Final
Business and Regulatory Impact Assessment

Title of Proposal

The Public Health Scotland Order(s)

Purpose and intended effect

Background
The Scottish Government carried out a Public Health Review in 2015 (Public Health Review) to examine public health systems and functions and their contribution to improving population health and wellbeing and reducing health inequalities. One of the recommendations was to undertake further work to review and rationalise organisational arrangements for public health in Scotland. This work should explore greater use of national arrangements, including for health protection.

Objective
The new public health model seeks to deliver better health and wellbeing outcomes for communities by promoting a collaborative approach to planning and delivery, putting decision making in the hands of local communities and agencies who are best-placed to assess local public health needs. At national level, a new Special Health Board (to be called Public Health Scotland) will provide strategic leadership; support enhanced opportunities for innovation, research, learning and development; and provide assurance on the delivery of improved public health and wellbeing outcomes. Under the new model, the bodies Health Protection Scotland (a division of NHS National Services Scotland (NSS)), Information Services Division (also a division of NSS) and NHS Health Scotland (a Special Health Board) will cease to exist. Public Health Scotland will take over their current functions and services from 1 April 2020.

Public Health England has some health protection responsibilities related to Scotland, especially on chemicals, poisons, and radiation. The UK Government and the devolved administrations have designated Public Health England (PHE) to act as the National Focal Point (NFP) for all of the UK and only PHE should communicate directly with the World Health Organisation (WHO) on International Health Regulations 2006 matters. This is a legally binding international instrument to: 'prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international trade and traffic'. Public Health England (PHE), The European Centre for Disease Control (ECDC) and the World Health Organization (WHO) also have significant overall responsibilities through PHE acting as the nominated UK body for the ECDC, and the use of the International Health Regulations (IHR).

Rationale for Government intervention
Scottish Ministers announced in November 2014 that they had asked for a Review of Public Health in Scotland, the report of which was published February 2016. This Review found that Scottish public health needed to be more visible and that it

needed to have a clearer vision. It concluded that public health needs to provide leadership which extends far beyond the NHS and health boundaries to influence wider agendas, policies and programmes in the public, private, third and independent sectors. The Review emphasised the cost-effectiveness of preventive approaches and the need for a more proactive public health effort in Scotland.

In June 2018, the Scottish Government and the Convention of Scottish Local Authorities (COSLA) published Scotland's Public Health Priorities, after working with a range of partners and stakeholders to develop a set of priorities for the whole system. The six priorities are:

- A Scotland where we live in vibrant, healthy and safe places and communities.
- A Scotland where we flourish in our early years.
- A Scotland where we have good mental wellbeing.
- A Scotland where we reduce the use of and harm from alcohol, tobacco and other drugs.
- A Scotland where we have a sustainable, inclusive economy with equality of outcomes for all.
- A Scotland where we eat well, have a healthy weight and are physically active.

The agreed Priorities reflect public health challenges that are important to focus on over the next decade to improve and protect the public's health and wellbeing. They set out Government's vision for shared Public Health Priorities for Scotland, providing focus for public services to improve population health and wellbeing, reduce inequalities and increase healthy life expectancy. This provides a framework, consistent with the Scottish Government's purpose and the National Performance Framework, to guide everyone working in the health system and beyond to align their efforts to make a real difference to our society and economy.

Good health and wellbeing is beneficial for individuals and families, and also strengthens capacity for participation in learning, employment, caring, and many other activities. The new national body will therefore provide strengthened leadership and centralised, more aligned and coordinated national public health functions that will contribute to the delivery of the National Outcomes.

Through the public health reforms and future work of Public Health Scotland, we want to create a culture for health in Scotland that enables us to:

- plan and deliver services that centre on prevention and integration;
- ensure decision making rests as close to communities as possible;
- work with communities to deliver improved health outcomes and empower citizens; and
- deliver local services that work together even more closely with communities to meet the needs of people who use them.

