



Protecting the health of the local population: the new health protection duty of local authorities under the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013¹

Purpose of this document

This document explains the new health protection duty of local authorities under regulation 8 of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013, made under section 6C of the National Health Service Act 2006 (“NHS Act 2006”) (as inserted by section 18 of the Health and Social Care Act 2012²), which came into force on the 1st of April 2013 (“6C Regulations”)³.

The 6C Regulations and this document focus principally on arrangements for preventing and planning response to health protection incidents and communicable disease outbreaks that do not require mobilisation of a multi-agency response under the Civil Contingencies Act 2004 (“CCA”)⁴. It complements the Department’s publications on emergency preparedness⁵, resilience and response (EPRR) arrangements⁶.

The Secretary of State has the overarching duty to protect the health

of the population, a duty which will generally be discharged for him by Public Health England (PHE). The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 delegate to local authorities the critical role of providing information and advice to relevant organisations (including PHE) so as to ensure all parties discharge their roles effectively for the protection of the local population.

If the Secretary of State considers that (for any reason, and in any location) the local arrangements are inadequate, or that they are failing in practice, then he must take the action that he believes is appropriate to protect the health of the people in that area.

Background

The arrangements for health protection from April 2013 build on the strengths of the existing system. The activity previously carried out by the Health Protection Agency (HPA) under the

Health Protection Agency Act 2004⁷ is now the responsibility of the Secretary of State, under new statutory health protection functions (in particular section 2B of the NHS Act 2006). In practice that activity will be carried out by PHE) an executive agency of the Department of Health. Primary Care Trusts and Strategic Health Authorities were abolished on 1 April 2013⁸.

The 6C Regulations provide for each local authority to “provide information and advice to every responsible person and relevant body within, or which exercises functions in relation to, the authority’s area, with a view to promoting the preparation of appropriate local health protection arrangements (“health protection arrangements”), or the participation in such arrangements, by that person or body”. More detail on the legislative framework is available at Annex A.

The director of public health (DPH) is responsible for the local authority’s contribution to health protection matters, including the local authority’s roles in planning for, and responding to, incidents that present a threat to the public’s health. PHE has a responsibility to deliver the specialist health protection response, including the response to incidents and outbreaks, through the PHE Centres which take on the functions of the former Health Protection Units. These roles are complementary and both are needed to ensure an effective response. In practice this means that there must be early and ongoing communication between the PHE Centre and DPH regarding

emerging health protection issues to discuss and agree the nature of response required and who does what in any individual situation.

The local health protection system therefore involves the delivery of specialist health protection functions by PHE, and local authorities providing local leadership for health. In practice, local authorities and PHE will work closely together as a single public health system. This joint working with clarity of responsibilities between them is crucial for safe delivery of health protection, and practical guidance for these arrangements is at Annex B.

The aim of the new arrangements is for an integrated, streamlined health protection system that delivers effective protection for the population from health threats, based on:

- a clear line of sight from the top of government to the frontline;
- clear accountabilities;
- collaboration and coordination at every level of the system; and
- robust, locally sensitive arrangements for planning and response⁵.

Unitary and lower tier local authorities have existing health protection functions and statutory powers under the Public Health (Control of Disease) Act 1984⁹, as amended by the Health and Social Care Act 2008, and regulations made under it¹⁰ as well as other legislation, such as the Health and Safety at Work Act etc 1974¹¹ and

the Food Safety Act 1990¹² and associated regulations, which enables them to make the necessary interventions to protect health.

The key elements of health protection

Health protection seeks to prevent or reduce the harm caused by communicable diseases and minimise the health impact from environmental hazards such as chemicals and radiation.

As well as major programmes such as the national immunisation programmes and the provision of health services to diagnose and treat infectious diseases, health protection involves planning, surveillance and response to incidents and outbreaks.

Local authorities (and directors of public health (DsPH) who would usually act on their behalf) have a critical role in protecting the health of their population, both in terms of planning to prevent threats arising, and in ensuring appropriate responses when things do go wrong.

