Department of Health
An Roinn Sláinte
Männystrie O Poustie
www.health-ni.gov.uk

Policy underpinning the Public Health Bill (Northern Ireland)

A Consultation Document

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CONTENTS

1. MINISTER'S FOREWORD

A review of the current Public Health Act (Northern Ireland) 1967 highlighted the need to update our public health legislative framework in order that Northern Ireland can respond to 21st century public health emergencies.

The overarching principle of the draft Bill is to protect the population against various forms of infection and contamination including biological, chemical and radiological, in addition to infectious diseases, which is the focus of the 1967 Act.

This all hazards approach will enable broader surveillance, supporting more timely and effective interventions, controlling the further spread of infection and contamination generally and if needs be, in an emergency.

This is the second consultation on Public Health and seeks your views on specific policy proposals that will underpin the provisions to be included in the Bill. The first consultation in September 2015 asked basic questions about current Public Health law[1]. The outcome of that consultation enabled a Final Report to be published in March 2016[2], which set out key recommendations for legislative reform and the shaping of future public health protection law in Northern Ireland, leading to this current consultation.

This consultation sets out the proposals which will underpin a new health protection legislative framework for Northern Ireland, and which are based on the recommendations of the Review of the 1967 Act and learning from recent public health emergencies.

Mike Nesbitt, MLA
Minister of Health

[1] Consultation for the review of the Public Health Act (Northern Ireland) 1967 | Department of Health (health- ni.gov.uk)
[2] Review of the Public Health Act (NI) 1967 - Final report March 2016 (health-ni.gov.uk)

2. INTRODUCTION AND CONTEXT

2.1 Background

Current DoH public health legislation, the Public Health Act (Northern Ireland) 1967[3] ("the 1967 Act"), is over 56 years old. The purpose of the Review of the 1967 Act was to ascertain whether it is fit for purpose today. Following the publication of the Final Report of the Review in March 2016[4], work commenced on scoping policy proposals that would underpin a new health protection legislative framework for Northern Ireland. Unfortunately, in January 2018, work on the Bill had to be paused as a result of other work pressures. The Department's emergency response to the Covid-19 pandemic naturally further delayed progress on a Bill until it was feasible to divert resources to recommence this work. In May 2022, DoH ministerial agreement was given to set up a Bill Team, tasked with bringing forward a new legislative framework which would be limited in scope to health protection, which is the prevention and mitigation of the impacts of infectious disease, environmental, chemical and radiological threats on individuals, groups and populations.

A sole focus on health protection matters allows the Bill to progress at pace. Widening the scope to incorporate other public health issues which may be contentious, risks holding up the passage of the Bill while these issues are considered. Without a new health protection legislative framework, Northern Ireland (NI) remains vulnerable to other 21st century public health emergencies, in terms of a legislative response, and therefore a new health protection legislative framework is urgently required.

In summary, it is proposed that the new Bill will:

- be based on the all-hazards approach, in alignment with other UK jurisdictions, for the protection of people from known or yet to be discovered hazards, infections or contamination;
- update certain powers around restrictions on employment, quarantine, isolation and medical examination;

[3] Public Health Act (Northern Ireland) 1967 (legislation.gov.uk)
[4] Review of the Public Health Act (NI) 1967 - Final report March 2016 (health-ni.gov.uk)

- clarify roles and responsibilities for different authorities; and
- provide underlying human rights based principles under which powers of intervention would be exercised.

2.2 Review of the Public Health Act (Northern Ireland) 1967

The Review of the Public Health Act (Northern Ireland) 1967 ("the 1967 Act"), including the 2015 public consultation, led the Department to the conclusions and recommendations set out in the table in the **Annex.**

The main deficiencies in the 1967 Act have been well rehearsed and are:

- the narrow scope of the Act, which is concerned almost exclusively with infectious diseases, whereas other jurisdictions and international law have adopted an 'all hazards' approach to protect the population against various forms of infection and contamination as well as infectious diseases;
- the Act is not consistent with World Health Organisation (WHO) International Health Regulations 2005 (IHR 2005[5]), to which the UK is a signatory, and which places duties on Member States in relation to public health measures;
- the powers given to authorities may not be compatible with the Human Rights Act 1998, and new legislation could ensure that actions that interfere with individual freedoms are proportionate to the public health risk;
- the powers of entry and the roles of authorised officers in carrying out certain functions are unclear; and
- the list of notifiable diseases needs to be reviewed and updated to take account of public health threats that have emerged or become more apparent since 1967, e.g. Severe Respiratory Syndrome (SARS). Other UK jurisdictions have since added a list of notifiable organisms (causative agents) to their legislation, which places Northern Ireland out of alignment.

[5] International Health Regulations (2005) – Third edition (who.int)

2.3 Policy proposals to address recommendations of the Review

The Department's consideration of the 18 recommendations, together with informal consultation with some key stakeholders, have led to the development of policy proposals that might underpin provisions in a draft Bill.

The aim and objectives of a draft Bill will be:

- to update outdated public health legislation to make it fit for purpose in order to better manage 21st century public health emergencies;
- to align with UK jurisdictions, where appropriate, and to better comply with IHR 2005, Human Rights and Data Protection legislation; and
- to widen the scope of current public health legislation to create permanent powers to enable Northern Ireland to respond to public health scenarios on an 'all-hazards' basis.

The Final Report of the Review reflected the main issues set out in the 2015 consultation document in terms of four key themes and the recommendations attached to each of them are highlighted below.

Recommendation 1, *the Executive should include a public health bill in its legislative programme for the next Assembly mandate* has been accepted, the remaining recommendations are addressed in this consultation document.

Theme 1: Structure and purpose of the Bill	Rec. 2, 3 & 17
Theme 2: Organisational responsibilities	Rec. 7
Theme 3: Public Health powers	Rec. 4 - 6, 8 -16
Theme 4: Protecting Individuals	Rec. 16, 18

Accordingly, this consultation paper will set out the policy proposals under each theme and identify which of the recommendations are incorporated.

THEME 1: STRUCTURE AND PURPOSE

Principles, statement of intent and objectives

Recommendation 3: The Public Health Bill should include a statement of principles, or of intent, or objectives, or a combination of these.

1. The 2015 consultation sought views on whether the new legislation should include a set of principles, a statement of intent, a list of objectives, a combination of all three, or none at all.

2. Whilst most respondents supported the inclusion of a combination of principles, a statement of intent and/ or a list of objectives, the final position should reflect the importance of clarity regarding the purpose and scope of the legislation. The scope of this legislation is health protection and therefore a reference to the promotion of public health, for example, is not required.

3. A statement of intent could be included in the preamble to the Bill which will clarify the purpose of the new Health Protection Framework. This will be confirmed when the final content of the Bill is known, however the intention behind the Bill is "to restate and amend the law on public health protection, and to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Northern Ireland, and to implement the Department's obligations under the International Health Regulations".

4. Whilst the statement of intent clarifies the risks the legislation is trying to mitigate, the Department does not consider that it is necessary to include a set of objectives within the Bill itself. On the basis that the legislation is drafted accurately the objectives are clear to see. However, these aspects could be discussed in the Explanatory Memorandum accompanying the Bill.

Question 1: Do you agree or disagree with the proposed statement of intent? Please give reasons for your answer.

All-hazards approach

Recommendation 2: The Public Health Bill should be based on the all-hazards approach and be consistent with the WHO International Health Regulations.

5. In the 2015 consultation, views were sought on how could new legislation best be future–proofed in order to protect the public's health against threats that are as yet unknown and what categories of threat to human health should be grounds for state interventions.

6. The 1967 Act establishes that those who are suffering from or are carriers of a 'notifiable disease' (Schedule 1) or 'infectious disease' (section 32) may have orders made against them. The term 'contamination' is only mentioned in relation to vessels and aircraft (section 2A(1)(1A)). Both the Public Health (Ships) Regulations (Northern Ireland) 2008 and Public Health (Aircraft) Regulations (Northern Ireland) 2008 contain provisions for 'an infected person' and an infected ship or aircraft. There are no other clear categories of threat to human health in the 1967 Act.

7. Section 14 of the Public Health etc. (Scotland) Act 2008 asp 5, places duties on registered medical practitioners (RMPs) where they have reasonable grounds to suspect that a patient whom they are attending has been exposed to a health risk state. "A 'health risk state' is defined as meaning a highly pathogenic infection (i.e. an infection highly likely to cause a serious disease), or exposure to any contamination, poison or other hazard that is a significant risk to public health. A patient's exposure to a health risk state means either physical contact with or contamination by a health risk state or physical contact with or contamination by a person who, or an object which, has been in physical contact with, or been contaminated by, a health risk state." The duties in relation to health risk states are set out separate to the notification duties in relation to notifiable diseases.

8. It is extremely important that Northern Ireland creates flexibility to monitor for new illnesses and conditions in line with European and international health regulations obligations. Knowledge of new cases of unknown conditions needs to be fed into monitoring systems to enable public health professionals to respond before a definitive

diagnosis is made. Defining 'health risk state' too tightly could limit our capacity to respond to new threats to public health.

Definitions of infection and contamination

9. To define 'infection' and 'contamination', the Department prefers to use the model presented in English legislation to maintain flexibility. The definition of infection and contamination proposed is ***any infection or contamination which presents or could present significant harm to human health***. This model is described more fully in Theme 3.

10. The Department also proposes to specify that any reference to the spread of contamination includes a reference to the spread of any source of contamination. In addition, the Bill will make provision to the effect that any reference to disinfection or decontamination includes a reference to the removal of any vector, agent or source of the infection or contamination.

11. The Department proposes to make provision to adopt an all-hazards approach to align with other UK jurisdictions and the IHR 2005. That is, in addition to the duty on registered medical practitioners (RMPs) to notify specified infectious diseases, to notify in relation to other infections, not listed in the Schedule of notifiable diseases, which they believe present or could present, a significant risk to human health. They will also be required to notify cases of contamination that present or could present a significant risk to human health.

12. To support this approach, it is proposed that the Bill will, in particular, give the Department regulation making powers for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Northern Ireland (whether from risks originating there or elsewhere). This will afford the Department flexibility as new issues emerge over time.

Question 2: Do you agree or disagree with the definition of "infection and contamination"? Please give reasons for your answer.

THEME 2: ORGANISATIONAL RESPONSIBILITIES

Recommendation 7: The Department should aim to ensure that new legislation provides a greater clarity regarding the roles and responsibilities of the bodies concerned.

Demarcation

13. The 2015 Review asked whether legislation should describe the functions, duties and powers for ministers and each of the statutory bodies concerned in relation to public health.

14. It is considered that the functions and duties of the Department and the Public Health Agency are clearly set out in the Health and Social Care (Reform) Act (Northern Ireland) 2009 c. 1[6] and do not need to be repeated in the Bill, although a reference to the 2009 Act may be appropriate. Section 2 of the 2009 Act sets out the Department's general duty in relation to the provision of health and social care in Northern Ireland. Section 3 sets out the Department's general power and provides that the Department may provide or secure the provision of such health and social care as it considers appropriate to the discharge of its duty. Section 6 provides a power for the Department to give directions (either general or specific) to the Public Health Agency (PHA) as to how they should carry out their functions. Section 13 sets out the functions of the PHA in relation to the areas of health improvement and health protection. The section also provides that in exercising its functions, the PHA must co-operate with other bodies which exercise functions relating to health improvement or protection. Section 13(1)(b) provides that the PHA shall exercise on behalf of the Department health protection functions which are specified as:

    - the protection of the community (or any part of the community) against:
        - communicable disease, in particular by the prevention or control of such disease;

[6] Health and Social Care (Reform) Act (Northern Ireland) 2009 (legislation.gov.uk)

- other dangers to health and social well-being, including dangers arising on environmental or public health grounds or arising out of emergencies.

