

## The new public health role of local authorities



### Introduction

The Health and Social Care Act 2012 received Royal Assent on 27 March 2012. This is a critical step in the transition towards the establishment of a new public health system. It is therefore timely to reaffirm the Government's vision for the new public health role in local authorities and to summarise the new legal framework for local government that underpins that vision.

This note sets out our vision for public health in local government and the new legal arrangements. It also sets out the implications for the role of the director of public health, although this is also the subject of separate and more detailed guidance in parts 1 and 2.

This note will primarily be of interest to local authority elected members and officers, and local public health teams, working within local government and supporting their local clinical commissioning groups.

### The vision

Local leadership for public health will be at the heart of the new public health system. Upper tier and unitary authorities will take on new responsibilities to improve the health of their populations,

backed by a ring-fenced grant and a specialist public health team, led by the director of public health. Upper tier authorities will be supported in this by the existing expertise within district councils – around environmental health, for example.

Local authorities should embed these new public health functions into all their activities, tailoring local solutions to local problems, and using all the levers at their disposal to improve health and reduce inequalities. They will create a 21st century local public health system, based on localism, democratic accountability and evidence.

Supporting local political leadership in improving health will be the director of public health and his or her team. The director of public health will be the lead officer in the local authority for health, and a statutory chief officer.

They will champion health across the whole of the authority's business, promoting healthier lifestyles and scrutinising and challenging the NHS and other partners to promote better health and ensure threats to health are addressed.

He or she will be a statutory member of the health and wellbeing board.





Contributing to the preparation of joint strategic needs assessments and the development of joint health and wellbeing strategies within the framework of the national Public Health Outcomes Framework, he or she should ensure a rigorous focus on local priorities and action across the life course to ensure a preventive approach is embedded in the local system.

### **The new local legal framework for public health**

Broadly speaking, the Health and Social Care Act 2012 (“the Act”) gives responsibility for health protection to the Secretary of State and health improvement to upper tier and unitary local authorities.

The Secretary of State will also delegate some health protection functions to local authorities. Local authorities will maintain responsibility for their existing health protection functions, many of which are exercised by lower tier and unitary authorities.

Section 12 of the Act inserts new section 2B into the NHS Act 2006 to give each relevant local authority a new duty to take such steps as it considers appropriate to improve the health of the people in its area. This section also gives Secretary of State a power to take steps to improve the health of the people of England – and it gives examples of health improvement steps that either local authorities or the Secretary of State could take, including giving information, providing services or facilities to promote healthy living and providing incentives to live more healthily.

Section 18 gives the Secretary of State the power to make regulations as to the exercise by local authorities of certain public health functions by inserting new section 6C into the NHS Act 2006. This means that the Secretary of State can require local authorities to carry out aspects of his health protection functions by taking certain prescribed steps. It also means that the Secretary of State can prescribe aspects of how local authorities carry out their health improvement function.

Upper tier and unitary local authorities are therefore taking on critical public health responsibilities. Section 30 then requires them, acting jointly with the Secretary of State, to appoint an individual who will be responsible for the local authority's new public health functions. That individual will be an officer of the local authority, and known as the director of public health.

This section also gives the Secretary of State the power to direct a local authority to investigate the conduct of a director of public health in relation to public health functions delegated from Secretary of State, and to report back (although the Secretary of State does not have the power to terminate the employment of a director of public health. The local authority as the employer does have this power, but must consult the Secretary of State before doing so).

Section 31 inserts a new section 73B into the NHS Act 2006, which gives Secretary of State the power to publish guidance to which the local authority must have regard.





Such guidance may include guidance as to the appointment of officers of the local authority to discharge its public health functions (for example, guidance on the involvement of the Secretary of State in the process of appointing directors of public health).

The Government will also publish the refreshed Public Health Outcomes Framework as guidance to which local authorities must have regard.

Under this same section, each director of public health is required to produce, and the relevant local authority to publish, an annual report. The Government has not further specified what the annual report might contain – this is very much a decision for individual directors of public health as to the issues they feel are important to raise.

Directors of public health will also be statutory members of health and wellbeing boards (section 194(2)(d) of the Act).