The scope and scale of work by local government to prevent threats to health emerging, or reducing their impact, will be driven by the health risks in a given area.

Understanding and responding to those health risks needs to be informed by Joint Strategic Needs Assessments (JSNAs)¹³, Joint Health and Wellbeing Strategies (JHWS), and the health and

social care commissioning plans based upon them.

Local government will work with local partners to ensure that threats to health are understood and properly addressed.

PHE, with its expertise and local health protection teams, has a critical role to play in responding directly to incidents and outbreaks, and in supporting local authorities in their responsibilities to understand and respond to potential threats.

The NHS will also continue to be a key partner in planning and securing the health services needed to protect health and in mobilising NHS resources in response to incidents and outbreaks.

Prevention

Local authorities already have existing duties and powers to tackle environmental hazards (see earlier “Background” section). The move of local public health functions from the NHS into local government opens up new opportunities for joint work with environmental health colleagues to tackle areas where there are potential threats, including infectious diseases, and environmental hazards.

The local leadership of DPH, on behalf of local authorities, is critical to ensuring that the local authority and local partners are implementing preventative strategies to tackle key threats to the health of local people.

In taking forward this preventative role, local authorities, usually led by their DPH, will work closely with local PHE centres, which will provide a range of health protection services, including collection, analysis, interpretation of surveillance data, expert epidemiological and public health advice on hazards and effective interventions, and support to develop and implement local prevention strategies. Local teams will also wish to develop relationships with NHS England Local Area Teams, for example in relation to the commissioning of screening and immunisation programmes.

Planning and preparedness

Effective planning is essential to limit the impact on health when hazards cannot be prevented. The legal duty under the NHS Act 2006 to protect the population rests with the Secretary of State and is discharged through PHE, which provides the specialist health protection expertise to support local agencies in developing their plans to respond to public health emergencies and incidents.

Upper tier and unitary local authorities also have a new health protection duty, which involves the local authority discharging aspects of the Secretary of State's duty to take steps to protect public health. The duty takes the form of a statutory requirement (under the section 6C Regulations referred to above) to provide information and advice to certain persons and bodies, with a view to promoting the

preparation of appropriate health protection arrangements. Such arrangements should cover threats ranging from relatively minor communicable disease outbreaks and health protection incidents to full-scale emergencies.

In practice, this means that the DPH will provide information, advice, challenge and advocacy on behalf of their local authority, to promote preparation of health protection arrangements by relevant organisations, operating in their local authority area¹⁴. The DPH, on behalf of their local authority, should be absolutely assured that the arrangements to protect the health of the communities that they serve are robust and are implemented appropriately to local health needs. They also need the opportunity to escalate concerns as necessary, when they believe local needs are not being fully met. They should expect a highly responsive service from PHE and other partners in this respect.

This local authority role in health protection planning is not a managerial, but a local leadership function. It rests on the personal capability and skills of the local authority DPH and their team, on behalf of the local authority, to identify any issues and advise appropriately. But it is underpinned by legal duties of cooperation, contractual arrangements, and clear escalation routes.

Responsibility for responding appropriately to the local authority's

information and advice (and accountability for any adverse impact if that advice is not heeded) rests with other organisations¹⁵.

The 6C Regulations serve as a key lever for local authorities to improve the quality of health protection arrangements in their local areas through the effective escalation of issues. They may raise issues locally, with the partner concerned, the Health and Wellbeing Board (HWB), or directly with commissioners if there are concerns about commissioning of services.

To help ensure that public health advice is appropriately taken account of, there is a range of legal duties and escalation routes, which are discussed further below.

Relationships and accountabilities

Successful health protection requires strong working relationships at the local level. To underpin and support good working relationships, there are a number of legal and other levers to ensure that the relevant organisations do what is required of them to protect the public and take public health advice.

The Secretary of State expects PHE, as an executive agency of the Department of Health, to cooperate with the NHS (NHS England, CCGs, commissioning support units and providers) and local authorities, and to

support them in exercising their functions.