15. In particular, the 2009 Act makes provision as to the types of actions that the PHA may undertake for the purpose of health improvement or health protection functions, and these are:
    - engage in or commission research;
    - obtain and analyse data and other information;
    - provide laboratory and other technical and clinical services;
    - provide training in relation to matters in respect of which the Regional Agency has functions;
    - make available to any other body such persons, materials and facilities as it thinks appropriate;
    - provide information, advice and assistance.

16. The powers of the Department and the PHA in relation to health protection matters will be clearly set out throughout this consultation document.

Scope

17. The scope of the proposed Bill is health protection. The Bill will replicate and enhance the existing powers of the PHA in 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. The structures in Northern Ireland are different in that we do not have local authorities in the same way and some of the current investigatory powers in Northern Ireland are set out in other legislation which falls under the policy remit of other Northern Ireland departments.

18. Consequently, a targeted consultation with local councils, environmental health officers and PHA will take place as part of this consultation exercise. This will enable comprehensive consideration and mapping of current roles and responsibilities in relation to response and investigation of health protection matters, as well as who would be responsible for decontamination and disinfection. Clarity and understanding in respect of current accountability and responsibility is needed in order to manage a health protection incident where there may not be a clear role or responsibility nor a legislative platform underpinning that responsibility. A decision on how we fill this health protection gap is needed.

Question 3: 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? Please give reasons for your answer.

Monitoring and surveillance

19. One of the functions of the PHA is to obtain and analyse data and other information. The 2015 Review of the 1967 Act asked whether it provided a sufficient statutory basis for this role. However, since the 2015 Review, the UK Government has introduced legislation that applies to all Public Health Agencies in the UK, the Health Security (EU Exit) Regulations 2021[7]. The focus of this legislation is monitoring and surveillance.

Health Security (EU Exit) Regulations 2021

20. Current Northern Ireland public health legislation does not make provision in relation to surveillance undertaken by the PHA in Northern Ireland. This is outside the scope of the Bill. However, in relation to ensuring alignment with other UK Public Health Agencies, it is paramount that an all-hazards approach to notification is adopted in the Bill to enable PHA to comply with the requirements under these regulations.

[7] The Health Security (EU Exit) Regulations 2021 (legislation.gov.uk)

21. Part 2 (starting with Regulation 6) of the Health Security (EU Exit) Regulations 2021, imposes an obligation on all UK public health agencies to carry out epidemiological surveillance on the communicable diseases and related special health matters listed in the Schedule to the regulations in relation to their respective part of the United Kingdom. Regulation 2 defines "communicable disease" to mean any infectious disease caused by a contagious agent which is transmitted from person to person by direct contact with an infected individual or by indirect means such as exposure to a vector, animal, fomite, product or environment, or exchange of fluid which is contaminated with the contagious agent. "Related special health matters" means antimicrobial resistance and healthcare associated infections related to communicable diseases.

22. The regulations also place a duty on UK public health agencies to collect information from epidemiological surveillance and share it with other UK public health agencies. There is a duty on the UK Focal point, which is the United Kingdom Health Security Agency (UKHSA) to report to WHO. The information to be shared by UK public health agencies is:
    - comparable and compatible data and information in relation to the epidemiological surveillance of those communicable diseases and related special health matters;
    - information concerning the progression of any epidemic situations; and
    - information concerning unusual epidemic phenomena or new communicable diseases of unknown origin.

23. These regulations also require that the UK authorities must consult each other with a view to coordinating their efforts to develop, strengthen and maintain their respective capacities for monitoring, early warning and assessment of, and response to, serious cross-border health threats.

24. It is proposed therefore, to introduce a new duty on diagnostic laboratories to notify the PHA when they identify evidence of infection caused by specified causative agents. Powers to make domestic health protection regulations will also include provision

conferring on the PHA and other persons functions in relation to the monitoring of public health risks. This will be discussed further under Theme 3 Public Health powers.

Question 4: 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? Please give reasons for your answer.

THEME 3: PUBLIC HEALTH POWERS

Recommendations 4 and 8 to 16.

25. This Theme concerns itself with powers of entry and investigations, quarantine and isolation, compulsory medical treatment, restrictions, cleansing and disinfection of premises, things and persons, emergency powers and provisions in relation to dead bodies. It will also set out the proposed notification policy proposals which pre-empts actions that are needed in response to these notifications.

Notification policy

26. In England, the Health Protection (Notification) Regulations 2010[8] (HPNR 2010), made under sections 13, 45C(1), (2) and (3)(a), 45F(2)(a) and (b), 45P(2) and 60A of the Public Health (Control of Disease) Act 1984, sets out the policy in relation to the notification process in respect of infectious diseases, infection and contamination. The regulations also apply in relation to suspected disease, infection or contamination in a dead body. The regulations also place duties on diagnostic laboratories to notify the United Kingdom Health Security Agency (UKHSA – formerly Public Health England) if they identify a causative agent listed in Schedule 2 to the regulations, or evidence of such an agent, in a human sample.

[8] The Health Protection (Notification) Regulations 2010 (legislation.gov.uk)

27. Scotland's notification process, which is set out on the face of the Public Health etc. (Scotland) Act 2008[9] closely mirrors the policy intent under the HPNR 2010.

28. A decision as to whether the notification policy is placed on the face of the Bill or in regulations, will be taken during the drafting stage, however, the proposed overarching notification policy is set out below.

List of notifiable diseases and causative agents

29. Current Northern Ireland legislation does not include provision for the notification of causative agents, but the policy intent will be to do so. A Four Nations working group is currently undertaking a review of the lists of notifiable diseases and causative agents within Northern Ireland and GB legislation, with a view to securing alignment on a Four Nations basis. The outcome of the notifiable diseases review is not expected for some months and the definitive list cannot be presented for consultation at this time. However, Northern Ireland public health consultants are working with DoH policy officials in support of the Four Nations review in order that agreed aligned lists can be included in the new legislation.

Duties on a registered medical practitioner

30. A registered medical practitioner (RMP) will be defined as – ***a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practice under that Act.***

31. The RMP will be under a duty to report to the PHA where they have reasonable grounds for suspecting that a patient:
    - has a notifiable disease;
    - has an infection, which in their view presents or could present significant harm to human health; or

[9] Public Health etc. (Scotland) Act 2008 (legislation.gov.uk)

- is contaminated in a manner which, in the view of the RMP, presents or could present significant harm to human health.

What must be notified.

32. The notification must include the following information in relation to the patient so far as it is known to the RMP:
    - name, date of birth and sex;
    - home address including postcode;
    - current residence (if not home address);
    - telephone number;
    - HSC number;
    - occupation (if the RMP considers it relevant);
    - the name, address and postcode of the place of work or education (if the RMP considers it relevant);
    - any relevant overseas travel history;
    - ethnicity;
    - contact details for a parent (or person with parental responsibility) of the patient (where the patient is a child under the age of 18 years);
    - the disease or infection which the patient has or is suspected of having or the nature of the patient's contamination or suspected contamination;
    - the date of onset of symptoms;
    - the date of the RMP's diagnosis; and
    - the RMP's name, address and telephone number.

When the notification must be made

33. The notification must be provided in writing within 3 days beginning with the day on which the RMP forms a suspicion.

34. Provision will be made in the Bill to allow any notifications, information, disclosures, lists and reports that are required in writing to be communicated electronically if:

- the recipient has consented in writing to receiving the notification, information, disclosure, list or report (as the case may be) by an electronic communication; and
- the communication is sent to the number or address specified by the recipient when giving that consent.

Considerations as to whether to notify an urgent case

35. Where a RMP considers that the case is urgent, they must provide oral notification as soon as reasonably practicable. In determining whether the case is urgent the RMP must have regard to the following:
    - the nature of the suspected disease, infection or contamination;
    - the ease of spread of that disease, infection or contamination;
    - the ways in which the spread of the disease, infection or contamination can be prevented or controlled; and
    - the patient's circumstances (including age, sex and occupation).

36. Provision will also be made to the effect that the duty on the RMP to notify the PHA does not apply where the RMP reasonably believes that the PHA has already been notified of the patient's suspected disease, infection or contamination by another RMP.

Duty to notify suspected disease, infection or contamination in dead persons

37. The Department proposes to include provision placing a duty on the RMP to notify PHA where they have reasonable grounds for suspecting that the person they are attending has died whilst:
    - infected with a notifiable disease;
    - infected with a disease which, in the view of RMP, presents or could present, or presented or could have presented (whilst that person was alive), significant harm to human health; or
    - contaminated in a manner which, in the view of the RMP, presents or could present, or presented or could have presented (whilst the person was alive), significant harm to human health.

What must be notified

38. The notification must include the following information in relation to the person insofar as it is known to the RMP:
    - name, date of birth and sex;
    - date of death;
    - home address including postcode;
    - place of residence at time of death (if different from home address);
    - HSC number;
    - occupation at time of death (if the RMP considers it relevant);
    - the name, address and postcode of the person's place of work or education at the time of death (if the RMP considers it relevant);
    - relevant overseas travel history;
    - ethnicity;
    - the disease or infection which the person had or is suspected of having had or the nature of the person's contamination or suspected contamination;
    - the date of onset of symptoms;
    - the date of the RMP's diagnosis; and
    - the RMP's name, address and telephone number.

When the notification must be made

39. The notification must be provided in writing within 3 days beginning with the day on which the RMP forms a suspicion.

Considerations as to whether to notify an urgent case

40. Where a RMP considers that the case is urgent, they must provide oral notification as soon as reasonably practicable. In determining whether the case is urgent the RMP must have regard to the following:
    - the nature of the suspected disease, infection or contamination;
    - the ease of spread of that disease, infection or contamination;
    - the ways in which the spread of the disease, infection or contamination can be prevented or controlled; and
    - the person's circumstances (including age, sex and occupation).

41. Provision will also be made to the effect that the duty on the RMP to notify the PHA does not apply where the RMP reasonably believes that the PHA has already been notified of the person's suspected disease, infection or contamination by another RMP.

Duties on operators/directors of diagnostic laboratories to notify PHA of causative agents found in human samples

42. A new duty on operators/ directors of diagnostic laboratories will be introduced to notify the PHA where a causative agent specified in a list is identified in a human sample.

What must be notified

43. The information to be included in the notification insofar as it is known to the operator/ director must include the following:
    - name and address of the diagnostic laboratory;
    - the date and time the sample was received by the diagnostic laboratory;
    - where a causative agent is identified, the details of that agent;
    - date of the sample;
    - nature of the sample;
    - the results of any antimicrobial susceptibility test and any resistance mechanism identified in respect of the sample;
    - name of person from whom the sample was taken;
    - that person's:
        - date of birth and sex;
        - current home address including postcode;
        - current residence (if not home address);
        - ethnicity;
        - HSC number;
    - the name, address and organisation of the person who solicited the test.

When the notification must be made

44. The notification must be provided in writing within 7 days beginning with the day on which the causative agent is identified.

45. Provision will be made that only a Northern Ireland diagnostic laboratory will be under a duty to notify PHA. The Northern Ireland diagnostic laboratory identifies a causative agent where:
    - the diagnostic laboratory identifies the causative agent; or
    - the causative agent is identified by another laboratory under an arrangement made with that diagnostic laboratory.

