

# Health and Social Services Committee

## HSS (2)-17-06 (p.4)

**Date: 30 November 2006**

**Venue: Committee Room 2, National Assembly for Wales**

**Title: Secondary Legislation: The Smoke-Free Premises etc (Wales) Regulations 2007**

### **Purpose**

1. This paper provides the Committee with the opportunity it requested to consider the draft Smoke-Free Premises etc (Wales) Regulations 2007, before they go forward for consideration under Standing Order 24.

### **Summary**

2. The draft Smoke-free Premises etc. (Wales) Regulations 2007 make provision for the prohibition of smoking in certain premises and vehicles in Wales, through powers conferred in the Health Act 2006. Similar legislation took effect in Scotland in March 2006, and is proposed to come into force in Northern Ireland in April 2007 and in England in summer 2007.

### **Background**

3. In June 2004 the Assembly voted to establish a cross-party Ad Hoc Committee on Smoking in Public Places. The Committee's remit was to consider the health risks of second-hand smoke and the economic impact of restrictions on smoking in public places. Following a public consultation, the Committee issued its report on 10 May 2005. Its main recommendation was that the National Assembly for Wales should press the UK Government for the powers that would enable it to introduce a ban on smoking in enclosed workplaces and public places within a timescale of two to three years. On 25 May 2005 AMs voted to support these recommendations.

4. On 5 July 2005 the Assembly Minister for Health and Social Services announced that the Welsh Assembly Government accepted the Committee's recommendations and proposed to introduce a comprehensive ban on smoking in enclosed public places and workplaces once the necessary powers had been granted by the UK Government. The Health Act 2006, which conferred the necessary powers, received Royal Assent on 19 July 2006. On 21 July 2006 the Assembly Government initiated a consultation on draft regulations for Wales, which ended on 13 October 2006.

### **Consideration**

5. The draft Regulations are broadly in line with similar legislation in Scotland and proposed in

England. The Regulations specify the meaning of "enclosed" and "substantially enclosed" in relation to smoke-free premises. They exempt specified descriptions of premises or specified areas of them from being smoke-free, in particular private accommodation in premises which are a workplace; designated bedrooms in hotels, guest houses etc; designated rooms in certain types of residential accommodation, i.e. care homes, hospices and mental health residential units; and certain research and testing facilities. They provide for certain vehicles to be smoke-free, notably public transport vehicles and vehicles which are used as a workplace by more than one person. The regulations also specify the form, content and display of no-smoking signage. They designate county councils and county borough councils in Wales as the enforcement authorities for smoke-free legislation, make provision for transfer of cases between enforcement authorities, and specify the form of fixed penalty notices.

6. The majority of consultation responses were strongly supportive of smoke-free legislation and generally content with the regulations. A report on the consultation is attached below.

7. In the light of comments received during the consultation, an amendment is proposed to clarify the fact that private vehicles are not required to be smoke-free. Issues raised in consultation responses about the situation of domiciliary workers visiting the homes of smokers will be covered in the guidance document for the NHS, local authorities and the care sector. Concerns about enforcement on public transport will be addressed in the enforcement protocol being drawn up between the Assembly Government and the Welsh Local Government Association.

## **Financial Implications**

8. These are covered in detail in paras. 6-13 of the attached Explanatory Memorandum. Funding of ? 4.09 million has been allocated in 2006/07 to support preparatory activity (enhanced smoking cessation services, public awareness campaign, advice to businesses, local government preparations for enforcement, baseline monitoring). A further ?3.94 million has been provisionally allocated in 2007/08 to support smoking cessation, public awareness, local government enforcement activity and impact research.

## **Timetable for Implementation**

9. Following the Health and Social Services Committee's consideration of the Regulations, it is planned that they should be considered by the Business Committee on 12 December 2006, by the Legislation Committee on 16 January 2007 and by Plenary on 23 January 2007. After the issuing of detailed guidance and signage to businesses and a media campaign alerting the public, it is aimed to bring the Regulations into force on 2 April 2007.

