment to be deployed appropriately depending on the type of incident.

Supplementary provision as to entry

Q11(a) Do you agree or disagree with the supplementary powers of entry for authorised officers of the PHA?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees with the provision of supplementary powers for “authorised officers” which should be sufficient to allow officers to carry out their role with all the investigative tools that are necessary to properly assess the risks to public health and to allow them to take appropriate action to mitigate or eliminate the risk under investigation.

Q11(b). In relation to “any such person” accompanying an “authorised officer”, who do you think should be included in this category?

Please provide suggestions in the box below

Given the range of hazards incorporated under the proposed Bill, it would not be possible for the Council to pre-empt the professional/technical skills or credentials of any such person. The legislation should be drafted accordingly to allow sufficient latitude for such persons to be identified and appointed in response any type of hazard defined within the scope of this Bill.

Private contractors might fall into this category as required to accompany an Authorised Officer to provide specialist advise or expert services.

It is recommended that the legislation clarifies that PHA remain the lead authority, directing the incident response and that decision-making responsibilities lie with PHA.

A dedicated team with appropriate experience and expertise, akin to the HSENI major incident team, to fulfil this role may be worth considering.

Q11(c) Do you agree or disagree with the supplementary provisions as to powers of entry?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees with the supplementary provisions as to the powers of entry. It is further recommended that a Code of Practice be developed to sit alongside the powers of entry to ensure the correct and consistent use of such powers. This is of particular importance as the powers referred to in the proposed legislation impinge upon human rights, liberty, and property.

Q11(d). Do you think other actions should be included?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

Include any other reasonable power which is necessary for the purpose entry is authorised.

Inclusion would enable action not listed, to be taken if deemed necessary and would also future proof the legislation so other actions can be taken without need to change the legislation. It may also be worth including the power to secure a scene or for it to be left undisturbed.

Offence of Wilful Obstruction

Q12(a). Do you agree or disagree that an offence of wilful obstruction should be included in the Bill?

- Agree
- Disagree
- Undecided
- Not Applicable

Please give reasons for your answer

The offence of wilful and reckless obstruction should be included in the proposed Bill to ensure acts of obstruction are appropriately dealt with and to bring this legislation into parity with other regulatory provisions to address these behaviours.

Careful consideration should be given to the definition of 'wilful'. The equivalent offence in legislation is typically 'obstruction' rather than 'wilful obstruction' which has a particularly high threshold. It is Council's experience that clauses such as this are usually framed in terms of causing obstruction without lawful excuse.

Q12(b). If you agree, do you think the level of fine is appropriate?

- Agree
- Disagree
- Undecided
- Not Applicable

Please give reasons for your answer

The level of fine is a matter for the Department to consider.

In considering the level of fine for an offence of obstruction in impeding the investigation to deal with a public health risk, the Department may wish to consider whether the level of fine proposed would be commensurate with the offence, taking account of the severity of public health

implications, the circumstances of those who chose to impede and obstruct investigation and the remedial action to address public health risks. The Department should also consider how the level of fine proposed for this offence might align (or conflict) with existing legislation for similar offences in other legislation. For example, the offence of obstruction in the Health and Safety at Work (Northern Ireland) Order 1978 is punishable by higher levels of fines and/or imprisonment.

Enhancement of PHA Powers / Magistrates' Court Orders

Q13. Do you agree or disagree with the “requirements and restrictions” in relation to “persons” and “groups of persons”?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees that the “requirements and restrictions” in relation to “persons” and “groups of persons” should enable adequate measures to control risk to public health in any given scenario. Members of the public and civil liberty/human rights groups should be consulted on the proposed requirements and restrictions.

The consultation documentation lacks information on who PHA will authorise to investigate and mitigate an incident. This should be clarified in the further discussion to be entered into with the Department before a draft Bill is brought forward and will also allow for the practicalities around enforcement to be worked through.

Any potential impact on Council resources/budgets must be subject to further consultation.

Q14. Do you agree or disagree with the “requirements and restrictions” in relation to “related parties”?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees that the “requirements and restrictions” in relation to “related parties” should enable adequate measures to control risk to public health in any given scenario.

Q15. Do you agree or disagree with the “requirements and restrictions” in relation to “things”?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees that the “requirements and restrictions” in relation to “things” should enable adequate measures to control risk to public health in any given scenario that may arise that presents a significant risk to health. The definition of ‘thing’ includes dead body/human remains should be considered with sensitivity in the description.

The Council would like to further understand what role (if any) they may have in relation to these requirements as there would be health and safety considerations and possibly a specialist services required which would not be readily available within Councils current roles, responsibilities, and resources.