Considerations as to whether to notify an urgent case

46. If the operator/ director of the diagnostic laboratory considers that a particular case is urgent, the notification must be provided orally as soon as reasonably practicable.

47. In determining whether the case is urgent, the operator/director of the diagnostic laboratory must have regard to the following:
    - the nature of the causative agent;
    - the nature of the disease which the causative agent causes;
    - the ease of spread of the causative agent;
    - the ways in which the spread of the causative agent can be prevented or controlled; and where known, the person's circumstances (including age, sex and occupation).

48. Provision will also be made to the effect that the duty to notify does not apply where the operator/ director of the diagnostic laboratory reasonably believes that the PHA has already been notified by the operator/ director of another diagnostic laboratory in relation to the same causative agent being found in a sample from the same person.

49. We will include a definition of a causative agent to mean (a) a causative agent listed in the legislation, or (b) evidence of an infection caused by such an agent.

Question 5: Do you agree or disagree with the proposed "all hazards" approach to notification? Please give reasons for your answer.

Question 6 – Please give reasons for your answers.
(a): Do you agree or disagree with the duties to be placed on registered medical practitioners?

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

UK Government consultation on the Health Protection (Notification) Regulations 2010 (HPNR 2010)

50. The UK Government ran a consultation from 12 July 2023 to 15 November 2023 in relation to proposed amendments to the HPNR 2010 seeking views on proposed additions to the list of notifiable diseases and notifiable causative agents and amendments to the reporting requirements on diagnostic laboratories in England[10]. The consultation proposed an extension of current reporting requirements placed on diagnostic laboratories to also report negative and void test results, in addition to the positive results already required.

51. The UK consultation sought views from stakeholders to update the HPNR 2010 to meet their current surveillance needs and to support prompt and effective public health action.

52. We also seek views on whether Northern Ireland legislation should include this additional duty on diagnostic laboratories.

53. As outlined above we are unable to share a composite list of notifiable diseases and notifiable causative agents to be included in Northern Ireland legislation until such

[10] Health Protection (Notification) Regulations 2010: proposed amendments - GOV.UK (www.gov.uk)

times as the Four Nations Review has completed, which will also take into account the outcome of the HPNR 2010 consultation.

Question 7 – Please give reasons for your answers.
(a): Do you agree or disagree with the duties to be placed on operators / directors of diagnostic laboratories?
(b): Do you agree or disagree with the types of information that operators / directors of diagnostic laboratories must notify?
(c): Do you agree or disagree that legislation should place a duty on diagnostic laboratories to report negative test results?
(d): Do you agree or disagree that legislation should place a duty on diagnostic laboratories to report void test results?

Offences

54. The Department also proposes to include an offence to the effect that if the operator/ director of a diagnostic laboratory fails without reasonable excuse to comply with the duties set out above, they will commit an offence. Any person who commits an offence will be liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). The suggested offence aligns with the equivalent offence set out in English legislation.

Question 8 – Please give reasons for your answers.
(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?

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

Powers of entry and investigations

55. The 1967 Act makes provision in relation to powers of entry by an authorised officer of the PHA. Section 22 provides that the authorised officer has the

right to enter any premises to ascertain whether there is, or has been, on, or in connection with premises, contravention of the Act or regulations made under the Act. Powers are given to the authorised officer to ascertain whether circumstances exist which would authorise or require PHA to take action or execute any work under the Act or regulations under the Act. In addition, the authorised officer is given powers to take any action or execute any work, authorised or required by the Act, or any regulations, or any (magistrates' court) orders made under the Act to be taken or executed by the PHA. Admission cannot be demanded as of right in relation to premises used as a dwelling house unless 24 hours' notice of intended entry has been given to the occupier.

56. A definition of 'authorised officer' will be included in the Bill to mean ***any person authorised by the PHA to exercise functions conferred on it under the Bill (whether or not the person is an officer of the Agency).***

57. It is proposed to enhance these powers of entry and investigations by supplementing them with a wide range of powers such as applying for a warrant in specified circumstances, using reasonable force when necessary, directing that premises be left undisturbed, taking measurements or photographs, making recordings, requiring a person to answer questions, or dismantling any article or substance.

58. The enhanced policy proposals in relation to powers of entry are as follows:
    a) An authorised officer of the PHA shall have a right to enter any premises at all reasonable hours:
        - for the purposes of ascertaining whether there is or has been any contravention of any provision in the Bill, or of an order made by the magistrates court under the Bill, which it is the function of the PHA to enforce;
        - for the purposes of ascertaining whether or not circumstances exist which would authorise or require the PHA to take any action, or execute any work, under such a provision or in relation to such an order;
        - to take any action, or execute any work, authorised or required under a provision in the Bill or in relation to a magistrates court order; or

- generally, for the purpose of the performance by the PHA of their functions under such a provision, or in relation to a magistrates court order.

b) Admission to any premises shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

c) Paragraph (a) above does not authorise entry to any part of premises which is used as a private dwelling (but this does not affect the power of a magistrate court to issue a warrant authorising entry to a private dwelling or to any part of premises used as a private dwelling).

d) A magistrates' court warrant may authorise the PHA to enter the premises, if need be by force, if it is shown to the satisfaction of the magistrates court on sworn information in writing that:
   - that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied, or the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
   - that there is reasonable ground for entry into the premises for any such purposes as is mentioned in sub paragraphs (a) above.

e) The magistrates' court shall not issue a warrant unless it is satisfied that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied, or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry.

Question 9: Do you agree or disagree with the proposed enhanced powers of entry for "authorised officers" of the PHA? Please give reasons for your answer.

Question 10 – Please give reasons for your answers.
(a): Do you agree or disagree with the definition of "authorised officer"?

(b): Do you agree or disagree that the Department should specify who the "authorised officers" should be in legislation?

Supplementary provision as to entry

59. The Department also proposes to include supplementary provision as to entry.

60. An authorised officer entering any premises, may take with them any such person or equipment and materials as may be necessary. If authorised to enter premises by virtue of a warrant, they will be under a duty to leave any unoccupied premises as effectively secured against trespassers as he found them.

61. The officer may for the purpose for which entry is authorised:
    - search the premises;
    - carry out measurements and tests of the premises or of anything found on them;
    - take and retain samples of the premises or of anything found on them;
    - inspect and take copies or extracts of any documents or records found on the premises;
    - require information stored in an electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form; and
    - seize and detain or remove anything which the officer reasonably believes to be evidence of any contravention relevant to the purpose for which entry is authorised.

Question 11 – Please give reasons for your answers.
(a): Do you agree or disagree with the supplementary powers of entry for "authorised officers" of the PHA?

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

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

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

62. Every warrant issued under these provisions will continue in force until the purpose for which the entry is necessary has been satisfied. A provision will also be included in the Bill to the effect that nothing in the power of entry provisions or the supplementary powers will limit the other parts of the Bill, or of regulations made under it, with respect to entry into or upon, and inspection of, any premises.

Offence of wilful obstruction

63. It is proposed to include an offence of wilful obstruction to the effect that a person commits an offence if the person wilfully obstructs any person acting in execution of the above provisions or of a warrant made or issued. A person guilty of an offence liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5000).

Question 12 – Please give reasons for your answers.
(a): Do you agree or disagree that an offence of wilful obstruction should be included in the Bill?

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

Enhancement of PHA powers

64. A number of factors make alignment with Public Health Protection legislation in England, Wales and Scotland, complicated. Firstly, the remit of Local Authorities in the other jurisdictions is wide and includes social care, schools, housing, as well as waste management and planning etc. whereas Northern Ireland's health protection functions are dispersed across a range of bodies such as Environmental Health Officers in local councils, the Health and Safety Executive, the Drinking Water Inspectorate, health and social care trusts etc.

65. Currently there are a number of response plans, drawing on legislation, memorandums of understanding, and operational frameworks which provide strategic direction on what agencies should carry out which functions in a range of health protection or emergency scenarios. The main plans are the PHA's Northern Ireland Infectious Disease Incident/Outbreak Plan (September 2018)[11], Department of Health Emergency Response Plan (March 2024)[12] and the Northern Ireland Civil Contingencies Framework (November 2023)[13].

66. These plans relate to the statutory functions and responsibilities of relevant Government Departments and organisations and how they should engage with each other to protect public health.

67. Given the dispersed nature of the functions and responsibilities in Northern Ireland in comparison with the unitary authorities in England, Scotland and Wales, and given the broadening of the legislation to include a response to all public health hazards, it is proposed that the Bill builds on the current functions of the PHA. This means that, in addition to its advisory role, it is given the power to authorise other bodies to act to investigate and mitigate an incident within their remits.

68. In an instance, where the novel nature of the health threat means there is no clear agency with the power to act, the PHA will be able to authorise and resource the

[11] Northern Ireland Infectious Disease Incident / Outbreak Plan | HSC Public Health Agency (hscni.net)
[12] Department of Health – Emergency Response Plan – March 2024
[13] Nov 23 - Version 2 Draft - NICCF (executiveoffice-ni.gov.uk)

proposed functions either to be undertaken by another body or to carry out the function itself.

69. Given the understanding and cross working between organisations currently, it is envisaged that this is only a precautionary measure to act as a failsafe.

Magistrates' court orders

70. Consequently, the Bill will include a suite of provisions enabling the PHA to make applications to the magistrates' court to order health measures in relation to persons, things or premises.

71. It is proposed that the Bill will make provision at the start of this suite of provisions to describe what we mean when we refer to a person, thing or premises being infected or contaminated. For example:

- references to infection or contamination are to infection or contamination which presents, or could present, significant harm to human health (whether from risks originating in Northern Ireland or elsewhere);
- references to contamination include radiation;
- references to a person who is infected or contaminated include references to a person who carries the source of an infection or contamination;
- references to a thing or premises being infected or contaminated include references to the thing or premises carrying the source of an infection or contamination;
- references to infecting or contaminating persons, things or premises include references to passing the source of an infection or contamination to persons, things or premises;
- references to the spread of contamination include the spread of any source of contamination; and
- references to disinfection or decontamination include the removal of any vector, agent or source of the infection or contamination.

Health measures in relation to persons

72. The PHA will have the power to serve a notice on any person or groups of people requesting them to do, or refrain from doing, anything for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination which presents or could present significant harm to human health. The notice must provide contact details for an officer of the PHA who is able to discuss the notice. The PHA may offer compensation or expenses in connection with its request.

73. Where this power is deemed not effective, the PHA can make an application to the magistrates' court for an order. Before a magistrates' court order can be made, specified criteria must be met.

74. A magistrates' court may make an order imposing on a person one or more restrictions or requirements if the court is satisfied that:
    - a person is or may be infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that the person might infect or contaminate others; and
    - it is necessary to make the order in order to remove or reduce that risk.

75. A magistrates' court may make an order imposing on one or more persons in the group one or more of the restrictions or requirements if the court is satisfied, in relation to a group of persons, that:
    - each person in the group is or may be infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that each person in the group might infect or contaminate persons outside the group; and
    - it is necessary to make the order in order to remove or reduce that risk.