Consultation

Across Government
Directorates across the Scottish Government have been consulted on these public health reform proposals, particularly those policy divisions with a direct interest in the Public Health Priorities outlined above. Their input supported the drafting of the document 'Scotland's Public Health Priorities'. Public Health England, Public Health Wales, Healthcare Improvement Scotland and Food Standards Scotland have also been directly involved in the Public Health Reform Programme governance.

Public Consultation
The Scottish Government and COSLA, working with a range of partners and stakeholders, engaged widely across Scotland to develop the Public Health Priorities. Engagement activity involved over 500 individuals from across all sectors. The 2015 Public Health Review also included broad membership from health boards, Healthcare Improvement Scotland, COSLA, the Farr Institute, Glasgow Centre for Population Health, Universities and the third sector. A number of these representative bodies are also members of the Public Health Reform Oversight Board, which was formed in June 2017 to provide advice, support and challenge to the reform programme.

On 28 May 2019, Joe FitzPatrick MSP, the Minister for Public Health, Sport and Wellbeing, and Councillor Stuart Currie, Health and Social Care spokesperson for COSLA, launched *"A consultation on the new National Public Health Body 'Public Health Scotland'"* seeking views on the role, structure and expected functions of Public Health Scotland, with some discussion of its interface with other bodies, partnerships and statutory frameworks. A total of 185 responses were received: 151 from organisations and 34 from individual citizens. The largest organisation sub-group was the Third Sector, with 51 respondents. The consultation closed on 8 July 2019.

A partial BRIA was included with the public consultation to invite feedback on it but no significant comments were received. The responses generally highlighted the important role of both businesses and the third sector in the delivery of public health, as well as common concerns around the potential conflict of interest or negative consequences, arising from private sector involvement (e.g. the food and drink industry) in public health-related interventions. Officials met with Third Sector and Community Planning Forums to publicise the consultation, to talk through the various questions and invite comments on the BRIA.

Business
As mentioned, we included the partial BRIA with the public consultation and asked for related feedback but no substantive comments or concerns were received from particular businesses or third sector organisations. Broadly, the third sector organisations just wanted to ensure that they had appropriate gateways and forums to engage with and influence the work of the new body.

Options

Option 1 – Do nothing
There are many challenges currently facing the NHS in Scotland, including increasing costs, growing demands and the continuing pressures on public finances. These challenges continue to intensify. Demand for healthcare services continues to increase and more people are waiting longer to access services. This is why the way wider population health activity is planned, managed and delivered at all levels in Scotland must change. The scale and interdependencies of health and social care make achieving the changes needed a highly complex and long-term undertaking. Previous approaches, such as providing more funding to increase activity or focusing on specific parts of the system are no longer sufficient. While improvements to budgets for treatment services have helped alleviate short-term pressures, doing nothing towards enhancing prevention and early intervention will simply mean we see increased and unsustainable pressures on treatment services over the medium and longer term.

Option 2 - Establish Public Health Scotland as a standalone new body, without integrating existing NHS assets
Creating a new, additional, national body to coordinate and provide leadership for public health activity would, in effect, increase rather than reduce the cluttered public health landscape that the 2015 Review and subsequent reform activity is trying to address.

Option 3 – Establish Public Health Scotland by integrating NHS Board (territorial) Public Health Directorates into a single body
Each of the territorial Health Boards has a public health team responsible for improving population health, through joint working with other parts of the Health Board, external partner organisations and communities to deliver services across all the domains of public health. These teams are led by Directors of Public Health (DPH), a board-level role that provides strategic leadership and advocacy for population health within the Health Board and partner organisations. In some areas, the DPH is a joint appointment across both the Health Board and Local Authority.

Local public health teams (e.g. health improvement, health protection, health and social service quality, public health intelligence) work across mainstream and specialist NHS Board services, so this option would create a single, national group of NHS public health specialists offering support to services across Scotland. Most of the core public health workforce is currently based within NHS territorial health boards or Integration Authorities, providing services to their local geographical population; a smaller proportion are based in the national health boards, providing specialist expertise and analytical support across Scotland.