## **Action for Subject Committee**

10. The Committee is invited to consider this paper, the draft Regulations, the draft Explanatory Memorandum, the draft Regulatory Appraisal and the report on the consultation on draft Regulations.

Brian Gibbons AM

Minister for Health and Social Services

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**To: Business Committee**

**From: Brian Gibbons AM**

**Minister for Health and Social Services**

**Explanatory Memorandum**

**Health, Wales**

**The Smoke-Free Premises Etc. (Wales) Regulation 2007**

## **Summary**

These Regulations make provision for the prohibition of smoking in certain premises and vehicles in Wales, in pursuance of powers conferred in the Health Act 2006.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the Smoke-free Premises etc. (Wales) Regulations 2007, in accordance with Standing Order 24.6.
2. A copy of the Instrument is submitted with this Memorandum.

## **Enabling Powers**

3. The powers enabling this Instrument to be made are contained in sections 2 (5), 3, 5 (1) and (2), 6, 8 (3), 10 and 79 (3) and in paragraph 4 of Schedule 1 to the Health Act 2006, and in section 26 of the Welsh Language Act 1993. The powers under the Health Act 2006 have been conferred on the National Assembly for Wales and the powers under the Welsh Language Act 1993 have been transferred to the National Assembly for Wales. Under the post-2007 arrangements, we foresee that this legislation would follow the Affirmative procedure. The instrument contains references to penalties and discounted amounts. Powers to specify the amounts of penalties and discounted amounts by regulations are vested in the Secretary of State for Health. The UK Department of Health is aiming to make the Smoke-free (Penalties and Discounted Amounts) Regulations in time for the Smoke-Free Premises etc (Wales) Regulations to be made in mid-January.

## **Effect**

4. These Regulations make provision for the prohibition of smoking in certain premises and vehicles in Wales. The Regulations are broadly in line with similar legislation in Scotland and proposed in England. The Regulations specify the meaning of "enclosed or substantially enclosed" in relation to smoke-free premises. They exempt specified descriptions of premises or specified areas of them from being smoke-free, in particular private accommodation in premises which are a workplace; designated bedrooms in hotels, guest houses etc; designated rooms in certain types of residential accommodation, i.e. care homes, hospices and mental health residential units; and certain research and testing facilities. They provide for certain vehicles to be smoke-free, notably public transport vehicles and vehicles which are used as a workplace by more than one person. The Regulations also

specify the form, content and display requirements of no-smoking signage. They designate county councils and county borough councils in Wales as the enforcement authorities for smoke-free legislation, make provision for transfer of cases between enforcement authorities and specify the form of fixed penalty notices.

## **Target Implementation**

5. It is intended that the proposed Regulations be made on 23 January 2007 and come into force on 2 April 2007.

## **Financial Implications**

### **Costs to the Assembly**

6. Funding of £1.16 million from the Tobacco Control Budget Expenditure Line (BEL) and £412,000 from the Health Challenge Wales BEL has been allocated in 2006/07 for enhanced smoking cessation activity in advance of the smoking ban. These activities will include a helpline, No Smoking Day, self-help cessation resources and support for the All Wales Smoking Cessation Service.. Similar funding has provisionally been allocated for 2007-08 when the ban takes effect.

7. Public awareness activity linked to the introduction of the ban includes mass media advertising on the health risks of second-hand smoke; mass media advertising to inform the public that the legislation is coming into force; a dedicated website providing information and guidance about the legislation; three mailshots to businesses and one mailshot to all households in Wales; and supporting Public Relations activity and resources. Funding of ?1.45 million has been allocated from the Health Challenge Wales BEL in 2006/07 to support the public awareness campaign.

8. The Welsh Assembly Government has made a commitment to provide a dedicated phoneline for reports of non-compliance. Funding of ?20,000 from the Health Challenge Wales Budget Expenditure Line (BEL) has been allocated in 2006/07 for set-up costs, and a further ?60,000 is included in indicative figures for the Health Challenge Wales budget line in 2007/08.

