



The Law Commission

(LAW COM. No. 130)

PUBLIC HEALTH (CONTROL OF DISEASE) BILL

REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS
RELATING TO THE CONTROL OF DISEASE

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by Command of Her Majesty
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The Honourable Mr. Justice Ralph Gibson, *Chairman*.

Mr. Stephen M. Cretney

Mr. Brian J. Davenport, Q.C.

Dr. Peter North.

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PUBLIC HEALTH (CONTROL OF DISEASE) BILL

**REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS
RELATING TO THE CONTROL OF DISEASE**

*To the Right Honourable the Lord Hailsham of St. Marylebone, C.H., Lord
High Chancellor of Great Britain.*

The Public Health (Control of Disease) Bill which is the subject of this Report seeks to consolidate those provisions of the public health legislation that relate to the control of disease. In order to produce a satisfactory consolidation it is necessary to make the recommendations set out in the Appendix to this Report.

The Department of Health and Social Security have been consulted in connection with the recommendations and agree with them.

RALPH GIBSON

21st December 1983

Chairman of the Law Commission

APPENDIX

RECOMMENDATIONS

1. The Public Health (Control of Disease) Bill seeks to consolidate those provisions of the public health legislation that relate to the control of disease, and certain closely related provisions. It is one of a series of Bills to consolidate parts of the public health legislation. The provisions consolidated in this Bill are:—

The Public Health Act 1936 (c.49)

Parts I, V, IX, X, XI and XII (in whole or in part)

The National Assistance Act 1948 (c.29)

Sections 50, 56(1) and (2), 63(2) and 66

The Public Health Act 1961 (c.64)

Part III

The Local Government Act 1963 (c.33)

Section 41

The Health Services and Public Health Act 1968 (c.46)

Part III.

2. There are three problems that arise in connection with this consolidation. The first relates to Part XII of the Act of 1936. Part XII contains general provisions which apply to the whole of the Act. Many of those provisions do not have any relevance in the context of the control of disease but some do. For example, section 296 provides that all offences under the Act are to be summary offences and section 298 provides a restriction on the right to prosecute, section 288 imposes a penalty on a person wilfully obstructing any other person acting in the execution of the Act and section 285 provides how notices and other documents may be served.

3. Part III of the Act of 1961 contains further provisions relating to the prevention and notification of disease. Section 38 provides that a justice of the peace may order a person to be medically examined. Section 39 provides that the occupier of premises must, on the application of the proper officer of the local authority (formerly the medical officer of health), furnish information relating to persons suffering from a notifiable disease or food poisoning in the premises. Section 40 authorises a local authority to prohibit or restrict young persons from entering theatres, cinemas, swimming baths, etc. The last two sections each provide for an offence, punishable with a fine of £25, for failure to comply. Section 1(2) of the Act of 1961 provides that Part III "shall be construed as one with Part V of the Public Health Act 1936". Part XII of the Act of 1936 applies to Part V of that Act, and those words must at least have the effect that expressions used in the 1961 provisions have the meanings given to them by Part XII of that Act for the purposes of Part V of that Act. But it is not certain that the other ancillary provisions in Part XII are attracted.

4. Part III of the Act of 1968 contains yet further provisions relating to notifiable diseases and food poisoning. In particular, section 48 provides that if a doctor becomes aware or suspects that a patient whom he is attending is suffering from a notifiable disease or from food poisoning he must notify the proper officer of the name, age and sex of the patient and the address of the premises where the patient is. The section provides for an offence, punishable with a fine of £25, for failure to comply. This section, together with sections 49 and 50 (which provide as to forms of certificate and fees), were enacted in place of sections 144 to 146 of the Act of 1936, which imposed a similar duty on the head of the family to which the patient belonged or the occupier of the building in question as well as on the patient's doctor, and provided similarly as to forms and fees. Section 54 of the Act of 1968 gives a justice of the peace power to order the medical examination of a group of persons and, like section 38 of the Act of 1961 (which gives a justice of the peace power to order the medical examination of a single person), provides that an order under the section may be combined with a warrant under section 287(2) of the Act of 1936 authorising the proper officer to enter premises. Section 287(2) of the Act of 1936 is, of course, in Part XII of that Act. But Part III of the Act of 1968 is not made subject to Part XII of the Act of 1936 nor does it provide that it shall be construed as one with any Part of that Act.