76. The restrictions or requirements that may be imposed on a person by an order are that:
    - the person submit to medical examination;

- the person be removed to a hospital or other suitable establishment;
- the person be detained in a hospital or other suitable establishment;
- the person be kept in isolation or quarantine;
- the person be disinfected or decontaminated;
- the person wear protective clothing;
- the person provide information or answer questions about the person's health or other circumstances;
- the person's health be monitored and the results reported;
- the person attends training or advice sessions on how to reduce the risk of infecting or contaminating others;
- the person be subject to restrictions on where the person goes or with whom the person has contact;
- the person abstains from working or trading.

77. Where a court is satisfied as to the criteria set out above in relation to persons or groups of persons, the order may also make provision in relation to a child in that a person with parental responsibility for the child (within the meaning of the Children (Northern Ireland) Order 1995) to secure that the child submits to or complies with the restrictions or requirements imposed by the order.

Question 13: Do you agree or disagree with the "requirements and restrictions" in relation to "persons" and "groups of persons"? Please give reasons for your answer.

Health measures in relation to persons: related parties

78. The Department proposes to include measures in relation to related parties.

79. A definition of 'related party' will be included to mean:
    - a person who has or may have infected or contaminated a person, or who has or may have been infected or contaminated by a person;
    - a person who has or may have infected or contaminated a member of the group, or who has or may have been infected or contaminated by a member of the group.

80. A magistrates' court may make an order imposing on or in relation to a person a requirement that a person provide information or answer questions about a person's health or other circumstances (including, in particular, information or questions about the identity of a related party).

81. Before such an order can be made, the court must be satisfied that:
    - a person is or may be infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that a related party might infect or contaminate others; and
    - it is necessary to make the order in order to remove or reduce that risk.

82. A magistrates' court may make an order imposing on or in relation to one or more persons in the group a requirement that the person provide information or answer questions about the person's health or other circumstances (including, in particular, information or questions about the identity of a related party).

83. Before such an order can be made, the court must be satisfied, in relation to a group of persons that:
    - each person in the group is or may be infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that a related party might infect or contaminate others; and
    - it is necessary to make the order in order to remove or reduce that risk.

84. Where a court is satisfied as to the criteria set out above in relation to a related party, the order may also make provision in relation to a child in that a person with parental responsibility for the child (within the meaning of the Children (Northern Ireland) Order 1995) to secure that the child submits to or complies with the restrictions or requirements imposed by the order.

Question 14: Do you agree or disagree with the "requirements and restrictions" in relation to "related parties"? Please give reasons for your answer.

Health measures in relation to things

85. A magistrates' court may make an order imposing, in relation to the thing, one or more restrictions or requirements if the court is satisfied that:
    - the thing is or may be infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that the thing might infect or contaminate humans; and
    - it is necessary to make the order in order to remove or reduce that risk.

86. A magistrates' court may make an order imposing, in relation to one or more things in the group, one or more restrictions or requirements if the court is satisfied that:
    - each thing in the group is or may be infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that each thing in the group might infect or contaminate humans; and
    - it is necessary to make the order in order to remove or reduce that risk.

87. The restrictions or requirements that may be imposed by an order are:
    - that the thing be seized or retained;
    - that the thing be kept in isolation or quarantine;
    - that the thing be disinfected or decontaminated;
    - in the case of a dead body, that the body be buried or cremated;
    - in any other case, that the thing be destroyed or disposed of.

88. The definition of 'thing' will include a reference to (a) human tissue, (b) a dead body or human remains, (c) animals, and (d) plant material.

Question 15: Do you agree or disagree with the "requirements and restrictions" in relation to "things"? Please give reasons for your answer.

Health measures in relation to things: related persons or related things

89. A magistrates' court may make an order under requiring (a) the owner of the thing, or (b) any person who has or has had custody or control of the thing, to provide information or answer questions about the thing (including, in particular, information or questions about where the thing has been or about the identity of any related person or the whereabouts of any related thing).

90. Before such an order can be made, the court must be satisfied that:
    - the thing is or may be infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that a related person or related thing might infect or contaminate humans; and
    - it is necessary to make the order in order to remove or reduce that risk.

91. A magistrates' court may make an order requiring (a) any owner of one or more things in the group, or (b) any person who has or has had custody or control of one or more things in the group, to provide information or answer questions about the thing (including, in particular, information or questions about where the thing has been or about the identity of any related person or the whereabouts of any related thing).

92. Before such an order is made, the court must be satisfied that:
    - each thing in the group is or may be infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that a related person or related thing might infect or contaminate humans; and
    - it is necessary to make the order in order to remove or reduce that risk.

93. The Bill will make provision to define a "related person" to mean:
    - a person who has or may have infected or contaminated the thing, or a person who has or may have been infected or contaminated by that thing;

- a person who has or may have infected or contaminated any thing in the group, or a person who has or may have been infected or contaminated by any such thing.

94. The Bill will make provision to define a "related thing" to mean:
    - a thing which has or may have infected or contaminated the thing, or a thing which has or may have been infected or contaminated by that thing;
    - a thing which has or may have infected or contaminated any of the things in the group, or a thing which has or may have been infected or contaminated by any such thing.

Question 16: Do you agree or disagree with the "requirements and restrictions" in relation to health measures in relation to things for "related persons" and "related things" at paragraph 91? Please give reasons for your answer.

Health Measures in relation to premises

95. A magistrates' court order may make an order imposing, in relation to "premises" or a "group of premises", one or more restrictions or requirements if the court is satisfied that:
    - the premises, or group of premises, are or may be infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that the premises or each set of premises in the group might infect or contaminate humans; and
    - it is necessary to make the order to remove or reduce the risk.

96. The restrictions or requirements which may be imposed by an order are:
    - that the premises be closed;
    - in the case of a conveyance or movable structure, that the premises or group of premises be detained;
    - that the premises be disinfected or decontaminated; and
    - in the case of a building, conveyance or structure, that the premises be destroyed.

97. A definition of “premises” will be included to mean “any place, and in particular, will include (a) any vehicle, train, vessel or aircraft, (b) and tent or movable structure, and (c) any offshore installation.”

Question 17: Do you agree or disagree with the “requirements and restrictions” in relation to “premises”? Please give reasons for your answer.

Health measures in relation to premises: related persons or related things

98. A magistrates’ court order may make an order requiring the owner(s) or any occupier of one or more sets of premises in the group to provide information or answer questions about that set of premises, including information about the identify of any related person or the whereabouts of any related thing.

99. Before such an order can be made, the court must be satisfied that:
    - the premises or each set of premises in the group are or may be infected or contaminated or are or may be a place where infection or contamination was spread between person or things;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that a related person or related thing might infect or contaminate humans; and
    - it is necessary to make the order to remove or reduce that risk.

100. The Bill will make provision to define a “related person” to mean:
    - a person who has or may have infected or contaminated:
        - the premises,
        - a person who is or has been on the premises, or
        - a thing which is or has been on the premises; and
    - a person who has or may have been infected or contaminated by:
        - the premises,
        - a person who is or has been on the premises, or
        - a thing which is or has been on the premises.

101. The Bill will make provision to define a "related thing" to mean:

- a thing which has or may have been infected or contaminated the premises, a person who is or has been on the premises, or a thing which is or has been on the premises; or
- a thing which has or may have been infected or contaminated by the premises, a person who is or has been on the premises, or a thing which is or has been on the premises.

Question 18: Do you agree or disagree with the "requirements and restrictions" in relation to health matters relating to "premises" in relation to a "related person" and a "related thing" in paragraph 98? Please give reasons for your answer.

Additional provision in relation to magistrates' court orders

102. The Department also proposes to make additional provision in relation to magistrates' court orders. The Bill will provide that the orders may include, in addition to the restrictions or requirements mentioned above:

- such other restrictions or requirements as the court considers necessary for the purpose of reducing or removing the risk in question;
- a restriction or requirement contained in an order may be expressed to take effect subject to conditions specified in the order;
- two or more orders may be combined in a single order and the order may contain such directions as the court considers appropriate to give effect to it;
- the order may order the payment of compensation or expenses in connection with the taking of measures pursuant to the order; and
- an order is authority for those persons to whom it is addressed to do such things as may be necessary to give effect to it.

Question 19: Do you agree or disagree with the additional provisions in relation to the making of the magistrates' court orders. Please give reasons for your answer.

Right to a timely explanation of interference with individual rights

103. Sections 37 and 38 of the Public Health etc. (Scotland) Act 2008 asp 5 provide for a Scottish health board to make an exclusion or restriction order where it knows that a person has, or has been exposed to, an infectious disease or is contaminated, or has been exposed to a contaminant, and that this appears to present a significant risk to public health. An exclusion or restriction order may prohibit a person from entering or remaining in any place, or from carrying on any activity, and impose such other conditions as are considered appropriate by the board.

104. If a health board considers that there is a significant risk to public health, section 90 makes provision for it to restrict the release of a body from a hospital where a person has died of an infectious disease, or had such a disease, or was contaminated, before dying of another cause.

105. Under sections 34, 40, 42, 43 and 45 of the 2008 Act, a health board may also apply to the sheriff for an order for medical examination, quarantine, removal to, or detention in, a hospital.

106. In all of the above cases, under either section 31 or section 90, the health board is required to provide an explanation of the need for the action taken. In relation to an exclusion, restriction or sheriff's order, this must be provided to the intended subject of the order and must explain:
    - that there is a significant risk to public health;
    - the nature of that risk; and
    - why the board considers it necessary for the proposed action to be taken.

107. Where the subject is incapable of understanding the explanation (whether because of youth, illness or otherwise), the board must give the explanation to a parent, guardian, welfare attorney, or any other person appointed or having authority to intervene in their affairs.

108. Where the action is in relation to a dead body, the board must explain to any person who appears to be responsible for the removal and disposal of the body:
    - that there is a significant risk to public health;
    - the nature of that risk;
    - any precautions which should be taken; and
    - any other matter which the board considers appropriate.

109. The explanation of the need for an exclusion, restriction or sheriff's order must be provided before the proposed action is taken. Where this is not possible, it should be provided as soon as reasonably practicable after taking the action.

110. Furthermore, applications for sheriff's orders must specify whether such an explanation has been given and any response made by, or representations made on behalf of, the person in relation to whom the order is sought. Where no explanation has been given, the board must show that it was not reasonably practicable to do so. The making of an order is subject to the sheriff's satisfaction on these matters.

111. The review of the 1967 Act recommended that the new Public Health Bill aims to strike an appropriate balance between the state's responsibility to protect the public's health and the autonomy, rights and dignity of the individual. The Act preceded the development of human rights and data protection legislation in the United Kingdom. As such, it does not include a statutory requirement for a person to be provided with an explanation of the need for an action that interferes with their rights.

112. The review found such a right to be in accordance with the Human Rights Act 1998 and the European Convention on Human Rights ("the ECHR"). It recognised, in particular, strong stakeholder support for aligning with Scottish legislation, which requires a timely explanation for restrictions on the removal of a body and for orders imposing detention, isolation, quarantine or medical examination.

113. The Department also wishes to consider whether such a right should be extended further and welcomes views in relation to the additional restrictions and requirements likely to be provided under the new Bill.

Question 20: Should provisions in relation to a timely explanation of interference with individual rights be included? Please give reasons for your answer.

Medical examination: least invasive and least intrusive procedures

114. Where a magistrates' court order imposes a requirement that a person submit to medical examination, any health care professional authorised to carry out that examination:
    - must not use invasive or intrusive procedures unless that professional considers such procedures are necessary to achieve the purpose for which the examination is being carried out; and
    - must, where the professional considers such procedures are necessary for that purpose, use the least invasive and least intrusive procedures practicable.