9. All premises and vehicles made smoke-free by legislation will require signage. Signs will be printed and disseminated by the Welsh Assembly Government. Funding of ?20,000 from the Tobacco Control BEL and ?40,000 from the Health Challenge Wales BEL has been allocated for 2006/07.

10. A research strategy for monitoring and evaluating the impact of the ban has been set in place. In addition to monitoring changes in public attitudes and economic data, this will include research on (1) changes in children's exposure to environmental tobacco smoke and (2) changes in attitudes and behaviour in relation to smoking restrictions in community contexts where smoking and drinking take place. £190,000 is allocated to this work in 2006/07 in the Health Challenge Wales BEL, and a further £310,000 is included in the indicative figures for this BEL in 2007/08.

### **Costs to Local Authorities**

11. The Welsh Assembly Government has made additional resources available to local authorities in Wales for recruitment and training of enforcement officers and activities to raise awareness of the proposed legislation among businesses in Wales. £800,000 has been allocated in the Smoke-free Public Places account within the Health Promotion BEL for 2006-07, and £2 million will be transferred from this BEL to the Local Government Revenue Support Grant for 2007-08.

### **Costs to Other Bodies, Individuals and Business**

12. Individual businesses will be required to have signage in place in their premises and smoke-free vehicles. Signs will be provided free of charge by the Welsh Assembly Government.

### **Regulatory Appraisal**

13. A Regulatory Appraisal has been carried out in relation to this Instrument and is attached.

### **Consultation**

#### **With Stakeholders**

14. In 2004, a cross-party Assembly Committee on Smoking in Public Places was established to consider current evidence on relevant issues, including the health risks of environmental tobacco smoke and the economic impact of restrictions on smoking in public places. The Committee carried out a public consultation and took evidence from a range of stakeholders. In May 2005 the Committee issued its report recommending that the Welsh Assembly Government should seek powers from the UK Government to introduce a comprehensive ban on smoking in enclosed public places and workplaces. In response to the Committee's report, the Minister for Health and Social Services announced that the Welsh Assembly Government proposed to implement a comprehensive ban once powers had been granted, and that the Health Bill would be the vehicle for providing these powers.

15. In June 2005 the UK Department of Health and the Wales Office issued a consultation relating to the smoke-free provisions in the Health Bill. The consultation document invited responses to the Department of Health but also made provision for responses from Wales to be sent to the Welsh Assembly Government. The consultation received over 57,000 responses from England and Wales, with over 90 percent of respondents expressing support for a complete ban on smoking in all enclosed public places and workplaces.

16. The Health Act 2006 received Royal Assent on 19 July 2006. On 21 July the Assembly Government initiated a twelve week consultation on its detailed proposals in relation to the powers conferred by the Health Act 2006 and on these Regulations.

17. Copies of the consultation document, draft Regulations and draft Regulatory Appraisal were sent to over 680 key stakeholders in Wales and England, including local authorities, health and social care bodies, business (including the hospitality and leisure sector) and the voluntary sector. Copies of the consultation documents were also made available on the dedicated website [www.smokingbanwales](http://www.smokingbanwales).

co.uk.

18. Responses were received from 129 organisations and 59 individuals in Wales. A report on the consultation responses is attached at Annex D to the Regulatory Appraisal.

19. Following the comments received during the consultation, an amendment was proposed to clarify the fact that private vehicles are not required to be smoke-free. Issues raised about the situation of domiciliary workers visiting the homes of smokers will be covered in the guidance document for the NHS, local authorities and the care sector. Concerns about enforcement on public transport will be addressed in the enforcement protocol being drawn up between the Welsh Assembly Government and the Welsh Local Government Association.

### **With Subject Committees**

20. These Regulations were notified to the Health and Social Services Committee, via the list of forthcoming legislation, on 28 September 2006 (HSS (2)-13-06, paper 2a: item HSS 31 (06)). The Regulations were identified for detailed scrutiny and are scheduled for consideration by the Committee on 30 November 2006.