Schedule 5 of the Act amends the Local Government Act 1989 to add directors of public health to the list of statutory chief officers.

Finally, sections 35-37 set out new arrangements for consulting and making decisions on fluoridation schemes, which will become the responsibility of local authorities.

These duties mean that the local authority will have to take steps to ensure that it is aware of and has considered what the health needs of its local population are, and what the evidence suggests the

appropriate steps would be to take to address those needs.

Local authorities will have considerable freedom in terms of how they choose to invest their grant to improve their population's health, although they will have to have regard to the Public Health Outcomes Framework and should consider the extant evidence regarding public health measures.

The Government intends to mandate a small number of steps and services, as follows:

- steps to be taken to protect the health of the local population
- ensuring NHS commissioners receive the public health advice they need
- appropriate access to sexual health services
- the National Child Measurement Programme
- NHS Health Check assessment.

These steps and services will be mandated through regulations made under new section 6C of the NHS Act 2006.

Mandating steps and services in this way is not a means of indicating relative importance. Rather it reflects that there are some areas where a greater uniformity of provision is required (particularly health protection), or the fact that some steps are critical to ensuring there is an effective local public health system.

Mandating steps and services is also a means of ensuring that, where there is a legal duty on the Secretary of State which will be discharged in future by local authorities, this duty will be effectively discharged.





### **Implications for local authorities**

As noted above, local authorities already have important and wide-ranging public health functions, for example under the Public Health (Control of Disease) Act 1984 (as amended). These will continue.

However, under the Act and the regulations listed above, local authorities will be taking on significant new public health functions.

The director of public health, as the lead officer for these new functions, will need to have specialist public health expertise, and access to specialist resources, spanning the three domains of public health, health improvement, health protection and healthcare public health (ie the population health aspects of NHS-funded clinical services).

The director and their specialist teams will also need access to appropriate information and evidence on which to base their advice, including detailed information on patterns of provision of health care if they are to advise local NHS commissioners and health and wellbeing boards.

Thus the director will have a critical role in defining the needs assessment which will drive commissioning, building on the assets of the local area. Directors of public health will support clinical commissioning so that it reflects the needs of the whole population.

They will also lead on health protection, ensuring that appropriate arrangements are in place, escalating concerns and holding local partners to account.

Additionally, as lead adviser on health to the local authority and a statutory chief officer, the director of public health will be an important official within the authority, influencing decisions across the range of the authority's business, as well as carrying out on the authority's behalf its new functions relating to public health.

To be effective, he or she will need to be an effective senior officer within the authority. This will call for considerable influencing skills and the ability to balance the need to be an advocate for public health and the requirement to respect the local democratic process.

Local authorities will lead the process of appointing directors jointly with the Secretary of State, which will help to ensure consistent appointment of people of the right calibre, with the right expertise and experience, in these key posts. The Government is publishing separate guidance on this process.

While the organisation and structures of individual local authorities are matters for local leadership, we are clear that these legal responsibilities should translate into the director of public health acting as the lead officer in a local authority for health and championing health across the whole of the authority's business.

This means that we would expect there to be direct accountability between the director of public health and the local authority chief executive (or other head of paid service) for the exercise of the local authority's public health functions, and that they will have direct access to elected members.





### The new public health functions

Below we set out what the new functions mean for local authorities in each of the three domains of public health.

#### *Health improvement*

The key new duty for local authorities will be to take appropriate steps to improve the health of their population. This new duty complements much of the local authority's existing core business, and its strategic responsibility for stewardship of place.

It will normally be appropriate for a Cabinet Member to take the lead among elected members for this area and give it the appropriate political leadership at the local level.

The director of public health will support local political leaders in their ambitions to improve local health. We would expect that he or she will:

- contribute fully to rigorous and well-informed joint strategic needs assessments and joint health and wellbeing strategies
- take day-to-day management over the ring-fenced public health budget, thereby having responsibility and the resources to invest to improve health locally
- work more widely with wider partners to foster joint commissioning where appropriate and to inform wider strategies, for example around adult social care, children's services, transport, housing and leisure
- provide officers and elected members with appropriate advice, based on a rigorous appreciation of patterns of local health need, what works and potential

returns on public health investment

- provide advice to partners more broadly (thus the local authority might wish to offer public health-related training courses).