115. A provision will be made to the effect that "invasive procedures" do not include:
    - examination of the ear, nose or mouth;
    - temperature assessment using:
        - an ear, oral or cutaneous thermometer;
        - or thermal imaging;
    - physical examination of skin and hair;
    - auscultation;
    - external palpation;
    - retinoscopy;
    - external collection of urine, faeces or saliva samples;
    - external measurement of blood pressure;
    - electrocardiography.

Question 21: Do you agree or disagree with the provisions in relation to medical examinations? Please give reasons for your answer.

Question 22: Do you agree or disagree with the list in relation to invasive procedures? Please give reasons for your answer.

Orders in relation to premises - Powers of entry

116. The Bill will include provision in relation to a magistrates' order in relation to premises where the court is satisfied that:
    - admission to any premises has been refused;
    - if admission to the premises is requested, it will be or is likely to be refused;
    - a request for admission would defeat the object of the entry;
    - the occupier is temporarily absent;
    - the premises are unoccupied; or
    - the case is one of urgency.

117. The order will authorise a person (who must be named or described in the order) to enter the premises, if need be by force. Any person entering any premises by virtue of an order may be accompanied by such other persons and such equipment and materials as may be necessary.

118. Provision will also require that on leaving any unoccupied premises which the officer has entered by virtue of such an order, the officer must leave them as effectively secured against trespassers as the officer found them.

119. The purposes under which an order may be made authorising entry will be to enable the officer to:
    - search the premises;
    - carry out measurements and tests of the premises or of anything found on them;
    - take and retain samples of the premises or of anything found on them,
    - inspect and take copies or extracts of any documents or records found on the premises;
    - require information stored in an electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form; and

- seize and detain or remove anything which the officer reasonably believes to be evidence of any contravention relevant to the purpose for which entry is authorised.

Question 23: Do you agree or disagree with the provision of magistrates' court orders in relation to premises? Please give reasons for your answer.

Period for which a magistrates' court order may be in force

120. The order must specify the period for which any restriction or requirement imposed by or under the order is to remain in force. That period may be extended by a further order.

121. The period specified in the order nor any extension of the order may not exceed 28 days in relation to restrictions or requirements in respect of a person required to be detained in hospital or other suitable establishment, or to require that the person be kept in isolation or quarantine.

122. The Department will be given powers to make regulations to prescribe the maximum period that an order may remain in force and the maximum period of any extension of the order. Regulations may specify a shorter period for the purposes of a person subject to an order requiring them to be detained in hospital or other suitable establishment, or to be kept in isolation or quarantine.

Question 24: Do you agree or disagree with the periods for which magistrates' court orders may be in force? Please give reasons for your answer.

Procedure for making orders

123. An application to the magistrates' court may be made by the PHA by notice under Part 7 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

124. The Department may make regulations to require the PHA to give notice, to such persons as may be specified in the regulations, of the making of an application for a magistrates' court order but if the court considers it necessary to do so the court may

make an order without a person having been given such notice as is otherwise required to be given to that person under magistrates' court rules or regulations.

125. Regulations made by the department will also make provision about the evidence that must be available to a magistrates' court before the court can be satisfied to make the order in relation to a person.

126. The Department will consult on the policy underpinning the regulations when they are being drafted. However, the Department may be minded to follow the policy underpinning regulation 4 of The Health Protection (Part 2A Orders) Regulations 2010[14] which specifies that the following evidence must be made available to the justice of the peace:

- a report which gives details (insofar as known and relevant), or gives reasons for the omission of details, of:
    - the signs and symptoms of the infection or contamination in the person who is the subject of the application,
    - the person's diagnosis,
    - the outcome of clinical or laboratory tests, and
    - the person's recent contacts with, or proximity to, a source or sources of infection or contamination.

  The report must contain the at least one of the details listed above.

- a summary of the characteristics and effects of the infection or contamination which the person has or may have which includes an explanation of:
    - the mechanism by which the infection or contamination spreads,
    - how easily the infection or contamination spreads amongst humans, and
    - the impact of the infection or contamination on human health (by reference to pain, disability and the likelihood of death);

- an assessment of the risk to human health that the person presents, including a description of any acts or omissions, or anticipated acts or omissions, of the person which affect that risk;

[14] The Health Protection (Part 2A Orders) Regulations 2010 (legislation.gov.uk)

- an assessment of the risk to human health that the related party presents, including any acts or omissions, or anticipated acts or omissions, of the related party which affect that risk;

- an assessment of the options available to deal with the risk that person presents; and

- an assessment of the options available to deal with the risk that the related party presents.

127. The evidence must be given by persons who are suitably qualified to give the evidence and the evidence may be given orally or in writing.

128. The Department will also have a power to make regulations to make other provision for the procedure on an application for a magistrates' court order (including provision modifying the Magistrates' Courts (Northern Ireland) Order 1981 and magistrates' courts rules).

Varying and revoking orders

129. A magistrates' court order may be varied or revoked by a magistrates' court on the application of an affected person, the PHA, or any other authority with the function of executing or enforcing the order in question.

130. In the case of an order for health measures in relation to persons or related parties, the following persons are affected persons:
    - any person on whom a restriction or requirement is imposed by the order,
    - a person with parental responsibility (within the meaning of the Children (Northern Ireland) Order 1995) for the person,
    - a person's husband, wife or civil partner,
    - a person living with a person as if they were spouses or civil partners of each other, and
    - such other persons as may be specified.

131. In the case of an order for health measures in relation to things, the following persons are affected persons:
    - the owner of the thing;
    - any person with custody or control of the thing; and
    - such other persons as may be specified.

132. In the case of an order for health measures in relation to premises, the following persons are affected persons:
    - the owner of the premises;
    - any occupier of the premises; and
    - such other persons as may be specified.

133. In the case of an order for health measures in relation to things: related persons or things or premises: related persons or things, the following persons are affected persons:
    - any person required to provide information or answer questions; and
    - such other persons as may be specified.

134. The Bill will also provide that the variation or revocation of a magistrates' court order does not invalidate anything done under the order prior to the variation or revocation.

Question 25 – Please give reasons for your answers.
(a): Do you agree or disagree with the proposals in relation to the making of magistrates' court orders?

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

Enforcement of magistrates' court orders

135. The Bill will make provision for the enforcement of magistrates' court orders and will provide that a person commits an offence if they fail without reasonable excuse to

comply with a restriction or requirement imposed by the order, or wilfully obstructs anyone acting in the execution of an order.

136. A person guilty of an offence is liable on summary conviction to a fine not exceeding £5,000.

137. If a person is convicted of an offence, and the court by which the person is convicted is satisfied that the failure or wilful obstruction constituting the offence has caused premises or things to become infected or contaminated or otherwise damaged them in a material way, the court may, if it considers it appropriate to do so, order the person to take or pay for such remedial action as may be specified in the order.

138. Where a magistrates' court order imposes a requirement that a person be detained or kept in isolation or quarantine in a place, and that person leaves that place contrary to the requirement, a constable may take a person into custody and return a person to that place. A person may not be taken into custody after the expiry of the period for which the requirement is in force.

Question 26 – Please give reasons for your answers.
(a): Do you agree or disagree with the proposals in relation to the enforcement of magistrates' court orders?

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

Supplementary provisions in respect of magistrates' court orders

139. The Bill will contain supplementary provision giving the Department a power to make further provision by regulations, in particular:
    - The taking of measures pursuant to a magistrates' court order and may make particular provision about:
        - the type of investigation which may be carried out as part of a medical examination;
        - the manner in which measures are to be taken;

- who is to be responsible for executing and enforcing measures;
- who is to be liable for the costs of measures;
- the payment of compensation or expenses in connection with the taking of measures.

140. The Department will consult further on this policy when the regulations are to be drafted, however provision will be made in the Bill to state that these regulations may not confer functions on officers of Revenue and Customs to execute or enforce the magistrates' court orders unless the regulations are made with the consent of the Commissioners for His Majesty's Revenue and Customs.

Question 27: 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? Please give reasons for your answer.

Restrictions/ emergency powers

141. It is proposed that the Bill will make a provision at the start of this suite of provisions in relation to references to infection and contamination. These are described in paragraph 71 above.

142. The Bill will include regulation making powers allowing the Minister of Health to make domestic and international travel health protection regulations. The power in relation to domestic public health protection regulations may be exercised: in relation to infection or contamination generally, or in relation to particular forms of infection or contamination. The powers will enable regulations to be made of a general nature, to make contingency provision, or to make regulations specifically to respond to particular circumstances.

143. Domestic regulations may be made for the purposes of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Northern Ireland (whether from risks originating there or elsewhere).

The regulations may;

- impose restrictions or requirements on or in relation to ***persons, things or premises*** in the event of, or in response to, a threat to public health, or enable a Northern Ireland department, the Regional Agency or another person, by virtue of a decision taken under the regulations, to impose such restrictions or requirements.

- In relation to a ***person***, the regulations may impose a 'special restriction or requirement' such as:
  - requiring a person to submit to a medical examination;
  - be removed to a hospital or other suitable establishment;
  - be detained in a hospital or other suitable establishment;
  - keep a person in isolation or quarantine;
  - require a person to vaccinated or to receive other prophylactic treatment;
  - a person to be disinfected or decontaminated;
  - that the person wear protective clothing;
  - that the person provide information or answer questions about the person's health or other circumstances;
  - that the person's health be monitored and the results reported;
  - that the person attend training or advice sessions on how to reduce the risk of infecting or contaminating others;
  - that the person be subject to restrictions as to where the person may go or with whom the person has contact;
  - that the person abstain from working or trading.

- In relation to a ***thing***, the regulations may impose a 'special restriction or requirement' such as:
  - that the thing be seized or detained;
  - that the thing be kept in quarantine;
  - that the thing be disinfected or decontaminated;
  - in the case of a dead body, that the body be buried or cremated;
  - in any other case, that the thing be destroyed or disposed of.

- In relation to ***premises***, the regulations may impose a 'special requirement or restriction' such as:
  - that the premises be closed;
  - that, in the case of a vehicle or movable structure, the premises be detained;
  - that the premises be disinfected or decontaminated;
  - that, in the case of a building, structure, mobile home or vehicle, the premises be destroyed.

- The regulations may also make provision as to:
  - imposing duties on registered medical practitioners or other persons to record and notify cases or suspected cases of infection or contamination;
  - conferring on the Regional Agency or other persons functions in relation to the monitoring of public health risks;
  - a requirement that a child is to be kept away from school;
  - a prohibition or restriction relating to the holding of an event or gathering, a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains.

144. Specific provision will be made prohibiting regulations that impose or enable the imposition of a requirement that a person undergoes medical treatment. Medical treatment does not include vaccination and other prophylactic treatment.

Question 28: Do you agree or disagree with the proposed "restrictions and requirements" that may be included in health protection regulations? Please give reasons for your answer.

Keeping a child away from school

145. The Department proposes to make provision giving the PHA the power to require a child is kept away from school.

146. Section 5 of the 1967 Act currently provides that the PHA may serve a notice on a person having the care of a child who is suffering from or has been exposed to infection from a notifiable disease not to attend school for a specified period. Any person who permits a child to attend school in contravention of the notice commits an offence.