21. Because of the cross-cutting nature of the Regulations, notification was also made to Legislation Programme Coordinators of other subject Committees on 20 September 2006. To date, the Regulations have not been identified for detailed scrutiny by any other Committee.

### **Notification under Directive 98/34/EC**

22. EC Directive 98/34/EC lays down a notification procedure for the transparency of technical Regulations relating to products and information society services. This requires that such technical Regulations are notified to the Commission in draft, followed by a standstill period of three months to allow Member States to raise any concerns about potential barriers to trade. On advice from the Department of Trade and Industry that smoke-free signage might fall within the scope of this Directive, and taking into account that Irish and Scottish smoke-free Regulations were notified before being made, the draft Smoke-free Premises etc (Wales) Regulations 2007 were notified to the Commission on 17 October 2006.

23. If one or more member States and/or the Commission delivers a "detailed opinion" (to the effect that the measure envisaged should be amended in order to eliminate or reduce any barriers which it might create in the free movement of goods or, in respect of rules on services, the free movement of services or the freedom of establishment of service operators), the originating member State must report to the Commission on the action it proposes to take on those detailed opinions and must not make the regulation for a total of six months from the receipt of notification by the Commission. This means that, in the event that a "detailed opinion" is delivered on the Welsh Regulations, it will not be possible to bring the ban into force in Wales on 2 April 2007. Neither comments nor detailed opinions were received on the Irish and Scottish smoke-free Regulations.

### **Recommended Procedure**

24. Subject to the views of the Business Committee, I recommend that these Regulations proceed to plenary under the Standard procedure to give Members an opportunity to debate them.

## **Compliance**

25. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights obligations (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

26. The information in this Memorandum has been cleared with the Legal Services Department (LS).

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Brian Gibbons AM November 2006

Minister for Health and Social Services

## **Regulatory Appraisal**

### **Health, Wales**

### **Smoke-Free Premises Etc (Wales) Regulations 2007**

#### **1. Purpose and intended effect of the measure**

1.1 The purpose and intended effect of the measure is to protect public health by introducing a comprehensive ban on smoking in public places and work places.

1.2 Smoking has long been recognised as the most preventable cause of ill-health and premature death in Wales. It is estimated to be associated with over 6,000 deaths among smokers each year in Wales. It has also been identified as the primary reason for the gap in life expectancy between rich and poor [Jarvis & Wardle, 1999]. For this reason, reducing smoking-related harm is a priority for the Welsh Assembly Government in its action to address health inequalities.

1.3 There is clear and irrefutable evidence that smoking damages the health of non-smokers. In 1998, the UK Scientific Committee on Tobacco and Health (SCOTH) issued a major report which concluded that exposure to second-hand smoke causes lung cancer, with an increased risk of 20-30 per cent in those with long-term exposure. SCOTH also concluded that second-hand smoke is a cause of heart disease in adult non-smokers, and of respiratory disease, cot death, middle ear disease and asthmatic attacks in children [SCOTH, 1998]. An updated review of relevant studies carried out by SCOTH in 2004 [SCOTH, 2004] found that evidence of the hazardous nature of exposure to environmental tobacco smoke had consolidated. The Committee concluded that second-hand smoke is a serious public health risk.

1.4 The Assembly Committee on Smoking in Public Places was set up in June 2004 to consider the health risks of second-hand smoke and the economic impact of restrictions on smoking in public places. Following a public consultation, the Committee issued its report on 10 May 2005. Its main recommendation was that the National Assembly for Wales should press the UK Government for the powers that would enable it to introduce a ban on smoking in enclosed workplaces and public places (with specified exemptions) within a timescale of two to three years. AMs voted in support of these recommendations, which were accepted by the Welsh Assembly Government.

1.5 The Health Act 2006 which received Royal Assent in July 2006 requires all enclosed public places and workplaces in England and Wales, including pubs and private membership clubs, to be smoke-free. The Bill makes provision for the Welsh Assembly to make regulations relating to aspects of the legislation, including exemptions for specified descriptions of premises; designation of additional smoke-free places not covered by the definition in the Act, in cases where, without the designation, persons present are likely to be exposed to smoke; specification of the form, content and display of no-smoking signage; and designation of enforcement authorities.