PHE is able to provide a wealth of health protection expertise to local authorities to help them in their health protection function as well as delivering directly to the public. To assist this process, PHE should agree with local authorities the specialist health protection support, advice and services that they will provide; this agreement should build on existing arrangements between the NHS, local authorities and the PHE centres.

The NHS England Standard Contract outlines what NHS organisations are expected to deliver in terms of health protection generally, as well as emergency planning (including significant incident and emergency) management and any cooperation requirements necessary to achieve those objectives.¹⁶

NHS England and CCGs have a duty to cooperate with local authorities on health and well-being under the NHS Act 2006¹⁷.

This includes cooperating around health protection, including the sharing of plans.

The Health and Social Care Act 2012 makes clear that both NHS England and CCGs are under a duty to obtain appropriate advice, including from persons with a broad range of professional expertise in “the protection or improvement of public health”¹⁸. This includes the advice of local authorities, usually delivered

through their director of public health. The leadership of the director of public health in this context is highlighted by local health resilience partnerships being co-chaired by a director of public health, ensuring their ability to scrutinise and be assured of the plans to respond to emergencies for the communities they serve.

Putting the new mandatory function into practice

Over and above their existing responsibilities as Category 1 responders under the CCA, under the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 upper tier and unitary local authorities are required to take certain steps to protect the health of their local population. In particular, as explained above, they are required to provide information and advice with a view to promote the preparation of health protection arrangements by key health and care partners within the local area¹⁹, recognising that PHE provides the specialist health protection functions of the Secretary of State.

The Department of Health does not expect local authorities to produce a single all-encompassing “health protection plan” for an area, but rather to promote preparation of effective health protection arrangements by local organisations, operating in their areas. This includes commissioning plans aimed at prevention of infectious diseases, as well as joint approaches

for responding to incidents and outbreaks agreed locally with partners, including PHE and the NHS.

Local co-operation agreements, memorandums of understanding and protocols between key partners on response to outbreaks are already in place and work well in some areas. These need to be revised and updated for the new system, given the new statutory responsibilities of Public Health England and Local Authorities described in this factsheet. The content of these agreements is for local determination, and local partners may wish to review or update their existing documents, taking into account the core elements to local arrangements which experience suggests should be in place in every area (many of which are set out in regulation 8(7) of the section 6C Regulations) including:

- clearly defined roles and responsibilities for the key partners (comprising at least the local authority, PHE, NHS England, CCGs and primary and secondary care NHS providers), including operational arrangements for releasing clinical resources (e.g. surge capacity from NHS-funded providers) with contact details for a key responsible officer and a deputy for each organisation
- local agreement on arrangements for a 24/7 on-call rota of qualified personnel to discharge the functions of each organisation

- clear responsibilities in an outbreak or emergency response, including the handover arrangements
- information-sharing arrangements to ensure that PHE, the director of public health and the NHS emergency lead are informed of all incidents and outbreaks
- arrangements for managing cross-border incidents and outbreaks
- arrangements for exercising and testing, and peer review
- arrangements for stockpiling of essential medicines and supplies, as appropriate
- escalation protocols and arrangements for setting up incident/outbreak control teams
- arrangements for review (the Department of Health recommends this should take place at least annually).

Local authorities may wish to establish a local forum for health protection issues, chaired by DPH, to review plans and issues that need escalation. This forum could be linked to the HWB, if that makes sense locally.

Ensuring that data can flow to the right people in the new system in a timely manner will be key to making the new arrangements work.

The Public Health Outcomes Framework²⁰, published on 23 January 2012, contains a health protection domain. Within this domain there is a placeholder indicator, “Comprehensive,

agreed inter-agency plans for responding to public health incidents”. The Department of Health is taking forward work to ensure that it can effectively measure progress against this indicator.

Next steps and further work

The Department of Health and PHE will publish further guidance on the wider health protection system in due course, building on discussion with the NHS, local government and public health stakeholders. This will include guidance on escalation routes where agreement on any aspect of preparation or response cannot be reached locally.