Option 4 – Establish Public Health Scotland by integrating Health Protection Scotland and NHS Health Scotland
This would effectively integrate the national health protection and health improvement/prevention functions and services, but without the full range of data intelligence services provided by ISD.

<u>Option 5 – Establish Public Health Scotland by integrating Health Protection Scotland, Information Services Division and NHS Health Scotland</u>
Consolidating the national domains of public health into a single body allows for a new, single public health brand and identity in Scotland, with revitalised leadership committed to partnership working, innovation and meaningful change across the whole system at national, regional and local levels. By including the data and intelligence function (ISD) within the new body, we ensure that all public health activity and performance measurement is brought together in one place, providing a basis for innovation and ambition around our digital capability more generally.

Evidence demonstrates that preventative approaches are cost-effective in both the short and longer term, including interventions that address the environmental and social determinants of health, build resilience and promote healthy behaviours, as well as vaccination and screening. In addition to focusing on the cost-effectiveness of new interventions, the new body will also ensure that we are using existing resources efficiently and are directing effort towards the right activities, ensuring our preventative approach is cost-effective, even if the benefits may not be seen for a decade or more.

<u>Option 6 – Establish Public Health Scotland by integrating Health Protection Scotland, Information Services Division, NHS Health Scotland and NHS Board (territorial) Public Health Directorates into a single body</u>
A combination of Options 3 and 5, with the new body incorporating all the domains of public health, alongside a centralised, national group of NHS and local government public health professionals providing support to services and communities across Scotland.

Sectors and groups affected
All sectors and groups across the Scottish population stand to be affected by the establishment of Public Health Scotland, both in terms of long-term improvements to population health and wellbeing and from reduced pressure on public services.
In broader terms, the reform work will also benefit businesses and the third sector by providing a healthier and more productive workforce.

Establishing the new body with a renewed commitment to research, innovation, learning and development (particularly in the fields of data and behavioural science) will also benefit businesses in the marketing, research, training, IT and analytics sectors as new approaches to the public's health and related systems are developed, tested and evaluated.

The only potential adverse effects to businesses would be in terms of businesses whose products or practices have a detrimental effect on public health. Efforts to improve population health and reduce health inequalities could reduce the sale of alcohol, tobacco and fast foods, for example. The response to public health hazards and risks could also potentially shut down businesses on the basis of epidemiological evidence.
Third sector organisations should also benefit in terms of financial and other support as the collaborative model of public health partnership evolves, making greater use of third sector expertise and resources.

Benefits

Option 1 – Do nothing

In the context of increasing costs and demand, maintaining the current approach to public health, with its accompanying structures and multiple delivery partners, is unlikely to yield the fundamental shift in strategy, leadership, service design and delivery required to meet existing and future challenges.

Except for some minor short-term cash savings from not establishing the new body, the opportunity to develop a new approach to the development of up-stream preventative solutions across the whole system will be lost while the major costs and demand for NHS and social care services will continue to increase in the medium and longer term.

Option 2 - Establish Public Health Scotland as a standalone new body, without integrating existing NHS assets

There would be little point in creating a new, additional, public health body without incorporating many elements of the existing expertise and resources of HPS, ISD or NHS Health Scotland. Such a body would be too narrowly and strategically focused and would lack the essential levels to enable change and innovation. Additionally, a new coordinating body for the public's health would add further complexity to the national public health landscape and would go against the recommendations of the Christie Review regarding integrating service provision, avoiding duplication and sharing services.

Option 3 – Establish Public Health Scotland by integrating NHS Board (territorial) Public Health Directorates into a single body

Without the additional strategic responsibility for the domains of public health, this option simply creates additional complexity, contrary to the 2015 Review recommendations. The approach could offer coordinated employment, deployment, education and training opportunities, with public health specialists more readily deployed to the areas with the highest needs and emerging issues. But more work would be required to better understand the impact on existing links to and knowledge of the local area and health community, in order to ensure we protect the effectiveness of existing partnership working.