5. The offences created by the Act of 1936 are summary offences (section 296 of that Act), and there is a restriction on the right to prosecute (section 298 of that Act). No similar provisions are made for the offences created under the Act of 1961. It is quite clear from the nature of the offences created by that Act, and from the level at which Parliament set the fines, that the offences created by that Act were intended to be summary offences. Consequently, without an express statutory provision to this effect in the Bill there would be a serious anomaly. Likewise, it would be anomalous if some of the offences in the Bill were subject to the restriction on prosecution (section 298 of the Act of 1936) while others were not. Similar comments would also apply if the provision relating to the sending of notices to the proper officer applied to some of the notices referred to in the legislation but not to others. Finally, we think it most undesirable that uncertainties or anomalies should exist as to when it is an offence to obstruct someone from carrying out his duty under the legislation. There is a general provision to this effect in the Act of 1936 (section 288 of that Act). For reasons explained above, there is a degree of uncertainty how far this applies to the Act of 1961, and it appears not to apply to the Act of 1968, notwithstanding that the relevant sections in the 1968 Act were enacted to replace similar provisions in the Act of 1936 to which section 288 would have applied.

6. The second problem concerns sections 267 and 268 of the Act of 1936. These relate respectively to vessels and to tents, vans, sheds and similar structures used for human habitation. The broad effect of the sections is to apply the provisions of the Act of 1936 relating to the control of disease and certain other matters to vessels, tents, etc. The sections provide, inter alia, that a vessel shall be regarded as a house, building or premises, and a tent etc. as a house or building, for the purposes of the Act. Section 267 and 268 of the Act of 1936 are in Part XI of that Act and, as in the case of

Part XII, there is a degree of uncertainty how far those sections apply to the Act of 1961; and they have not been expressly made applicable to the Act of 1968. Yet both the relevant parts of the Acts of 1961 and 1968 refer to "premises" or "building", and it would, in our view, be a serious gap in the public health legislation if that legislation did not generally apply, for example, to a person on a vessel who had entered this country with a notifiable disease or to a person with such a disease who was living in a tent or shed.

7. In order to effect a satisfactory consolidation of the legislation in question, we recommend that Part XII and sections 267 and 268 of the Act of 1936 should apply to the relevant parts of the Acts of 1961 and 1968. If this is not done, the resulting consolidation statute would, in our view, have to contain exclusions that would create serious anomalies and complications. These would appear perverse to those affected by the legislation and would expose what we would regard as potentially serious gaps in the public health legislation. We bear in mind that the purpose of this legislation is the protection of the public, and the importance of having a clear and consistent code in this area of the law is plain. We have no doubt that if the legislation in question had been presented to Parliament as a whole, rather than in the Act of 1936 (itself largely a consolidation statute) and the supplementing and amending Acts of 1961 and 1968, these anomalies and lacunae would have been provided for in the manner we propose.

8. Effect is given to this recommendation—

- (a) by not excluding clauses 11, 12, 16, 18, 20, 23, 35, 36 and 55(2) from the application of clauses 9(2) and 56 and Part VI of the Bill, and
- (b) by providing for offences under clauses 18 and 23 to be punishable on summary conviction.

9. The third problem relates to section 41(1)(b) of the London Government Act 1963. This section enables functions under the enactments specified in section 40(4) to be assigned to the London port health authority. Those enactments include the Acts of 1936 and 1961 but not the Act of 1968. Applying the principles discussed above, we consider that it is necessary for these enactments to include Part III of the Act of 1968, and we so recommend.

10. Effect is given to this recommendation in clause 7(4)(f) of the Bill.

11. In relation to section 50 and the related sections of the National Assistance Act 1948 (which impose a duty on local authorities to cause to be buried or cremated the body of a person who has died or been found dead in their area, in a case where no suitable arrangements for the disposal of the body have been made), we do not make any recommendations corresponding to those made above in relation to the Acts of 1961 and 1968. The Act of 1948 has an entirely different background from that of the public health Acts, and the sections are not expressed in terms that relate to the control of disease (though that is their principal object). We therefore consider that the sections can be satisfactorily consolidated without reference to the matters mentioned above.

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