## **2. Risk assessment**

2.1 Tobacco is a uniquely dangerous product and, as indicated above, smoking is one of the most damaging factors in Wales' poor health record. Measures to protect individuals and society from the impact of tobacco, through legislative and other forms of regulation and control, are a vital component in any tobacco control strategy. There is no safe level of exposure to second-hand smoke and, while some progress has been made in smoke-free environments through voluntary action, the evidence clearly indicates that comprehensive legislation is the only way to make significant progress to protect public health.

2.2 A large number of studies have been undertaken on the specific risks associated with environmental tobacco smoke. Results from these studies are considered in more depth under the potential costs and benefits of the various options. Risks associated with the successful implementation of the policy itself fall into two main areas: compliance/ enforcement, and the economic impact on businesses, particularly in the hospitality sector.

## **3. Options**

3.1 A number of options were considered during the development of the Assembly Government's



policy proposals on this issue. These included both legislative and non-legislative options.

### **Option 1 - Voluntary Approach**

3.2 Option 1 is to continue a voluntary approach to reducing second-hand smoke. Employers and businesses would be encouraged to take steps to make more places smoke-free, but there would be no statutory requirement for smoke-free places or for enforcement of them. The Assembly Government would continue its programme of initiatives to discourage young people from starting smoking, motivate and support smokers to quit, and raise awareness of the risks of exposure to second-hand smoke. Given the slow rate of voluntary change in this area in the past, especially in the hospitality sector, this option would seem likely to result in only limited progress and limited benefits.

### **Option 2 - Legislation but with Exemption for the Hospitality Sector**

3.3 Smoking would be generally restricted in enclosed public places, but the licensed hospitality sector would be wholly or partially exempt. This approach would be complemented by a range of other actions to tackle smoking as set out above. These partial restrictions would deliver a higher increase in smoke-free public places than Option 1. However, bars and clubs are places where there is currently particularly heavy exposure to environmental tobacco smoke [SCOTH, 1998].

### **Option 3 - Comprehensive Smoke-free Legislation**

3.4 All enclosed public places and workplaces would be smoke-free. Exemptions would be permitted only in workplaces which are also homes for vulnerable groups (i.e. care homes, hospices and residential mental health units). Once again, the Assembly Government would continue to pursue a range of actions to reduce smoking prevalence. This approach could be expected to achieve the greatest reductions in exposure to second-hand smoke. By creating a culture in which smoking is no longer the social norm, it would also be likely to result in a reduction in active smoking levels.

## **4. Benefits**

4.1 In 2004 the Health Economics Research Unit (HERU) at the University of Aberdeen was commissioned by NHS Health Scotland, on behalf of the Scottish Executive and the Welsh Assembly Government, to provide a review of the latest evidence as to the health and economic impacts of smoke free legislation and restrictions [HERU, 2005]. This study is the most up to date and comprehensive analysis of the likely impact of smoking legislation in Scotland and Wales and as such forms the basis of much of the cost-benefit analysis in this paper.

4.2 The results of the HERU study focus on the impact of a comprehensive ban on smoking in public places, as initial study work found that there was little evidence base available that would allow a full estimate of the health and economic impact of lesser restrictions.

4.3 The study combined a literature review with a modelling exercise to determine the likely impacts of restrictions on smoking in public places in Scottish and Welsh contexts. HERU carried out the literature review work and estimated a model for Scotland. The University of Glamorgan was then

sub-contracted by HERU to replicate the model using Welsh data where available [Cohen, 2005].

4.4 The model is based on a total ban on smoking in all public places including workplaces and leisure and hospitality facilities. A total ban – rather than lesser restrictions – has been modelled because it is unclear what the health effects of a partial ban would be. Nevertheless, the model is used to inform the benefit and cost estimates for each option below. The model provided low, central and high estimates of the impacts, with the central estimate being a conservative estimate of the most likely impact. The assumptions used regarding the costs and benefits of Options 1 and 2 mirror those used in Scotland in developing the Scottish legislation.

