19-21 Broad Street | St Helier
Jersey | JE2 3RR

Deputy Mary Le Hegarat
Health and Social Services Scrutiny Panel
BY EMAIL

2nd September 2021

Dear Chair,

Health and Social Security Scrutiny Panel: Follow up to quarterly public hearing

1. **We are aware of the consultation that has been recently undertaken to get public feedback on the development of a new public health law for Jersey to replace the current Loi (1934) sur la Santé Publique. Can you share what response, and how much feedback, has been received?**

This first stage of consultation was a high-level overview of key policy issues still under consideration and is mainly concerned with the overall scope of the new law, i.e., should the law remain focused on issues of health protection or should it have a broader remit to include health improvements aspects of public health (given long-term chronic illness is now the main cause of death rather than infectious diseases).

The consultation sought feedback on whether the law should:

a) Require Ministers to consider the health impact of any new law or policy they bring forward
b) Enable action to be taken to address non-communicable diseases (declaration of a disease as a matter of public health concern and the development of non-mandatory codes of practice)
c) Require that a Jersey Needs Assessment be produced (assessing the health needs of the population).

281 people responded to the online consultation survey and 76 emails were received to the dedicated consultation inbox.

Responses are currently being reviewed in detail and a report summarising the findings will be published in the coming weeks. However, the feedback does show broad support for the proposals relating a) and c) set out above but less support for the proposals under b).

A number of comments in the online survey and the majority of emails received related to paragraph 34 of the consultation document - particularly the wording 'where voluntary cooperation is not forthcoming'. A number of concerns were raised, or assumptions made as to as to what this would mean – most commonly that the law would be used to impose mandatory vaccinations (with particular reference to the current context of the Covid-19 vaccination).

To be clear, paragraph 34 of the consultation is about the need to modernise and enhance the range of actions currently permitted under the Loi (1934) sur la Santé Publique (the "1934 Law") to protect public health. The focus here is on being able to manage day-to-day public

health risks such as an outbreak of Tuberculosis (TB) or measles, not public health emergency situations, such as the Covid-19 pandemic.

Giving individuals the opportunity to voluntarily comply with recommendations and advice (such as a recommendation to quarantine where the person is suffering from a highly contagious disease) is always the starting point for managing public health risks. In most cases this will be the most appropriate and effective approach. That remains the intention as the new law is developed.

However, there may be times where an individual refuses to cooperate and the risk they pose to others is of such significance that legal public health measures are required (e.g., where someone with highly infectious TB refuses to comply with a request to quarantine until they become non-infectious). In these situations, the law is an important tool for providing clarity on what action can be taken, in what circumstances, and by whom. These are common features of public health legislation internationally.

Where public health measures are required to manage a risk, it is important that safeguards are in place guiding their application. This is a weakness of the current legislation and therefore a key objective for the new law is introducing robust and appropriate safeguards to direct the use of public health measures when required.

Additionally, it is worth restating that we are absolutely clear that the law will not be used as a means to mandate vaccination without people's consent.

A second stage of consultation will take place later this year which will set out detailed proposals on all aspects of the new law including public health measures for managing public health risks.

2. **The consultation referenced a proposed change to the leadership structure for Public Health, including the replacement of the existing Medical Officer of Health (MOH) role with statutory powers for the Director of Public Health (DPH). The previous MOH retired in 2020 and a DPH has recently been appointed.**

    a. **When was the decision made not to recruit a new MOH to fill the retirement vacancy? Who made that decision?**

    Dr Turnbull recommended that on her retirement from public service the MOH role needed to be updated to accord with the requirements of British Faculty of Public Health. Having accepted Dr Turnbull's advice, the Government has made the change. This is in accordance with the approaches taken in the other Crown Dependencies, which now both have DPH's. The States Employment Board endorsed this transition in 2020 alongside a number of other changes to senior public positions associated with the Department for Strategic Policy, Planning and Performance.

    b. **How have the MOH's responsibilities, including those which are set out in law, been redistributed in the short term and what is the long-term plan for these (for example, cremations)?**

    The MOH's responsibilities in law haven't been redistributed. The MOH role continues in law and the Director of Public Health (DPH) has been designated as such by the Minister of Health and Social Services. The established practice of designating one or two alternate MOHs also continues unchanged. In addition to the DPH, the Consultant in Communicable Disease Control (CCDC) and the Medical Director are both designated as alternate MOHs if needed. During the pandemic, the CCDC has provided much of the formal MOH advice required under the various pieces of emergency Covid legislation.

In terms of cremations, the MOH is just one of the people who can act as a medical referee under the Cremation (Jersey) 1961 Regulations. In June 2011 the States of Jersey adopted a proposed amendment to the provisions made under the Cremation (Jersey) Regulations 1961. This amendment allowed the Minister to grant to a team of medical referees the power to grant or refuse an application for cremation.

The powers had currently only been vested in the Medical Officer of Health (MOH) creating a single point of dependency which, in turn, created the potential for delay. Vesting the powers in one or more medical referees, creates a more resilient and efficient team approach.

There are currently two active medical referees who cover the authorisation of cremations in addition to the MOH who retains the power to also authorise cremations.

c. Has the leadership structure been changed before there is the statutory power to support the new position of DPH?

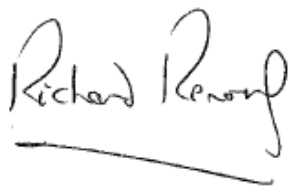
The statutory provisions relating to the MOH remain in place and are unchanged. Rather, the change in leadership structure has brought together public health resources under a new directorate in order to better coordinate work to improve health outcomes across the Island.

Public health continues to be hosted by the Department for Strategic Policy, Planning and Performance (SPPP), since being separated from health delivery in 2017 to increase its independence from health operations and better influence health in all policies. There is a dotted reporting line to the Director General for Strategic Policy, Planning and Performance in relation to basic public sector good governance (signing-off expenses etc.), which accords with previous recommendations made by the Comptroller & Auditor General in relation to such specialist functions that operate at arm's length. However, the autonomy of the DPH/MOH remains unchanged with the DPH/MOH retaining full professional independence, underpinned by law and in accordance with the requirements of the British Faculty of Public Health.

d. If the proposed changes to the public health law are approved, will the DPH be legally responsible for everything that the MOH has been responsible for? If not, what will be different?

The current legislative provisions for the MOH are fairly minimalist, mainly providing the MOH with a range of discretionary powers and an advisory role on certain matters. Key objectives for a new public health law are to reflect the public health requirements of current and future generations, provide improved clarity about public health functions, roles, and responsibilities, and more adequately ensure the professional independence of the DPH.

Yours sincerely,



Deputy Richard Renouf
Minister for Health and Social Services