Annex A: Legislative framework

Under section 2A of the NHS 2006 Act (as inserted by section 11 of the Health and Social Care Act 2012), the Secretary of State for Health has a duty to “take such steps as the Secretary of State considers appropriate for the purpose of protecting the public in England from disease or other dangers to health”.

In practice, PHE will carry out much of this health protection duty on behalf of the Secretary of State.

Under the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 unitary and upper tier local authorities have a new statutory duty to carry out certain aspects of the Secretary of State’s duty take steps to protect the health of the people from England from all hazards²¹, ranging from relatively minor outbreaks and contaminations²², to full-scale emergencies, and to prevent as far as possible those threats arising in the first place²³. In particular, regulation 8 requires that they provide information and advice with a view to promoting the preparation of health protection arrangements by “relevant bodies” and “responsible persons”, as defined in the regulations. In addition, regulation 7 requires local authorities to provide a public health advice service to clinical commissioning groups (CCGs), which includes advice on health protection.

They will continue to use existing legislation to respond to health protection incidents and outbreaks (see above).

Directors of public health (DsPH) are employed by local authorities and are responsible for the exercise of the new public health functions. Directors will also have a responsibility for “the exercise by the authority of any of its functions that relate to planning for, and responding to, emergencies involving a risk to public health”²⁴.

Under new section 252A of the NHS Act 2006²⁵, NHS England will be responsible for (a) ensuring that clinical commissioning groups and providers of NHS services are prepared for emergencies, (b) monitoring their compliance with their duties in relation to emergency preparedness and (c) facilitating coordinated responses to such emergencies by clinical commissioning groups and providers.

The Health and Social Care Act 2012 also amends section 253 of the NHS Act 2006 (see section 47 of the 2012 Act), so as to extend the Secretary of State’s powers of direction in the event of an emergency to cover an NHS body other than a local health board (this will include NHS Commissioning Board and clinical commissioning groups); the National Institute for Health and Care Excellence; the Health and Social Care Information Centre;

any body or person, and any provider of NHS or public health services under the Act.

Under the consequential amendments made by the Health and Social Care Act 2012, the NHS England and Public Health England (as part of the Department of Health exercising the Secretary of State's responsibilities in relation to responding to public health emergencies) will be Category 1 responders under the CCA, requiring them to cooperate and work together in the planning of responses to civil contingencies.

CCGs will be Category 2 responders under the Act giving them a duty to provide information and cooperate with civil contingency planning as needed. Local authorities²⁶ will remain Category 1 responders under the CCA.

Annex B

Local authorities and Public Health England relationship in respect of health protection

This annex is intended to provide clarity around the respective roles of local authorities and Public Health England (PHE) in relation to health protection to support a safe transition of this function into the new system after 1 April 2013, and has been agreed by PHE, the Association of Directors of Public Health and the Faculty of Public Health. It summarises the statutory responsibilities and collaborative working relationships necessary between local authorities and PHE to deliver effective arrangements to protect the public's health.

1. The statutory responsibilities of local authorities government and of PHE

Health protection includes (but is not confined to) infectious disease, environmental hazards and contamination, and extreme weather events.

The statutory responsibility to protect the health of the population transferred from the Health Protection Agency (HPA) to the Secretary of State for Health on 1 April 2013. Secretary of State's responsibility will mainly be discharged through PHE. However,

there are also some specific powers delegated to local authorities under the 6C Regulations. These are to give information and advice on appropriate health protection arrangements within their local area to every responsible person and relevant body, and to provide health protection advice to clinical commissioning groups.

PHE will be responsible for providing the specialist health protection functions previously carried out by the HPA including the specialist response to incidents.

As part of the local authority's responsibilities the director of public health (DPH), on behalf of the local authority, has a duty to prepare for and lead the local authority's response to incidents that present a threat to the public's health.

District and unitary authorities also have defined responsibilities in respect of environmental health, which may be discharged in a variety of different ways in different geographical areas. For example, some districts may wish to combine their environmental health capacity across a wider area with DPH leadership from the county; some unitary authorities may wish to have environmental health within the DPH's

leadership responsibilities, whilst in others they may be entirely separate.