4.5 Based on the available literature, the study considered a range of impacts from restrictions on smoking:

- Reduced exposure to environmental tobacco smoke (ETS) in the workplace;
- Reduction in smoking/increase in quit attempts by active smokers;
- Reduction in number of deaths from major disease types;
- Reduced costs of treating smoking related diseases;
- Economic impacts on the hospitality sector.

4.6 The HERU study used a conservative central estimate (2% reduction) of the impact of smoke free policies on smoking prevalence. Given the importance of providing a robust test for the impact of a smoking ban, the approach adopted throughout the modelling process has been to apply assumptions that will tend to understate the benefits of the smoking ban but not to understate the costs.

4.7 Option 1 – Voluntary Approach

### **Health benefits**

In the absence of legislation, it is expected that reductions in both active and passive smoking levels would be minimal. Based on existing trends, we might expect active smoking levels to fall marginally and as such, any economic benefits in terms of the value of lives saved or savings in morbidity costs would only be a fraction of those achieved through legislation.

### **The economic value of lives saved**

#### **As a result of reduced exposure to environmental tobacco smoke (ETS):**

Benefits from reduced exposure to ETS would be marginal. A continuation of the voluntary approach would lead to some public places that currently allow smoking to become smoke-free. On this basis, it has been assumed that option 1 will produce only a marginal economic benefit from reduced

mortality associated with ETS, being 10% of that achieved with comprehensive legislation.

### **As a result of reduced levels of active smoking:**

No additional fall in smoking prevalence has been assumed under option 1. Any further fall in smoking prevalence under a continued voluntary approach is likely to be as a result of continued tobacco control action, which will take place under each option, and therefore has not been included.

- Savings in the human cost of ill health (morbidity savings)

a) As a result of reduced exposure to ETS:

Reductions in the morbidity costs would arise as a result of reduced levels of ETS. We have assumed that the reduction would be 10% of that achieved under comprehensive legislation, in line with the reductions in deaths from reduced ETS exposure.

### **Resource savings**

- Reduced NHS treatment costs

a) As a result of reduced exposure to ETS:

In line with the reduction in deaths as a result of reduced levels of ETS, it has been assumed that the resource savings would be 10% of those achieved under comprehensive legislation.

b) As a result of reduced levels of active smoking:

It is assumed that there is no further reduction in active smoking under this option.

- Savings from reductions in sickness absence

a) As a result of reduced exposure to ETS:

Assumed to be 10% of those estimated for a smoke-free policy.

b) As a result of reduced levels of active smoking:

It is assumed that there is no further reduction in active smoking under this option.

- Cost savings from reduced fire hazards and reduced cleaning and decorating costs

These savings would be small compared to comprehensive legislation. It is assumed that they will be 10% of those achieved under a ban.

- Cost of increased smoking breaks in establishments with no current policy

Under a continuation of the voluntary code, there would be minimal impact on this, it is therefore assumed to be 0.

## **Hospitality Sector Impacts**

A continuation of the existing non-legislative option would be expected to have minimal impact on the hospitality sector. Restrictions on smoking in pubs, restaurants and other locations would be left to local discretion.

### **4.8 Option 2 – Legislation but with Exemption for the Hospitality Sector**

#### **(i) Health benefits**

The existence of legislation for many public places would have a greater impact on reductions in both active and passive smoking levels than a continuation of the voluntary approach. Exposure to ETS is particularly heavy in bars and clubs, however, so with the exemptions for this sector, the impact would not be as great as with comprehensive legislation. Any economic benefits in terms of the value of lives saved or savings in morbidity costs would therefore be smaller than those achieved through comprehensive legislation.