147. The Department proposes to enhance this provision to widen scope to all-hazards, so that the PHA may serve a notice on the parent of a child (or person with parental responsibility of a child) to require that they keep the child away from school. This applies where the PHA is satisfied that:
    - a child is infected or contaminated;
    - the infection or contamination is one which presents or could present significant harm to human health;
    - there is a risk that the child might infect or contaminate others;
    - it is necessary to keep the child away from school in order to remove or reduce that risk; and
    - keeping the child away from school is a proportionate response to the risk to others presented by the child.

148. Provision will be made to specify the information to be included in the notice as follows:
    1) the date from which the requirement commences;
    2) the duration of the requirement (up to a maximum of 28 days);
    3) why the requirement is believed to be a necessary and proportionate measure;
    4) the penalty for failing to comply with the notice; and
    5) contact details for the PHA officer who is able to discuss the notice.

149. It is proposed that the PHA will be under a duty to inform the head teacher at the child's school that a notice has been served and the contents of that notice. This should be done as soon as reasonably practicable after serving notice.

150. A parent may request that the PHA review the notice at any time before the requirement lapses. PHA will be under a duty to review the notice within 5 working days beginning with the day on which the request is made where the parent is

requesting a review for the first time. For all other requests, the PHA may undertake a review but will not be under a duty to do so.

151. PHA must inform the parent and the head teacher of the outcome of any review it conducts as soon as is reasonable practicable after the review is concluded.

152. PHA will be able to vary or revoke a notice and must inform the parent or head teacher that the notice has been varied or revoked and, if varied, the nature of the variation.

153. The PHA will be able to serve consecutive notices but must inform the parent of the child and the head teacher where a notice has expired, and no further notice is to be served.

154. A parent will be guilty of an offence if they fail without reasonable excuse, to comply with the notice served or a varied notice. The offence is liable on summary conviction to one or both of:
    1) a fine not exceeding level 2 on the standard scale (£500);
    2) a further fine not exceeding an amount equal to 50% of level 1 (£200) on the standard scale for each day on which the default continues after conviction.

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

155. The Department proposes to make provision giving the PHA the power to require that a head teacher provides PHA with the names and contact details of the pupils at that head teacher's school, where the PHA has served a notice on a parent of a child requiring them to keep a child away from school.

156. The PHA may serve a notice on the head teacher requiring them to provide a list of the names, addresses and contact telephone numbers for all the pupils of that school, or such group of pupils attending that school as it may specify, where PHA is satisfied that:
    1) a person who is or has recently been on the school's premises is or may be infected or contaminated;

2) the infection or contamination is one which presents or could present significant harm to human health;
3) there is a risk that the person may have infected or contaminated pupils at the school;
4) it is necessary for PHA to have the list in order to contact those pupils with a view to ascertaining whether they are or may be infected or contaminated; and
5) requiring the list (and contacting those pupils which may be infected or contaminated) is a proportionate response to the risk presented by the person.

157. The notice must:
1) specify a time limit for meeting the requirement;
2) specify an address where the list is to be sent;
3) provide contact details for an officer of PHA who is able to discuss the notice.

158. The head teacher will be guilty of an offence if they fail without reasonable excuse to comply with the notice and will be liable on summary conviction to a fine not exceeding level 1 on the standard scale (£200).

Question 29: Please give reasons for your answers.
(a): Do you agree or disagree with the proposals in relation to the power to keep a child out of school?

(b): Do you agree or disagree with the requirement on a head teacher to provide contact details?

Restriction of access to, or contact with, dead bodies

159. The Department proposes to make specific provision in relation to dead bodies.

160. Access to and contact with a dead body will be prohibited where the PHA or some other medical practitioner is satisfied that:
1) a dead body is or may be infected or contaminated;

2) the infection or contamination is one which presents or could present significant harm to human health;
3) there is a risk that the dead body might infect or contaminate people;
4) it is necessary to restrict entry to the room in which the dead body is located in order to remove or reduce that risk; and
5) prohibiting any person from entering the room in which the dead body is located or having contact with the dead body is a proportionate response to the risk presented by that dead body.

161. The PHA or some other medical practitioner may serve on the person having charge or control of the premises in which the dead body is located a notice prohibiting any person from entering the room in which the dead body is located or having any contact with the dead body. This person must arrange for a copy of the notice to be conspicuously displayed at each of the entry points to the room without delay.

162. The notice must include:
    1) a statement to the effect that entering the room in which the dead body is located or having any contact with the dead body is prohibited;
    2) a statement to the effect that breach of the prohibition is a criminal offence;
    3) contact details for an officer of the PHA or the medical practitioner who is able to discuss the notice; and
    4) the legal authority for the prohibition.

163. An offence is committed if, without reasonable excuse:
    1) the person on whom the notice is served fails to arrange for a copy of the notice to be displayed at each of the entry points to the room;
    2) any person removes or defaces a displayed notice; or
    3) any person fails to comply with a displayed notice.

164. An offence is not committed where a person fails to comply with the notice if:
    1) the person has the PHA's or medical practitioner's consent to enter the room in which the dead body is located or to have contact with the dead body; or

2) the person is exercising the functions of a coroner or is acting under the authority of a coroner.

165. Any person who commits an offence under this regulation is liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1000).

Question 30: Please give reasons for your answers.
(a): Do you agree or disagree with the proposals in relation to access to dead bodies?

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

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

Relocation of dead bodies

166. Similar to the powers described above in respect of access to and contact with a dead body, the Department wishes to make provision in relation to the relocation of a dead body.

167. Where PHA or some other medical practitioner is satisfied that:
    1) a dead body is or may be infected or contaminated;
    2) the infection or contamination is one which presents or could present significant harm to human health;
    3) there is a risk that the dead body might infect or contaminate people;
    4) it is necessary to relocate the dead body in order to remove or reduce that risk;
    5) relocating the body is a proportionate response to the risk to people presented by the dead body in its current location;

    the PHA, or some other medical practitioner may relocate or cause to be relocated, the dead body to a place where they consider that the risk of the dead body infecting or contaminating people is reduced or removed.

168. The dead body cannot be relocated if a coroner has jurisdiction over the dead body; or the PHA or some other medical practitioner has failed to take reasonable steps to inform the person with charge or control of the premises where the dead body is located of its intention to take action.

169. Any person having charge or control of premises in which a dead body is located must co-operate with the PHA or the medical practitioner, and where they fail to cooperate, without reasonable excuse, they are guilty of an offence. The offence is liable on summary conviction of a fine not exceeding level 3 on the standard scale (£1000).

Question 31: Please give reasons for your answers.
(a): Do you agree or disagree with the proposals in relation to relocation of dead bodies?

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

Limitations: Regulations imposing restrictions or requirements

Domestic Health Protection Regulations

170. The Bill will provide that domestic health protection regulations that include provision imposing restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health, the Department may not make the regulations unless it considers, at that time, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.

171. The Bill will also provide that where regulations include provision enabling a person to make a decision to impose a restriction or requirement (by a Northern Ireland Department, the PHA or another person), and the regulations enable the person to make a decision to impose a special restriction or requirement on or in relation to a person, a thing or premises, the regulations must provide for a right of appeal to a court of summary jurisdiction against any decision to impose a special restriction or requirement.

172. Regulations that include provision imposing a requirement on persons to be vaccinated or to receive other prophylactic treatment must:
    - provide for exemptions from that requirement; and
    - include provision about how a person who is entitled to an exemption is to evidence that entitlement.

173. Where the special restriction or requirement is capable of remaining in force in relation to any person, thing or premises for more than a specified period, the regulations must provide that a specified person may, by application, require that the continuation of the restriction or requirement be reviewed in accordance with the regulations at specified intervals.

174. In relation to a restriction or requirement in relation to detention in a hospital etc, or isolation or quarantine, the period specified, and the intervals specified must be 28 days or less, and the regulations must also require that the continuation of the restriction or requirement be reviewed at specified intervals if an application is not made.

175. Reviews must be carried out by a person determined in accordance with the regulations. The Bill will define "specified" to mean specified in the regulations.

Question 32 - Please give reasons for your answers.
(a): Do you agree or disagree with the scope of the powers to make domestic health protection regulations?

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

International Travel Regulations

176. The Bill will contain a regulation making power enabling the Department to make regulations:

- for preventing danger to public health from persons or vessels, aircraft, trains or other conveyances arriving in Northern Ireland from any place outside Northern Ireland;
- for preventing the spread of infection or contamination by means of any person or vessel, aircraft, train or other conveyance leaving Northern Ireland for any place outside Northern Ireland; and
- for giving effect to any international agreement or arrangement relating to the spread of infection or contamination.

177. These regulations will include provision:
    - for the medical examination, detention, isolation or quarantine of persons;
    - for the detention of conveyances;
    - for the inspection, analysis, retention, isolation, quarantine or destruction of things;
    - for the disinfection or decontamination of conveyances, persons or things or the application of other sanitary measures;
    - for prohibiting or regulating the arrival or departure of conveyances and the entry or exit of persons or things;
    - imposing duties on masters, pilots, train managers and other persons onboard conveyances and on owners and managers of ports, airports and other points of entry; and
    - requiring persons to provide information or answer questions (including information or questions relating to their health).

178. Regulations made under this suite of provisions (international travel) may not include provision requiring a person to undergo medical treatment. Medical treatment does not include vaccination and other prophylactic treatment.

179. Regulations that include provision requiring persons to be vaccinated or to receive other prophylactic treatment must:
    - provide for exemptions from that requirement; and

- include provision about how a person who is entitled to an exemption is to evidence that entitlement.

Question 33 – Please give reasons for your answers.
(a): Do you agree or disagree with the scope of the powers to make international travel health protection regulations?

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

Supplementary provision about public health protection regulations (domestic and international travel)

180. The Bill will make further provision about public health protection regulations (domestic and international travel).

181. Public health protection regulations may in particular:
    - confer functions on a Northern Ireland department, the Regional Agency and other persons;
    - create offences;
    - enable a court to order a person convicted of any such offence to take or pay for remedial action in appropriate circumstances;
    - provide for the execution and enforcement of restrictions and requirements imposed by or under the regulations;
    - permit or require the sharing of information;
    - provide for appeals from and reviews of decisions taken under the regulations;
    - permit or prohibit the levying of charges;
    - permit or require the payment of incentive payments, compensation and expenses; and
    - provide for the resolution of disputes.

182. It is proposed that public health protection regulations may amend any statutory provision. Public health protection regulations may not confer functions on officers of Revenue and Customs unless the regulations are made with the consent of the Commissioners for His Majesty's Revenue and Customs.

183. Public health protection regulations may not create an offence triable on indictment.

184. Public health protection regulations:

- may not create an offence punishable with a fine exceeding £10,000; and
- if the regulations provide for a further fine for each day on which the default continues after conviction, may not provide for the daily penalty to exceed an amount equal to 2% of level 5 on the standard scale (£5000).

185. If public health protection regulations provide for the imposition of a daily penalty in respect of a continuing offence:

- the court by which a person is convicted of the original offence may fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court; and
- where the court fixes such a period, the daily penalty shall not be recoverable in respect of any day before that period expires.

Question 34: Do you agree or disagree with the scope of the associated offences and fines? Please give reasons for your answer.

<u>Powers conferred on any other Northern Ireland department to make regulations</u>

186. Part 1A of the 1967 Act conferred regulation-making powers that were all exercisable by the Department of Health. During the COVID-19 pandemic, this led to the Department making regulations and setting policy in areas where it was not normally the policy lead. For example, many of the later regulations in 2021 addressed hospitality requirements; and COVID-19 certification covered hospitality and leisure industries, not healthcare provision. Whilst initially in 2020, arguably the Department was best placed to understand the virus and its consequences, gradually regulations

became more intricate and the operational reality of the sectors played a greater part in the development of the policy behind them.