Further consideration of the specific examples would be required to inform councils understanding of the types of scenarios where a significant risk to public health is identified.

The required interventions in some cases may require specialist services that cannot be readily sourced and therefore consideration may need to be given to setting up contingency arrangements by availing expertise and services that may be already available in other jurisdictions. Further clarity will help to inform our understanding of the roles that councils will be expected to provide.

Consideration of resources and budget associated with the introduction of this Bill is a concern for council and a detailed analysis of cost should be undertaken to ensure that there is no additional cost/burden to councils. It is recommended that a central budget is held by the PHA to fund councils to undertake any additional work that is necessary.

Any proposal that will bring additional responsibilities and burdens on Council resources/budgets will need to be considered in the context of bringing forward these proposals and a Regulatory Impact Assessment will be required. A central permanent funding arrangement should be provided.

Q16. Do you agree or disagree with the “requirements and restrictions” in relation to the health measures in relation to things for “related persons” and “related things” at paragraph 91?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees that the “requirements and restrictions” in relation to health measures in relation to “related persons” and “related things” should enable adequate measures to control risk to public health in any given scenario io that may arise that presents a significant risk to health.

Q.17 Do you agree or disagree with the “requirements and restrictions” in relation to “premises”?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees that the “requirements and restrictions” in relation to health measures in relation to “premises” and “any place” should enable adequate measures to control risk to public health in any given scenario io that may arise that presents a significant risk to health. A definition of a premises and any exclusions would be useful.

Q18 Do you agree or disagree with the “requirements and restrictions” in relation to the health measures for "related premises” in relation to a “related person” and a “related thing” in paragraph 98?

- Agree
- Disagree
- Undecided
- Not Applicable

Please give reasons for your answer

The Council agrees that the “requirements and restrictions” in relation to health measures in relation to “premises” and “any place” should enable adequate measures to control risk to public health in any given scenario that may arise that presents a significant risk to health.

Q19. Do you agree or disagree with the additional provisions in relation to the making of the magistrates’ court orders?

- Agree
- Disagree
- Undecided
- Not Applicable

Please give reasons for your answer

The section on magistrate’s court orders lacks any detail on which agency/who will seek and implement such orders.

Q20. Should provision in relation to a timely explanation of interference with individual rights be included?

- Agree
- Disagree
- Undecided
- Not Applicable

Please enter your answer and reasons for your answer in the box below.

It is a matter for the Department to determine whether its proposals strike the correct balance between protecting public health and an individual’s rights, it is essential that a timely and

comprehensive explanation is given to any individual who is impacted by this provision including the provision of information to a family member or representative who is acting on behalf of the individual.

It is also recommended that additional safeguards and support is provided to the most vulnerable in society. Additionally, where an individual or group is subject to restrictions or deprivation of freedoms, then suitable mitigations and financial support should be provided in appropriate circumstances.

Medical examination: least invasive and least intrusive procedures.

Q21. Do you agree or disagree with the provisions in relation to medical examinations?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council however considers this is a matter for the relevant health / medical professionals to provide comment on the proposals.

Q22. Do you agree or disagree with the list in relation to invasive procedures?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council considers this is a matter for the relevant health / medical professionals to provide comment on the proposals.

Q23. Do you agree or disagree with the provision of magistrates' court orders in relation to premises?

- Agree
- Disagree
- Undecided
- Not Applicable

Please give reasons for your answer

The Council agrees with the provision of magistrates' court orders in relation to premises to ensure that the additional provision is available if access to a premises is not possible or is prevented. However, detail is lacking on which agency/who will implement these orders.

Q24. Do you agree or disagree with the periods for which magistrates' court orders may be in force?

- Agree
- Disagree
- Undecided
- Not Applicable

Please give reasons for your answer

The Council acknowledges that where there are situations where individuals pose a severe and imminent risk to public health it may be necessary to apply powers of detention, isolation, and quarantine. The use of such powers must however be used sparingly, and the legislation should reflect that whilst at the same time allowing the statutory agencies some discretion as to assessing and balancing the risk to public health against the protection of individual freedoms / human rights obligations.

Consideration needs to be given on what actions will be taken should the risk remain after the 20 days expiration period.

Q25(a). Do you agree or disagree with the proposals in relation to the making of magistrates' court orders?

- Agree
- Disagree
- Undecided

Not Applicable

Please give reasons for your answer

The Council considers this is a matter for the relevant health / medical professionals to provide comment on the proposals however detail is lacking on which agency/who will implement these orders.