The DPH is a statutory member of the Health and Wellbeing Board (HWB). HWBs is to ensure leaders from health and care systems and the public work together to improve the health and wellbeing of their local population and reduce health inequalities. Board also ensure public engagement and input to joint strategic needs assessments and to health and wellbeing strategies. Boards will also ensure that commissioners work collaboratively to meet the health and wellbeing needs of the community.

2. Practical implications of statutory changes, underlying principles and collaborative support arrangements

To deliver effective planning and response arrangements at local level there needs to be constructive and collaborative working relationships between PHE and the local DPH. Whilst there will be variations in different localities, it is possible to identify a set of principles and support arrangements to enable the delivery of effective local authority and PHE health protection functions. These include:

DPH and PHE relationship

The DPH has a duty to prepare for and lead the local authority's response to incidents that present a threat to the public's health. PHE has a duty to deliver the specialist health protection response. These roles are

complementary and both are needed to ensure an effective response.

PHE delivery

PHE continues to deliver the specialist health protection functions described in the HPA's previous work on the "model health protection unit".

These are:

- Responding to and managing outbreaks and incidents
- Responding to cases, enquiries and providing advice
- Surveillance and epidemiology study
- Health protection leadership/ stakeholder relationship management
- Contributing to and influencing PHE Programme Board activities and other internal work streams
- Research and development
- Underpinning activities (management, governance arrangements, continuous professional development etc.)

This includes the provision of PHE support for DsPH addressing issues of environmental health planning applications (e.g. for waste incinerators)

Health and Wellbeing Boards

Local authorities, with their Health and Wellbeing Boards (HWBs), and through their DsPH will wish to assure that acute and longer term health protection responses and strategies delivered by PHE are delivered in a manner that properly meets the health needs of the local population. PHE Centres and DsPH will agree the reporting of health protection arrangements to HWBs to include local agreement of health protection priorities on an annual cycle and any ad hoc reporting for serious incidents or areas of concern.

We would not expect PHE to be represented on the HWB but to attend for specific health protection related discussions. Attendance would be primarily in support of the DPH who is the local leader for health in the local authority.

Mobilising resources for incidents

DsPH, with their local health leadership role, will work with colleagues from PHE to establish arrangements for mobilising resources to respond to incidents and outbreaks. This will include advice to CCGs, discussions with the Local Area Teams of NHS England, and particularly through the joint chairmanship arrangements of the Local Health Resilience Forum. We would expect the work to establish these arrangements to take place as soon as possible so that PHE staff can access support directly from providers when needed. We would also expect

that DsPH would wish to be assured that these plans will work effectively when required.

Communications, information and concerns

The PHE Centre and the DPH will develop a shared understanding around communications about health protection concerns. The PHE Centre will keep the DPH informed about health protection issues and of the action being taken to resolve them.

PHE will provide to Local authorities, via their DsPH, the information, evidence and examples of best practice to support the Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWS). There needs to be a clear programme of engagement at national and local level to determine what form this information can most helpfully be provided in.

PHE will support transparency and accountability across the public health system including the provision of information and discussions with local authorities in relation to achievement of public health outcomes.

PHE will also highlight issues of concern to local authorities, for example if there is no system for Environmental Health Officer support to respond to outbreaks of infection.

Workforce and training

PHE will work with DsPH and, where appropriate, other council officers, in providing development, education and other support to the activities of HWBs on issues of relevance to the health of the local population.

PHE will support local authorities to develop a trained and knowledgeable public health workforce, including in the area of health protection.

Further guidance is to be provided separately on a number of other issues including out of hours and Science and Technical Advice Cells (STAC) arrangements.