Option 4 – Establish Public Health Scotland by integrating Health Protection Scotland and NHS Health Scotland

This option would reduce opportunities in relation to the convergence of data and intelligence, particularly in the context of wider plans for Health and Social Care Digital Transformation. The requirement for the new body to be intelligence-led and the need for community and other planning to make better use of big data across the whole system of the public's health is widely supported. This option is also less attractive in that it would not offer the same critical mass of staff and resources afforded through the integration of HPS, ISD and NHS Health Scotland.

Option 5 – Establish Public Health Scotland by integrating Health Protection Scotland, Information Services Division and NHS Health Scotland

By bringing together the existing public health domains (people and services) to establish a new national public health body, we signal a decisive shift in our strategic

approach to improving the public's health and wellbeing, building shared leadership and sharing accountability with local government and other key partners from the outset.

A core element of the shift towards a preventative approach is the need to reduce the burden of clinical procedures and unwarranted variations in care – using health improvement, protection and data and intelligence efforts to identify and help reduce avoidable interventions and explain variations that do not improve the health and wellbeing outcomes for the people of Scotland.

Public Health Scotland will be able to place information specialists and other professional staff within localities to build local capacity and capability, facilitate access to national information and expertise, and share methods and results across Scotland. This will enable better planning, evaluation and targeting of resources across the whole system by:

- forecasting service demand and impact of service changes;
- examining how individuals and groups move between services;
- identifying individuals who most frequently attend or use specific services, to help focus preventative care.

Public Health Scotland will also be able to provide similar support to the third sector and other organisations relevant to the public's health and wellbeing, including GP clusters.

The new body will also assist with longer-term financial planning across the whole system, providing evidence and insights which describe potential future demand and related views on how best to reduce burdens on health and social care services.

Option 6 – Establish Public Health Scotland by integrating Health Protection Scotland, Information Services Division, NHS Health Scotland and NHS Board (territorial) Public Health Directorates into a single body
As for Option 5, but potentially offering more coordinated employment, deployment, education and core public health staff opportunities, with public health specialists more readily available to be deployed to the areas with the highest needs and emerging issues. However, such an approach would require more detailed analysis of the impact on local geographic knowledge, networks and partnership working before it could be pursued and may also require additional legislative change beyond that forecast for delivering Option 5.

Businesses/Third Sector
As noted above, the shift to cross-sector collaborations focused on prevention and early intervention models should provide increased opportunities for businesses and the third sector, particularly in relation to new and innovative approaches to improving population health, that make use of the latest research and data science approaches.

Costs

Option 1 – Do nothing.

NHS boards and Local Government must manage the cost of delivering health and wellbeing services within the funding and income they receive. This is increasingly challenging, as costs continue to rise and many of these are fixed costs. Staffing in the NHS, for example, accounted for over half of all revenue expenditure in 2016/17.

The financial challenge makes it crucial that the Scottish Government now review how public health services are planned, designed, evaluated and delivered to help reduce demand, improve outcomes and make the best use of public resources.
A coordinated, whole system approach is required to tackle health inequalities and address the economic and social costs of poor health and wellbeing outcomes.

A whole systems approach requires a consolidation and sharing of existing public health functions and a shift in mindset towards partnership approaches, supported by strong, refreshed leadership. Practitioners at national, regional and local level need related support to think, adapt and work in new ways, with a stronger preventative focus. Doing nothing is not a sustainable approach in the medium-term.

While some of these strategic aims could theoretically be delivered through coordinated, joint action taken forward in unison by the existing NHS bodies, the status quo offers far less potential for achieving efficiency savings through the use of shared services arrangements, consolidation of corporate functions and other economies of scale. It would also be more difficult to take a concerted approach to investment in research and innovation.