Q25(b). Do you agree or disagree with the proposals in relation to the varying and revocation of magistrates' court orders?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees with the principle of making court orders as described however it is a matter for the relevant health / medical professionals to provide comment on the substantive proposals. Council would again note that detail is lacking on which agency/who will implement these orders.

Q26(a). Do you agree or disagree with the proposal in relation to the enforcement of magistrates' court orders?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees with the proposals however would welcome clarification as to who the enforcing body for this aspect of the Bill will be. As highlighted above, Council do not have medical skills or expertise to exercise these powers therefore would fall outside of the scope of Council responsibilities.

Q26(b). Do you agree or disagree with the proposals in relation to the associated offence and fine?

- Agree
- Disagree
- Undecided
- Not Applicable

Please give reasons for your answer

Council do not have medical skills or expertise to exercise these powers therefore would fall outside of the scope of Council responsibilities.

Supplementary provisions in respect of magistrates’ court orders

Q27. Do you agree or disagree with the supplementary provisions, enabling the Department to make further regulations in relation to the taking of measures pursuant to a magistrates’ court order?

- Agree
- Disagree
- Undecided
- Not Applicable

Please give reasons for your answer

The Council agrees the Department should have the scope to make further regulations that are deemed appropriate.

As per previous responses, detail is lacking on which agency/who will enforce magistrates court orders and how the costs of enforcing any such orders will be provided for by the Department.

Restrictions / emergency powers

Q28. Do you agree or disagree with the proposed “restrictions and requirements” that may be included in health protection regulations?

- Agree
- Disagree
- Undecided

Not Applicable

Please give reasons for your answer

Council agrees with the proposed “restrictions and requirements” that may be included in health protection regulations. Any restrictions and requirements must be proportionate to risk and necessary to do so to protect the public from significant risks to health. Given the range of powers, councils would welcome further engagement with the Department in relation to roles and responsibilities before a draft Bill is brought forward.

The Council believes that the legislation should provide for remedial measures to apply to premises, things, and persons. Such powers should only be permissible where an on-going hazard is presented by such material or persons and the powers would provide the mechanism to ‘make safe’ the building or person and thereby eliminate the risk to public health. As it is likely that local councils may have some support role in this, the council would emphasise the need to undertake detailed consultation and to ensure that there is no additional cost/burden for councils. Given that these provisions will apply to an “all hazards” approach, councils will not have the necessary skills, expertise, or ready access to specialised services to deal with incidences where for example specialist decontamination services are required that cannot be readily sourced and therefore consideration may need to be given to setting up contingency arrangements by accessing and availing expertise and services that may be already available in other jurisdictions. Further clarity will help to inform our understanding of the roles that Councils will be expected to provide along with multi agency partners as highlighted in question 3, the role of the Civil Emergencies Contingencies Group and its associated structures will need to be considered in response to any threat that may occur within Northern Ireland.

Appropriate provision should be made for the carrying out of works in default and the recovery of costs where possible, however, it is important to recognize that where such costs are unlikely to be successfully recovered, council budgets may prohibit expensive works in default. Accordingly, to ensure that works are carried out promptly and the risk to public health is addressed as a priority it is recommended that a central budgetary resource is held which can be accessed by statutory agencies as necessary to carry out such works.

Councils will have been involved in the enforcement of the emergency Health Protection Regulations brought into effect at pace during the Covid pandemic. The lessons learnt from the Covid-19 Inquiry should inform this element of the Bill and include timely consultations with any statutory body required to enforce such special regulations to ensure that the legislation addresses the intended purpose.

Power to require a head teacher to provide contact details of pupils.

Q29(a). Do you agree or disagree with the proposals in relation to the power to keep a child out of school?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

This falls outside of the scope of Council responsibilities and not a function to be conferred to other persons.

Q29(b). Do you agree or disagree with the requirements on a head teacher to provide contact details?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

This falls outside of the scope of Council responsibilities. See response to 29(a).

Consideration should be given to GDPR and permissions for schools to share pupil's information outside of the education system.

Restriction of access to, or contact with, dead bodies

Q30(a). Do you agree or disagree with the proposals in relation to access to dead bodies?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees with proposals in relation to restricting access and contact with dead bodies who pose a significant threat to the spread of infectious disease or contamination for the protection of public health. Guidance and direction would need to be lead via medical experts.

Q30(b). Do you agree or disagree with the proposals in relation to contact with dead bodies?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees with proposals in relation to restricting access and contact with dead bodies who pose a significant threat to the spread of infectious disease or contamination for the protection of public health. Guidance and direction would need to be lead via medical experts.

Q30(c). Who should have the power to give notice of the restriction?