References

- ¹ S.I. 2013/351; available at <http://www.legislation.gov.uk/uksi/2013/351/contents/made>
- ² The Health and Social Care Act 2012 is available at: <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>
- ³ These Regulations are made under section 6C of the National Health Service Act 2006 ("NHS Act 2006") (as inserted by section 18 of the Health and Social Care Act 2012)
- ⁴ Available at: <http://www.legislation.gov.uk/ukpga/2004/36/contents>
- ⁵ "Emergency" is defined by the Civil Contingencies Act 2004, section 1 to mean: (a) an event or situation which threatens serious damage to human welfare in a place in the UK, (b) an event or situation which threatens serious damage to the environment of a place in the UK, or (c) war, or terrorism, which threatens serious damage to the security of the UK. Civil Contingencies Act 2004. Available at: <http://www.legislation.gov.uk/ukpga/2004/36/section/1>
- ⁶ Arrangements for emergency preparedness, resilience and response in the new system from April 2013 are available at: <http://www.dh.gov.uk/health/2012/04/epr>
- ⁷ See The Health Protection Agency Act 2004. Available at: <http://www.legislation.gov.uk/ukpga/2004/17/contents>
- ⁸ Factsheets on the role of public health in local government and the Public Health England operating model are available at: <http://healthandcare.dh.gov.uk/public-health-system>
- ⁹ The Public Health (Control of Disease) Act 1984 is available at: <http://www.legislation.gov.uk/ukpga/1984/22>
- ¹⁰ See Health protection legislation guidance 2010 at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_114510
- ¹¹ The Health and Safety at Work etc Act 1974 is available at: <http://www.legislation.gov.uk/ukpga/1974/37>
- ¹² The Food Safety Act 1990 is available at: <http://www.legislation.gov.uk/ukpga/1990/16>
- ¹³ Joint Strategic Needs Assessment statutory guidance can be found at: <http://healthandcare.dh.gov.uk/jsnas-jhwss-guidance-published/>
- ¹⁴ Regulations 8, S.I. 2013/351; available at <http://www.legislation.gov.uk/uksi/2013/351/contents/made>
- ¹⁵ Regulations 8, S.I. 2013/351; available at <http://www.legislation.gov.uk/uksi/2013/351/contents/made>
- ¹⁶ NHS Standard Contract 2012/2013 can be found at: <https://www.gov.uk/government/publications/leave-for-will-pls-nhs-standard-contracts-for-2012-13>
- ¹⁷ The NHS Act 2006, section 72. Available at: <http://www.legislation.gov.uk/ukpga/2006/41/section/72>
- ¹⁸ For NHS Commissioning Board: Health and Social Care Act 2012, part 1, section 23, inserting section 13J into the NHS Act 2006; for CCGs: HSC 2013, part 1, section 26, inserting section 14W into the NHS Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>
- ¹⁹ S.I. 2013/351; available at <http://www.legislation.gov.uk/uksi/2013/351/contents/made>
- ²⁰ *Improving outcomes and supporting transparency: a public health outcomes framework for England 2013-2016*. Available at: www.dh.gov.uk/health/2012/01/public-health-outcomes

- ²¹ Building on the principle of the “all hazards” approach as outlined in health protection legislation and accompanying guidance. Available at:http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_114589.pdf
- ²² All kinds of contamination, including chemical or radiation, as per section 45A of the Public Health (Control of Disease) Act 1984 as amended by the Health and Social Care Act 2008
- ²³ This is very similar to the principles set out in Health Services Guidance (93)56 on public health responsibilities of the NHS and the roles of others, which highlights the leadership role of the director of public health in a health authority and notes that he or she should “ensure that appropriate arrangements are in place for the control of communicable disease and of non-communicable environmental hazards and that the responsibilities of those involved are clearly defined in each case.”
- ²⁴ See new section 73A(1)(d) of the NHS Act 2006, as inserted by section 30 of the Health and Social Care Act 2012
- ²⁵ Section 252A has been inserted by section 46 of the Health and Social Care Act 2012
- ²⁶ “Local authority” holds the definition as under section 2B of the National Health Service Act 2006 (as inserted by section 12 of the Health and Social Care Act 2012) means a county council in England; a district council in England, other than a council for a district in a county for which there is a county council; a London borough council; the Council of the Isles of Scilly; the Common Council of the City of London.