#### **The economic value of lives saved**

a) As a result of reduced exposure to ETS:

Partial restrictions would lead to a proportionately higher increase in smoke-free places in comparison with a continuation of the voluntary approach. The Welsh Health Survey 2003/04 showed that of all adult non-smokers, 17% of men and 10% of women reported being exposed to other people's smoke in work, and 63% of men compared with 52% of women reported exposure to other people's smoke in pubs. The exemption of the hospitality sector would therefore limit the impact on reductions in exposure to ETS. It has been assumed that the economic value of lives saved as a result of reduced exposure to ETS under this option would be 25% of that achieved under comprehensive legislation.

b) As a result of reduced levels of active smoking:

Research on smoking restrictions introduced elsewhere (Chaloupka and Saffer, 1992) has identified a differential impact on active smoking between clean air laws and workplace restrictions. The research suggests that clean air laws deliver a 20% fall in cigarette consumption levels, compared to a 4-8%

reduction with lesser, workplace-based restrictions. Neither of these scenarios is exactly equivalent to the legislative options considered here and these studies measure falls in cigarette consumption rather than smoking prevalence. Nevertheless, a prudent interpretation of these results would suggest that the reduction in smoking prevalence associated with partial restrictions might be about half that of a smoke-free policy. This is consistent with the expectation that smoking legislation which continues to allow smoking in the hospitality sector, would have a much weaker impact on smoking rates.

- Savings in the human cost of ill health (morbidity savings)

a) As a result of reduced exposure to ETS:

Reductions in the morbidity costs would arise as a result of reduced levels of ETS. We have assumed that the reduction would be 25% of that achieved under comprehensive legislation, in line with the reductions in deaths from reduced ETS exposure.

b) As a result of reduced levels of active smoking:

Reductions in the morbidity costs would arise as a result of reduced levels of active smoking. We have assumed that the reduction would be 50% of that achieved under comprehensive legislation, in line with the reductions in deaths from reduced active smoking.

## **(ii) Resource savings**

- Reduced NHS treatment costs

a) As a result of reduced exposure to ETS:

In line with the reduction in deaths as a result of reduced levels of ETS, it has been assumed that the resource savings would be 25% of those achieved under comprehensive legislation.

b) As a result of reduced levels of active smoking:

In line with the reduction in deaths as a result of reduced levels of active smoking, it has been assumed that the resource savings would be 50% of those achieved under comprehensive legislation.

- Savings from reductions in sickness absence

a) As a result of reduced exposure to ETS:

Assumed to be 25% of those estimated for a smoke-free policy.

b) As a result of reduced levels of active smoking:

Assumed to be 50% of those estimated for a smoke-free policy.

- Cost savings from reduced fire hazards and reduced cleaning and decorating costs

Cost savings from reduced fire hazards and reduced cleaning and decorating costs would accrue under partial restrictions. Whilst the hospitality industry may account for a disproportionate share of these costs, restrictions on the non-hospitality sector will produce some of the benefits likely to be realised under option 3. As such, we have assumed these to be the same as for option 3 though in reality they are likely to be less.

- Cost of increased smoking breaks in establishments with no current policy

There is no evidence to differentiate the impact of smoking breaks on productivity in this option or option 3 and we have assumed the impact to be the same in each case.

c) Hospitality Sector Impacts

Legislation on smoking but with the licensed hospitality sector exempt would see smoking policy in this sector largely left to local discretion. Where a decision to restrict smoking continues to be left to local discretion, there may be some shift in revenue between bars, restaurants and hotels, but the overall impact on the sector might be expected to be zero. As such, this option might be expected to have a minimal impact on the hospitality sector.

4.9 Option 3 – Comprehensive smoke-free legislation

On the basis of available estimates, the Welsh model forecast that a complete ban in Wales would result in 253 deaths per year being averted from reduced incidence of lung cancer and coronary heart disease (CHD) associated with exposure to ETS. Based on 6000 deaths from smoking related diseases in Wales per annum, reductions in active smoking were estimated to lead to a further 120 deaths per year being averted due to reduced incidence of lung cancer and CHD. These figures represent the best central estimate of lives saved after 20 years, with lives saved increasing in a straight line from zero to 253/120 over this period. Furthermore, these figures represent a conservative estimate as only reduced deaths from lung cancer and CHD were included and not reduced deaths from a variety of other disease types.