187. Not only did this prove problematic at official level, but it also led to the Minister of Health leading debates on policy areas he was not familiar with and for which the Department had no responsibility.

188. Therefore, the Department would like the regulation making powers that are available in a public health emergency under new provisions in the Bill to be exercisable by any Northern Ireland Department. These would only be exercisable by another Department at the request of the Minister of Health.

189. In this case, there is potential for this model to create some confusion as multiple Departments become responsible for amending the same set of regulations, and indeed could lead to not only duplicated work, but work which actually counteracts that which another Department is planning. The potential for public confusion is high. Therefore, two safeguards are proposed.

190. Firstly, the Department of Health is the default regulation making authority, and, secondly, any regulations made by another minister need to be agreed with the Department of Health prior to making, to ensure they continue to meet the needs of the public health emergency as this is their primary function. This could follow similar models where HMRC agree regulations that have relevance to benefits, e.g. see the introductory text of The Statutory Parental Bereavement Pay (Administration) Regulations (Northern Ireland) 2022.

Question 35: Do you agree or disagree that regulation making powers should be included in the Bill enabling other Northern Ireland departments to make regulations at the request of the Minister of Health? Please give reasons for your answer.

Review of regulations

191. The Department proposes to make specific provision in relation to the review of regulations made under the Bill.

192. Proposals include that where public health protection regulations make specific provision in response to particular circumstances, a review of the regulations must be conducted by the Department of Health. The review must consider all the regulations that make specific provision in response to those circumstances and are in operation at the time the review is conducted.

193. The first review must be conducted no more than 28 days after the making of the first regulations that make specific provision in response to the circumstances. The subsequent reviews must be conducted at intervals of not more than 28 days.

194. The review must consider (among other matters):
    - the risk created by the infection or contamination or other danger to public health in response to which the regulations were made;
    - any change in that risk during the review period;
    - the effect of the regulations during the review period;
    - the effect of any other measures taken during the review period to deal with that risk; and
    - whether the provision made by the regulations is a necessary and proportionate response to that risk.

Question 36: Do you consider that the proposals in relation to the review of the operation of the health protection regulations are appropriate? Please give reasons for your answer.

Assembly control

195. It is anticipated the public health protection regulations may not be made unless a draft of the regulations has been laid before, and approved by a resolution of the Assembly, but this is subject to urgent regulations and any regulations making minor amendments. Consequently, provision will be included in relation to emergency procedures. In order to fully consider the mechanics of standing up future emergency health protection regulations, the Department has taken cognisance of the recommendations made in the Final Report for the Independent Commission on UK

Public Health Emergency Powers undertaken by the Bingham Centre for the Rule of Law[15] ("the Bingham report") which was published on 15 May 2024.

196. Among other things, the Bingham report proposes amendments to the general framework in Part 2A of the Public Health (Control of Disease) Act 1984 and Parts 5A and 7 of the Public Health etc. (Scotland) Act 2008. The Department's policy proposals for the draft Bill, in the main, mirror the 1984 Act and incorporates some aspects of the 2008 Act.

197. The Department notes the recommendations in the Bingham report in relation to Assembly control. In particular, the procedure under which emergency health protection regulations can be made and the relevant Assembly scrutiny.

198. Recommendation 3 of the Final Report proposes that before ministers can make urgent health protection regulations by way of the made affirmative procedure, this should be restricted to situations when a **declaration of an urgent health situation** is in effect. The Bingham report helpfully describes the made affirmative procedure in the Glossary:

> *Made affirmative scrutiny procedure (in Northern Ireland the "confirmatory procedure")*
> *In cases of urgency an affirmative statutory instrument can be made into law by a minister and come into force without parliamentary approval, but will expire within a specified period (usually 28 or 40 days) unless it is debated and approved by the legislature.*

199. Recommendation 3 sets out what the urgent declaration procedure should look like:
    - The condition for making a declaration should be that, after consulting the Chief Medical Officer in their jurisdiction, the minister considers that an infectious disease or contaminant constitutes, or may constitute, a danger to human health, and it is necessary to make regulations on an urgent basis in order to

[15] https://binghamcentre.biicl.org/documents/2185_icukphep_final_report.pdf

protect against that danger. The declaration must be revoked if those conditions are no longer satisfied.

- The declaration should be laid in draft before the relevant legislature before being made, and be subject to a debate and confirmation vote. If the minister considers that it is not practicable for the declaration to be approved by the legislature in advance, retrospective approval should be required within 14 days.
- The legislature should be recalled if a public health declaration is made during a period of parliamentary prorogation or adjournment, and the declaration would otherwise be approved more than 21 days after it was made. If circumstances make recall impracticable then the Speaker/Presiding Officer should have discretion to instruct the recall to take place virtually rather than in person, or in extremis for the recall requirement to be set aside, following consultation with the leaders of all the political parties represented in the Chamber.
- Any advice provided by the Chief Medical Officer should be made available to the legislature.
- The declaration should be subject to a two-month sunset period that can only be renewed following a debate and vote on a motion to extend the declaration.
- Before any debate and vote on an approval or extension motion, the minister should be required to lay a report outlining the justification for the declaration, having regard to (i) the public health advice received, (ii) the nature of the risks being faced, (iii) plans being drawn up to deal with the emergency, and (iv) the need to show respect for human rights, the principle of proportionality, and the special interests of vulnerable persons.

200. Section 86B of the Public Health etc. (Scotland) Act 2008 currently makes provision for public health declarations and Recommendation 3 suggests enhancements of this process to align with the urgent declaration process outlined above. The Department is seeking views on whether an urgent declaration procedure should be included in the draft Bill. The Bingham report suggests that the introduction of the urgent declaration procedure would unlock the urgent made affirmative procedure in public health

emergencies, meaning that the legislature would have greater oversight of the use of this procedure. Other parliamentary scrutiny processes would remain available without a declaration needing to be made.

Question 37: Do you consider that the proposals set out in Recommendation 3 of the Bingham report should be adopted in the new Public Health Bill? Please give reasons for your answer.

201. The Department proposes to make provision in the Bill in relation to the 'confirmatory procedure', similar to section 45R of the Public Health (Control of Disease) Act 1984 – Emergency procedure (for making regulations). Recommendation 4 of the Bingham Report proposes that section 45R is amended so that the maximum time between the making of made affirmative regulations (confirmatory procedure in Northern Ireland) and their affirmative scrutiny in the legislature should be reduced from 28 to 14 days. Similar to Recommendation 3 above, it is proposed that:
    - The minister should be required to take into account relevant advice provided by the Chief Medical Officer when determining whether regulations need to be made urgently, and to lay a written statement before the legislature explaining why it is considered that the regulations need to be made urgently with reference, if applicable, to this advice,
    - The maximum time between the making of made affirmative regulations and their affirmative scrutiny in the legislature should be reduced from 28 to 14 days,
    - The legislature should be recalled to debate regulations that are laid using the made affirmative procedure during a period of parliamentary prorogation or adjournment, if such regulations would otherwise be approved more than 21 days after the were made. If circumstances make recall impracticable then the speaker/Presiding Officer should have discretion to instruct the recall to place virtually rather than in person, or in extremis for the recall requirement to be set aside, following consultation of all the political parties represented in the Chamber,

- Any regulations made using the made affirmative procedure should expire after two months,
- As a matter of best practice, governments should set out the anticipated impact of regulations made using the made affirmative procedure before any parliamentary approval debate takes place. Where this is not possible, if any provision within the made affirmative regulations is to be continued in substantially the same form beyond the original two-month sunset period, then an impact evaluation should be provided to the legislature in advance of the approval vote.

Question 38: Do you consider that the proposals set out in Recommendation 4 of the Bingham report should be adopted in the new Public Health Bill? Please give reasons for your answer.

202. Recommendation 5 of the Bingham report makes proposals in respect of the draft affirmative procedure for making domestic health protection regulations. Section 45Q(2) & (4) of the Public Health (Control of Disease) Act 1984 – Parliamentary control - which the Department is minded to replicate, whereby active parliamentary approval of a statutory instrument (a statutory rule in Northern Ireland) is required in advance of it being made and coming into force. Recommendation 5 proposes the following amendments:
    - The four legislatures should be consulted on the minimum amount of time needed to ensure proper scrutiny of draft affirmative regulations, with a view to an expedited draft affirmative scrutiny procedure being developed for public health emergencies, without making scrutiny weaker than it would be under the made affirmative procedure;
    - Impact assessments should be laid before the legislature in advance of the approval debate for draft affirmative regulations;
    - Draft affirmative regulations should expire after six months;
    - If any provision within the draft affirmative regulations is to be continued in substantially the same form beyond six months, an impact evaluation should be provided to the legislature in advance of the approval debate.

203. All the proposals in this recommendation cannot be addressed by way of the Bill. For example, an expedited draft affirmative scrutiny procedure being developed for public health emergencies. However, provision could be made in the Bill for the expiration of draft affirmative domestic health protection regulations after 6 months.

Question 39: Do you consider that the proposals set out in Recommendation 5 of the Bingham report should be adopted in the new Public Health Bill? Please give reasons for your answer.

204. Recommendation 6 of the Bingham report addresses the assembly procedure used to make emergency international travel regulations. It notes that Scotland applies the draft affirmative procedure whereas England, Wales, and Northern Ireland (under temporary powers given by the Coronavirus Act 2020) applied the negative resolution procedure.

205. Again, the Bingham report helpfully provides a definition of the Made negative scrutiny procedure in the Glossary:

> *Under the made negative procedure, a statutory instrument does not require active approval by the legislature: it comes into force and remains law unless the legislature rejects it within a specified period. If the legislature does not reject the instrument within that period, it is deemed to have consented.*

206. The Bingham report is unable to fully recommend a solution to address this anomaly and recognises that removing the negative procedure and requiring that international travel regulations are made under the draft affirmative, or in urgent cases, the made affirmative (confirmatory procedure in Northern Ireland) would increase the strain on legislatures' capacity to review regulations. In Northern Ireland, over 75 international travel regulations were made during the Coronavirus pandemic, all of which would have needed parliamentary time for approval, in addition to any domestic restriction regulations presented. The Bingham report has stated that, *"…it was not made aware of any occasions when the negative procedure was used by the administrations in*

England, Wales and Northern Ireland in circumstances when it should not have been." (page 65).

207. The Department therefore proposes to retain the negative procedure for the making of urgent international travel regulations.

Question 40: Do you agree or disagree that the negative procedure for making urgent international travel regulations should be retained as in Recommendation 6? Please give reasons for your answer.

208. Recommendation 10 of the Bingham report proposes that ministers should have a statutory duty to have regard to any relevant advice produced by National Human Rights Institutions in their jurisdiction when making or continuing a declaration of an urgent health situation and when laying or continuing public health regulations. This duty might also usefully be extended to other independent rights institutions that represent groups likely to be affected by public health interventions, such as the Children's Commissioners.

209. The Department is minded to accept this recommendation and would seek views on this issue.

Question 41 – Please give reasons for your answer.
(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?

(b): What other institutions should this duty be extended to?