She/he should have a particular focus on ensuring disadvantaged groups receive the attention they need, with the aim of reducing health inequalities.

When commissioning clinical services such as sexual health and drug and alcohol services directors of public health will need to ensure that providers have appropriate clinical governance arrangements in place that are equivalent to NHS standards.

#### *Health protection*

The Secretary of State will have the core duty to protect the health of the population in the new system.

However, the Government sees local authorities having a critical role at the local level in ensuring that all the relevant organisations locally are putting plans in place to protect the population against the range of threats and hazards.

This will link to, but be different from, their statutory responsibility for public health aspects of planning for emergencies within local authorities.

Most health protection incidents are contained locally. The director of public health, with Public Health England, should lead the initial response to public health incidents at the local level, in close collaboration with the NHS lead.





The NHS will determine, in the light of the impact on NHS resources and with advice from the director of public health, at what point the lead role will transfer, if required, to the NHS.

The director of public health should therefore:

- provide strategic challenge to health protection plans/arrangements produced by partner organisations
- scrutinise and as necessary challenge performance
- if necessary, escalate any concerns to the local health resilience partnership (LHRP)
- receive information on all local health protection incidents and outbreaks and take any necessary action, working in concert with Public Health England and the NHS. This may include, for example, chairing an outbreak control committee, or chairing a look back exercise in response to a sudden untoward incident
- contribute to the work of the LHRP, possibly as lead DPH for the area;
- provide the public health input into the local authority emergency plans.

To assist directors of public health in fulfilling this health protection role we recommend local areas consider setting up a health protection forum or committee, possibly linked to the health and wellbeing board, for example as a sub-committee of the board.

Such an arrangement would help ensure that all key organisations met regularly, shared information and planned effectively.

### *Healthcare public health*

The Government intends to make regulations to require local authorities to provide public health advice to NHS commissioners.

The director of public health will therefore have the responsibility and funding for providing a core offer of public health advice to the NHS locally. NHS Commissioners will need to ensure that local authorities and health and wellbeing boards have access to the information they will need to advise them.

This arrangement provides an excellent opportunity for local authorities to build and maintain close links with clinical commissioners, complementing health and wellbeing boards.

She/he and their teams should therefore, for example:

- help to ensure that joint strategic needs assessments reflect the needs of the whole population
- support commissioning strategies that meet the needs of vulnerable groups
- support the development of evidence-based care pathways and service specifications
- contribute advice on evidence-based prioritisation policies
- produce as necessary health needs audits and health equity audits
- provide other specialist public health advice as required.

In delivering these functions directors of public health and their teams will benefit from the advice and support of Public Health England. Thus for example Public





Health England will provide data and evidence of what works in relation to the public health outcomes framework, provide specialist health protection services, and give advice on the population impact of health services.

#### *Resourcing the team*

The above description of the public health role within local authorities makes clear that there needs to be a specialist, experienced public health professional (the director of public health) supported by specialist public health resources with access to adequate information and evidence functions. The size of that resource will depend on a range of factors, not least the size and relative needs of the local population.

#### **Conclusion**

From April 2013 upper tier and unitary local authorities will provide local leadership for public health, underpinned by new statutory functions, dedicated resources and an expert public health team. Local political leadership will deliver a new focus on improving health and reducing health inequalities.

This new role will complement but also extend existing local authority functions in terms of maximising the wellbeing of citizens.

The director of public health will lead on delivering these public health functions for the local authority, supporting the political leadership.

She or he will have the overall role of advocating for the health of the population locally. This does not mean that the director of public health will have the accountability and resources to deliver all public health functions, but it does mean that they will need to be the lynchpin in the system – the person who knows how to access advice and resources, and support local elected members and officers in their work in promoting wellbeing across the local population.

To deliver this function successfully the director of public health will need to be a public health specialist, with highly developed technical skills, and with access to a range of public health expertise in their team. They will also need to be skilled at working in a political environment. In short, they will need to be public health change agents.



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