Please provide suggestions in the box below

The power to give notice of the restriction will be based on medical evidence and therefore Councils would not have any role in this aspect of the proposed Bill.
Detail is lacking on which agency/who will enforce offence of non-compliance

Relocation of dead bodies

Q31(a). Do you agree or disagree with the proposals in relation to relocation of dead bodies?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

Any powers conferred should be comprehensive and should allow for requirements on how the body is to be handled and ultimately treated. The Council therefore recommends that there should be powers to require precautions for handling/ preparing bodies, requiring movement to a place and arrangements for interment/disposal to prevent the risk to public health. Such requirements should be based on robust risk assessment.

Q31(b). Who should have the responsibility to relocate or cause the dead body to be relocated?

Please provide suggestions in the box below

Given that such hazards are likely to be identified via interaction with medical professionals at or around the time of death it seems likely that controls should commence at that stage by the doctor or other professional such as PHA officials.

Detail is lacking on which agency/who will enforce the failure to co-operate offence.

Limitations: regulations imposing restrictions or requirements

Domestic Health Protection Regulations

Q32(a). Do you agree or disagree with the scope of the powers to make domestic health protection regulations?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

See points raised in answer to question 28.

Q32(b). Do you agree or disagree with the scope of the limitations imposing “restrictions or requirements” in relation to domestic health protection regulations?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

See points raised in answer to question 28.

International Travel Health Protection Regulations

Q33(a). Do you agree or disagree with the scope of the powers to make international travel health protection regulations?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council believes any regulations must be proportionate to risk and necessary to do so to protect the public from significant risks to health, however the issue of internal travel restrictions is a matter for the Department to consider having regard to expert advice.

Q33(b). Do you agree or disagree with the scope of the limitations imposing “restrictions or requirements” in relation to international travel health protection regulations?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

See above answer.

Q34. Do you agree or disagree with the scope of the associated offences and fines?

Agree

Disagree

—

Undecided

Not Applicable

Please give reasons for your answer

The lessons learnt from the Covid-19 Inquiry should inform this element of the Bill.

Detail is lacking on which agency/who will enforce contraventions of public health regulations failure to co-operate offence.

Powers conferred on any other Northern Ireland Department to make regulations.

Q35. Do you agree or disagree that regulation making powers should be included in the Bill enabling other NI departments to make regulations at the request of the Minister of Health?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

Councils welcome any measures to ensure that any new regulations introduced in response to emergency measures are overseen and co-ordinated by the appropriate Ministerial Department. During the Covid pandemic, councils were involved in the enforcement of the emergency powers and encountered many challenges in enforcing legislation that involved several government departments.

Council welcomes advance consultation with stakeholders on any new regulations, especially with those responsible for enforcement. Failure to consult and consider feedback can result in legislation that is confusing to the public/businesses, open to interpretation and unenforceable by the enforcing authority.

Council also recommends that detailed guidance is developed wherever possible alongside the drafting of legislation to assist in its interpretation and implementation. Such guidance should be provided promptly, ideally prior to the new regulation coming into force. It is recognised that this is not always possible and if that is the case guidance should be provided as soon as possible thereafter. Whilst this may seem counter intuitive in an emergency situation, experience through the Covid pandemic was that the absence of guidance diverted significant resources in all public sector agencies to addressing queries.

Review of regulations

Q36. Do you consider that the proposals in relation to the review of the operation of the health protection regulations are appropriate?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

See answer above.

Assembly control

Q37. Do you consider that the proposals set out in Recommendation 3 of the Bingham report should be adopted in the new Public Health Bill?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The determination of this is a matter for the Department.

The Council acknowledges that circumstances may arise which require emergency health regulations to be made to protect public health. Where possible these regulations should benefit from the approval of the Assembly so as to ensure that they are properly scrutinised and also to confer legitimacy that flows from parliamentary debate and approval. Therefore any “urgent declaration process” must be strictly regulated, fully informed, and used sparingly.

Council recommends advance consultation with stakeholders on any new regulations, especially with those responsible for enforcement. Failure to consult and consider feedback can result in legislation that is confusing to the public/businesses, open to interpretation and unenforceable by the enforcing authority.

Council also recommends that detailed guidance is developed wherever possible alongside the drafting of legislation to assist in its interpretation and implementation. Such guidance should be provided promptly, ideally prior to the new regulation coming into force. It is recognised that this is not always possible and if that is the case guidance should be provided as soon as possible thereafter.

Q38. Do you consider that the proposals set out in Recommendation 4 of the Bingham report should be adopted in the new Public Health Bill?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The determination of this is a matter for the NI Assembly.

As per Q37 the Council takes the view that this procedure should be strictly regulated and to that end agrees that the time limit between invoking the confirmatory procedure and affirmative scrutiny should be kept to the practical minimum.