210. Recommendation 35 of the Bingham report relates to enforcement matters. Emergency domestic and international travel restriction regulations made under GB health protection legislation utilises Fixed Penalty Notices (FPNs) as the enforcement tool. The Bingham report suggests that Governments should consider whether some type of formal warning system could be a first-stage alternative to the use FPNs. The

report suggests that when considering whether emergency health measures should be underpinned by criminal law, careful judgement must be made taking account the threat level, what the public are being asked to do, and what the public sentiment is around compliance and enforcement (paragraph 312).

211. In order to adopt this recommendation, the Bill would need to make provision for such an informal system to be included in the primary powers to make the emergency restriction regulations. Legal advice is required as to whether the proposed powers to make emergency regulations which include a power to enforce the regulations would be interpreted to apply to a FPN regime only or could it enable an alternative formal warning system to be created in regulations at a later stage.

212. As the department is proceeding at pace with the Bill, we are seeking views on what such a formal warning system might look like, short of FPNs.

Question 42 – Please give reasons for your answers.
(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?

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

THEME 4: PROTECTING INDIVIDUALS

213. The 2016 Final Report of the Review of the 1967 Act highlighted the need to balance health protection and personal freedom. The Department has taken cognisance of these issues and this consultation document has highlighted throughout the safeguards and protections that have been into the proposed policy.

214. For example, where regulations include provision enabling a person to make a decision to impose a restriction or requirement (by a Northern Ireland department, the PHA or another person), and the regulations enable the person to make a decision to impose a special restriction or requirement on or in relation to a person, a thing or premises,

the regulations must provide for a right of appeal to a court of summary jurisdiction against any decision to impose a special restriction or requirement.

215. Similarly, express provision is placed in the Bill to ensure that the Department may not make health protection regulations unless it considers, at that time, that the restriction or requirement is proportionate to what is sought to be achieved by imposing it.

216. Where the PHA is proposing to apply for a magistrates' court order which may impose a restriction or requirement, they are under a duty to give notice to the person concerned of their intentions and provisions will provide for a review. This includes next of kin in relation to deceased persons.

217. The magistrates' court cannot be satisfied the specified criteria are met to make an order unless a prescribed list of comprehensive evidence is available to the justice. The criteria to be satisfied, in relation to persons, are that a person is or may be infected or contaminated, the infection or contamination is one which presents or could present significant harm to human health, there is a risk that the person might infect or contaminate others, and it is necessary to make the order in order to remove or reduce that risk. Provision will also be included requiring the PHA to give a timely explanation to the person affected by the order. The making of the order will be conditional on this, where practicable.

218. Time limits are imposed in relation to the period an order may be in force in relation to persons with limits specified for any period of extension of an order.

219. A duty, which will be specified in regulations, will be placed on PHA to have regard to the impact of the order on the welfare of a person and the person's dependants, if any, for the duration of the order, where they are detained in a hospital or other suitable establishment, or where they are kept in isolation or quarantine.

220. Where public health protection regulations, or a magistrates' court order impose or enable imposition of a requirement that a person submit to medical examination, any health care professional authorised to carry out that examination must not use invasive

or intrusive procedures unless that professional considers that such procedures are necessary to achieve the purpose for which the examination was being carried out, and must use the least invasive and least intrusive procedures practicable. The Bill includes provision enabling a person to apply to the court for a variation or a revocation of a magistrates' court order.

221. The Bill also places limitations on the use of powers by way of reference to a requirement that the powers are only exercised where there is a significant risk to human health, or by requiring that the exercise of powers is proportionate to the risk being met.

222. The Department considers therefore that the balance to protect human health and personal freedoms has been achieved.

223. The health protection powers are for use where voluntary cooperation to avert a health risk cannot be secured and where other methods of control are ineffective, unsuitable or disproportionate to the risk involved.

Question 43: Do you consider that the appropriate safeguards and protections to individuals have been captured in the proposed Bill? Please give reasons for your answer.

3. IMPACT SCREENING

3.1 Equality Implications

An equality screening has been carried out on the policy proposals underpinning a draft Public Health Bill and a preliminary decision has been taken that a full equality impact assessment is not required at this stage. The preliminary decision is subject to change following analysis of feedback received during this consultation.

Further screenings will be undertaken when regulations are to be drafted.

3.2 Human Rights

A draft Human Rights Impact Assessment has been developed for these proposals. This draft assessment will be revisited following analysis of feedback received during this consultation.

3.3 Data Protection Impact Assessment

A data protection screening has been carried out and consultation with the Information Commissioner's Office is ongoing. This draft assessment will be revisited following analysis of feedback received during this consultation.

3.4 Regulatory Impact Assessment

A draft Regulatory Impact Assessment has been developed for these proposals. This draft Regulatory Impact Assessment will be revisited following analysis of feedback received during this consultation.

3.5 Rural Impact Assessment

A Rural Impact screening has been carried out and it is considered that the proposals in the draft Bill would impact equally on the population, regardless of where they lived in Northern Ireland. Further screenings will be undertaken when regulations are to be drafted.

4. GET INVOLVED

4.1 How to respond

This consultation has been launched using Citizen Space. Citizen Space is the Northern Ireland Civil Service (NICS) recommended online Consultation tool and preferred surveying tool.

You can also share your views on this consultation in a number of other ways. Additional copies are available electronically and can be downloaded from https://www.health-ni.gov.uk/consultations

In addition, a separate questionnaire is available to help you record your comments and views. This can be completed and submitted in the following ways:

- Download and Email us at: phbt@health-ni.gov.uk
- Download, print and post to: Public Health Bill Team,
  Castle Buildings, Stormont,
  Belfast, Northern Ireland, BT4 3SQ

This document is also available in alternative formats on request. Please contact the Department, at the address above or email, to make your request.

The consultation will close on **27 September 2024**. Responses received after this date will only be considered in exceptional circumstances and with prior agreement from the Department.

Following this consultation, the Department will produce an analysis of the responses and the report will be published on the Department's website.

5. PRIVACY, CONFIDENTIALITY AND ACCESS TO CONSULTATION RESPONSES

The Department may publish a summary of responses following completion of the consultation process, except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full.

Responses to the consultation, may be published or disclosed on request in accordance with information legislation; these chiefly being the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR), the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

The FOIA gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation.

If you do not wish information about your identity to be made public please include an explanation in your response 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.

6. PRIVACY NOTICE – CONSULTATIONS (DOH)

Data Controller Name:	Department of Health (DoH)
Address:	Castle Buildings, Stormont, BELFAST, BT4 3SG
Email:	phbt@health-ni.gov.uk
Telephone:	028 90532337

Data Protection Officer Name:	Charlene McQuillan
Telephone:	028 90522353
Email:	DPO@health-ni.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the Data Protection Act (DPA) and the UK General Data Protection Regulation (UK GDPR). The Department of Health (DoH) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

6.1 Purpose for processing

We will process personal data provided in response to consultations for the purpose of informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We will publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

6.2 Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1)(e) of the UK GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2)(g) of the UK GDPR, in the exercise of the function of the department, and to monitor equality.

6.3 How will your information be used and shared

We process the information internally for the above stated purpose. We don't intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance the provisions of the data protection laws.

6.4 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 (GMGR).

6.5 What are your rights?

You have the right to obtain confirmation that your data is being processed, and access to your personal data.

You are entitled to have personal data rectified if it is inaccurate or incomplete.

You have a right to have personal data erased and to prevent processing, in specific circumstances.

You have the right to 'block' or suppress processing of personal data, in specific circumstances.

You have the right to data portability, in specific circumstances.

You have the right to object to the processing, in specific circumstances.

You have rights in relation to automated decision making and profiling.

6.6 How to complain

If you are not happy with how we process your personal information and if you wish to request access, object or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
casework@ico.org.uk

ANNEX

Review of Public Health Act (Northern Ireland) 1967 – Final Report (March 2016)
Conclusions and recommendations

The Review of the Public Health Act (Northern Ireland) 1967, including the public consultation, has led the Department to the following conclusions and recommendations.

Conclusions	**Recommendations**
1. The 1967 Act is deficient in a number of aspects.	1. The Executive should include a public health bill in its legislative programme for the next Assembly mandate.
The remaining recommendations assume that the Executive will agree to do so.	
2. The 1967 Act is concerned almost exclusively with infectious diseases, whereas the International Health Regulations 2005 and a number of jurisdictions have adopted the all-hazards approach to health protection legislation.	2. The Public Health Bill should be based on the all-hazards approach and be consistent with the WHO International Health Regulations.
3. There is support for the inclusion of a statement of principles or a statement of intent or a list of objectives or a combination of any of these.	3. The Public Health Bill should include a statement of principles, or of intent, or objectives, or a combination of these.
4. The 1967 Act does not require authorities to act in ways that are proportionate to the threats to the public's health.	4. The Public Health Bill should aim to strike a balance between the state's responsibility to protect the public's health, and the autonomy,

			rights and dignity of the individual. The Bill should be compliant with the state's duties in respect of human rights.
5.	Given the infrequency with which this legislation is reviewed, there is a particular need to future-proof new legislation.	5.	The Department should aim to future-proof the legislation by a combination of the all-hazards approach; careful choices of terminology in the legislation including the categories of threat to population health, judicious use of subordinate legislation.
6.	Many categories of threat to population health are being used in different jurisdictions.	6,	In preparing instructions to OLC the Department should consider in particular the categories of threat used in the Scottish legislation.
7.	One of the shortcomings of the 1967 Act is a lack of clarity or completeness as regard the roles and responsibilities of different authorities.	7.	The Department should aim to ensure that new legislation provides a greater clarity regarding the roles and responsibilities of the bodies concerned.
8.	The current powers of statutory agencies to investigate public health risks appear to be inadequate.	8.	Investigatory powers should be strengthened, and the Department should give further consideration to specific investigatory powers.
9.	Powers of quarantine, isolation, detention, and compulsory medical examination need to be updated.	9.	The Public Health Bill should include provisions to update these powers.
10.	Opinion is divided as to whether there should be a power to impose medical treatment on an individual.	10.	The Department should give further consideration to the ethical and practical aspects of this, and

	should consult on any specific proposals.
11. There is general agreement that there is a need to modernize powers to place employment restrictions on persons and premises.	11. The Public Health Bill should modernize such powers and the associated constraints and controls.
12. Powers to disinfect, disinfest, and decontaminate premises, things and persons need to be modernised.	12. The Department should give further consideration to these powers, particularly in relation to persons, and should consult on specific proposals.
13. There is support for the creation of powers to introduce emergency subordinate legislation to deal with certain scenarios, subject to necessary constraints and controls.	13. The Department should give further consideration to whether the Public Health Bill should include powers to make emergency subordinate legislation and should consult on specific proposals.
14. There is support for controls to be applied when a deceased person poses a threat to public health.	14. The Department should give further consideration to such powers and should consult on specific proposals.
15. There is general support for rights of review and appeal in the event of certain interventions.	15. The Public Health Bill should enshrine such safeguards.
16. There is strong support for a right to a timely explanation for certain interventions including restrictions on the removal of a body; and the imposition of quarantine, isolation, detention or medical examination.	16. The Public Health Bill should enshrine such rights.

17. There are differing views as whether the legislation should continue to be limited to health protection, or also include provisions relating to other domains of public health.	17. The Department should consider further the scope of new legislation.
18. Current legislation needs to be modernised in many respects and particulars, including the language used in the Act. The necessary amendments are so numerous that an amending bill would be significantly more complex to produce, to understand and to interpret than a fresh start bill. This could have adverse operational consequences in the event of a public health emergency.	18. The Public Health Bill should be an entirely new piece of legislation which would re-enact provisions from the 1967 Act as necessary.