Option 2 - Establish Public Health Scotland as a standalone new body, without integrating existing NHS assets
A new additional body with a purely strategic leadership role would mean increased organisational costs and duplication of senior leadership roles.

Option 3 – Establish Public Health Scotland by integrating NHS Board (territorial) Public Health Directorates into a single body
This option could potentially lead to savings in terms of rationalising pay levels and better matching of national capacity to demand.

Option 4 – Establish Public Health Scotland by integrating Health Protection Scotland and NHS Health Scotland
This option could offer some opportunities for operational efficiencies and synergies, but these may be limited by the fact that HPS would be further divorced from the ISD data and intelligence functions.

Option 5 – Establish Public Health Scotland by integrating Health Protection Scotland, Information Services Division and NHS Health Scotland
Combining HPS, ISD and Health Scotland into a new public body should offer increased opportunities for operational efficiencies and synergies, resulting in cash savings in real terms. A single national body will also encourage knowledge sharing, integration and diversification among staff. As the reform effort gains momentum and strengthened local partnerships emerge - national, regional and local evaluation and planning should improve and the average costs of delivering sustainable population health and wellbeing improvements should reduce. This may occur due to the increased specialisation or training of public health workers, faster innovation

through multidisciplinary action and learning, better use of data science to target resources more appropriately and shared supplier relationships around core services.

The new body will be central to understanding how the public health function can be made more effective and efficient and what modifications may be required to local, regional and national working to achieve this. Its leadership will help transform the way public health services are delivered by supporting the integration of services and working across boundaries.

The consolidation of corporate functions and new collaborative models of shared services across the system should help exploit economies of scale to increase efficiency, reduce costs and maximise returns from continuous improvement / Best Value efforts. There will be opportunities for bulk orders from suppliers, larger advertising buys and improved understanding of future demand to inform workforce decisions - including carrying out scenario planning on the future populations' health demand and workforce supply changes.

The health and social care intelligence gathered by Public Health Scotland will provide a clearer breakdown of the costs of meeting projected demand (including workforce numbers) and will help to focus resources and effort on those preventative approaches that measurably improve the health and wellbeing of Scotland's population. There will be transitional costs and expected savings associated with implementing public health reform; including costs in relation to supporting local arrangements and savings through increased efficiencies.

With regard to the Public Health Scotland budget, the Scottish Government and COSLA will work to the principle that funding will follow function. That is to say that where a new function is created or existing function moved, existing funding resources will be moved in line with this. So the existing budgets (around £61m) associated with Health Protection Scotland, Information Services Division and NHS Health Scotland will be transferred to the new national body.

Public Health Scotland will therefore be responsible for functions that are currently funded by a core recurring budget of around £35m and additional in-year funding of around £26m (subject to demand). It is estimated that there will be approximately 1,100 members of staff within Public Health Scotland.

Work is currently ongoing to conduct due diligence on the identified existing funding resources, which will then inform Public Health Scotland's starting budget. There have been, and will continue to be, start-up costs associated with establishing Public Health Scotland and its Board. These are being met by the Scottish Government, and include the costs of the wider public health policy work and support for the whole system.

Option 6 – Establish Public Health Scotland by integrating Health Protection Scotland, Information Services Division, NHS Health Scotland and NHS Board (territorial) Public Health Directorates into a single body

As for Option 5 plus possible savings in terms of rationalising pay levels and better matching national capacity to demand.

Scottish Firms Impact Test
Engagement with businesses and the third sector has shaped the recommendations contained in the 2015 Review and the subsequent development of Scotland's Public Health Priorities. The public consultation on the new body sought additional views regarding the impact that our proposals may have on businesses and the third sector.

Competition Assessment
Will the **measure** *directly or indirectly limit the number or range of suppliers?* No.
Will the **measure** *limit the ability of suppliers to compete?* No.
Will the **measure** *limit suppliers' incentives to compete vigorously?* No.
Will the **measure** *limit the choices and information available to consumers?* No.