Q39. Do you consider that the proposals set out in Recommendation 5 of the Bingham report should be adopted in the new Public Health Bill?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

This is a matter for the Department .

The Council would however refer to paragraph 203 of the Bingham report which stated "*that all the proposals in this recommendation cannot be addressed by way of the Bill.*"

The Council is unclear as to the relevant aspects of Recommendation 5 which are under consideration.

Q40. Do you agree or disagree that the negative procedure for making urgent international travel regulations should be retained as in Recommendation 6?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

This is a matter for the Department.

The Council's primary concern is that regulations that fall within their remit are legitimate, fit for purpose, properly scrutinised and enforceable.

Q41(a). Do you agree or disagree that ministers should have a statutory duty to have regard to any relevant advice produced by National Human Rights Institutions in their jurisdiction as in Recommendation 10?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

In view of the proposals within the Bill the Council welcomes the additional safeguard of imposing a statutory obligation on ministers to have regard to advice from local Human Rights institutions.

Q41(b) What other institutions could this duty be extended to?

Please provide suggestions in the box below

Commissioner for Older People.

Q42(a) Do you agree or disagree that an alternative formal system of enforcement, other than Fixed Penalty Notices (FPNs), should be adopted in emergency health protection regulations?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

The Council agrees that legal advice should be sought on this matter and also recommends that the lessons learnt from the UK Covid-19 Inquiry should be considered to inform this element of the Bill.

Any alternative formal system of enforcement, other than Fixed Penalty Notices, must be consistent with good practice with a graduated and proportionate approach to enforcement adopted where appropriate. Taking enforcement action is a discretionary matter and it is open to any agency to consider an alternative disposal having regard to the public interest test.

There is a lack of detail on who the enforcement body would be and how decisions on the course of action to be taken would be determined.

Recording and managing warnings issued could be problematic where there are a number of enforcing authorities. Regional systems will need to be put in place to enable sharing of information to avoid individual receiving multiple warnings that should have escalated to an FPN or prosecution.

Q42(b) If so, what should this look like?

Please provide suggestions in the box below

THEME 4: PROTECTING INDIVIDUALS (Page 67-69)

Q43. Do you consider that appropriate safeguards and protections to individuals have been captured in the proposed Bill?

Agree

Disagree

Undecided

Not Applicable

Please give reasons for your answer

Rural Impact

The Rural Needs Act (NI) 2016 places a duty on public authorities, including government departments, to have due regard to rural needs when developing, adopting, implementing or revising policies, strategies and plans and when designing and delivering public services.

Q44. Are the actions or proposals set out in this consultation document likely to have an adverse impact on rural areas?

Yes

Undecided

Not Applicable

| |
|--|
| Please give reasons for your answer. |
| This is a matter for the Department to consider. |

Equality/human rights questions

Q45. Are you aware of any indication or evidence – qualitative or quantitative – that the actions/proposals set out in this consultation document may have an adverse impact on equality of opportunity or on good relations? If yes, please give details and comment on what you think should be added or removed to alleviate the adverse impact.

Yes

Undecided

Not Applicable

Please give reasons for your answer.

The proposed Bill includes significant powers which could potentially impact upon individual rights. The Council is not in a position to comment in relation to equality, good relations or human rights impacts until it has had the opportunity consider the draft Bill and the associated screening documentation and assessments which accompany same.

Q46. Is there an opportunity to better promote equality of opportunity or good relations? If yes, please give details as to how.

Yes

Undecided

Not Applicable

Please give reasons for your answer.

All public authorities have statutory duties for equality and good relations. These statutory duties should be mainstreamed, through an assessment of equality and good relations impacts specific to this Bill.

Q47. Are there any aspects of this policy proposal where potential human rights violations may occur?

Yes

Undecided

Not Applicable

Please give reasons for your answer.

Council is of the opinion that there are proposals contained within the Bill that will be construed as impinging upon human rights, and therefore the legislature must ensure the proper safeguards are embedded in the Bill to prevent violations occurring. Legal advice should be sought in this regard.

Whilst safeguards appear to have been considered in the form of appeals and review periods where restrictions and deprivation of movement are imposed, it is not possible to determine the extent, if any, of potential human rights violations until the final draft of the Bill is available for comment.

Thank you for your comments

Please submit your response via email or hard copy to the correspondence details below:

Email: phbt@health-ni.gov.uk

Address: Health Protection Legislation Branch
C/O PHD Admin Team
Room C4.22
Castle Buildings
Stormont Estate
Belfast
Northern Ireland
BT4 3SQ

END