Test run of business forms
No new forms will be introduced.

Legal Aid Impact Test
This reform is unlikely to have any implications for fulfilling individuals' right to access to justice through availability of legal aid and possible expenditure from the legal aid fund. In the broadest terms, it may ultimately lead to fewer people seeking legal assistance or being taken through the courts by directly improving health and wellbeing outcomes (mental health, addiction, family cohesion) which may be linked to legal proceedings.

Enforcement, sanctions and monitoring
The Public Health Reform programme is being monitored by a Programme Board made up of representatives from national and local government, NHS Scotland, Health and Social Care, Community Planning, third sector and public health experts. The programme is subject to gateway review.

The Public Health Oversight Board provides additional advice, support and challenge and is made up of representatives from national and local government, NHS Scotland, Health and Social Care, Community Planning, third sector and national public health organisations. Public Health Scotland will be accountable to Scottish Ministers and COSLA for its performance.

Implementation and delivery plan
Public Health Scotland will become operational from 1 April 2020.

Post-implementation review
A post-implementation review of the legislation will be taken forward within 10 years. The relationship between Public Health Scotland and Community Planning Partnerships (via the Community Empowerment (Scotland) Act 2015) will be reviewed within 3 years.

Summary and recommendation
Option 5 is being recommended given that the current arrangements for public health service provision are no longer appropriately aligned with the increasing demands on the health and social care system and the related needs of local

communities. In terms of Option 6, work was undertaken to consider how the public health workforce across the NHS and local authorities should be deployed and employed in the future. This was led by a group of NHS and Local Authority leaders and progressed as a commission of the programme (entitled "Specialist Public Health Workforce Arrangements Commission"). The programme board considered the recommendations at its meeting held in May 2019. The final report can be accessed here: https://publichealthreform.scot/media/1537/paper-3-phr-sphwa-commission-deliverable-4-v10.pdf

The creation of Public Health Scotland will consolidate and strengthen the existing public health assets, enabling better targeting and coordination through the effective use of intelligence and data science. This transition to integrated preventative and early intervention solutions based on proven evidence of need and impact, should ultimately help reduce the financial pressure across the whole system of health and wellbeing. However, it may be some years before we can quantify the savings achieved through the lens of the new Public Health Priorities.

All businesses and public health agencies share a common interest: ensuring a healthy and productive population. Option 5 should positively impact businesses and the third sector in terms of a renewed commitment to research, innovation, testing and evaluating the latest public health tools, learning and practice. The focus on cross sector collaboration should also enable more partnerships with private business and the third sector, using their products and expertise to improve and deliver key public health services.

There will also be savings from economies of scale, synergies and new shared service opportunities achieved via the bringing together of three parts of NHS Scotland into Public Health Scotland. Integrating the bodies with key public health functions will help overcome any existing cultural differences, achieve critical mass in terms of staff/functions/services, avoid erosion of related functions and existing relationships and potentially increase the reputation of the organisation as a world leader and, as a result, their ability to attract and retain talent.

We recognise that it may be necessary to invest further in public health reform in order to realise future savings in the longer-term. Financial planning is obviously dependent on budgets available and the prioritisation of resources. The gathering of robust evidence of success by Public Health Scotland in relation to the new public health model will help justify appropriate levels of future investment in public health functions.

Public Health Scotland will retain the power to participate in and report on public health investigations into commercial activities and the practices of private businesses where they pose a health hazard, through the powers inherited from Health Protection Scotland, but only in cases where it would be in the interest of public safety. Health improvement activities and initiatives could also adversely affect commercial activity and the sale of products that are detrimental to health and wellbeing, in order to achieve population health benefits.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that: (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy; and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 30th September 2019

Minister's name: Mr Joe FitzPatrick
Minister's title: Minister for Public Health, Sport and Wellbeing

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