The HERU study converted lives saved into an economic impact based on studies of the value of life produced by the Department of Transport. The latest estimate provided by the Department of Transport for the value of a life is £1,249,150 (2002 prices). HERU adjusted this figure to account for the fact that deaths from smoking-related illnesses typically occur at a later age than road traffic accident fatalities. This gave a value per life saved of between £240k and £447k depending on disease type.

The economic impacts of restrictions on smoking in public places were considered. The literature considered by the HERU study suggested that overall there would be productivity gains from reduced smoking breaks, though whether any individual business gained or lost from the introduction of a complete ban would depend on the extant smoking policy for those premises. The Welsh model was however based on different assumptions, assuming that there would be no effect in establishments that were either smoke-free already, or had existing dedicated smoking rooms. Extra smoking breaks were expected in establishments with no current policy. The Welsh model therefore assumes a cost of introducing a ban of ?394,210. Estimated cost savings were calculated for reduced absenteeism due to reduced passive and active smoking (£4,484,000), reduced fire hazards (£5,957,000) associated with a ban on smoking, and reduced cleaning and decorating costs (£7,563,000).

The HERU study gave separate consideration to the effect of smoking restrictions on the hospitality sector. Hospitality sector impacts were considered in terms of the impact on trade and split into impacts on restaurants, bars and hotels/tourism. Evidence from studies on the impact on the hospitality sector was not as robust as the evidence available on health effects. In general it was found that studies had failed to find any statistically significant results. However, where evidence was available the results of the studies were reasonably consistent. The impact on the hospitality sector was calculated with reference to these studies and this figure was adjusted to account for expected offsetting expenditure elsewhere in the economy. This gave a net annual impact on the hospitality sector, which was used in estimating the overall economic impact of a smoking ban.

As part of the study a model of the overall economic impact of a smoking ban in Wales was constructed. The model was based on the evidence obtained on the various types of impact resulting from the smoking ban, as set out above. For each type of impact for which a monetary value could be established the study projected the future value of costs and benefits in each year over a 30 year appraisal period. Future values of costs or benefits were then discounted to give net present values (NPVs).

An economic value was placed on the following impacts of the smoking bill (NPV (£m) of central estimate in brackets):

### **Health benefits**

The economic value of lives saved: a) as a result of reduced exposure to ETS (86.9) and; b) as a result of reduced levels of active smoking (46.8)

Savings in the human cost of ill health (morbidity savings) as a result of reduced exposure to ETS (12.6). (Savings in the human cost of ill health, i.e. morbidity savings, as a result of reduced levels of active smoking were not valued)

### **Resource savings**

Reduced NHS treatment costs: a) as a result of reduced exposure to ETS (2.9) and; b) as a result of reduced levels of active smoking (2.2)

Savings from reductions in sickness absence: a) as a result of reduced exposure to ETS (4) and; b) as a result of reduced levels of active smoking (0.47)

Cost savings from reduced fire hazards (6)

Reduced cleaning and decorating costs (7.6)

Cost of increased smoking breaks in establishments with no current policy (-0.4)

## Hospitality Sector Impacts

Impact on the hospitality sector (42)

The robustness of the study results was extensively tested by the University of Glamorgan. In addition to the central estimate, 'low' and 'high' scenarios were tested based on much less and much more advantageous outcomes of a smoking ban.

The total NPV for the central estimate is +£2,158m. This suggests that the introduction of the smoking ban might be expected to have a significant positive impact in Wales over a 30-year period. The total NPV for the 'low' and 'high' scenarios were +£322m and +£3,903m.

The University of Glamorgan report concluded that "In no cases does the NPV become negative which implies that even using the most disadvantageous assumptions the model predicts that the overall effect of a ban on smoking in public places will be positive."

### Impact on the Hospitality Sector and Knock-on Effects on the Economy

The HERU study estimated the impact of a complete ban on the hospitality sector with reference to research studies carried out on the restaurant, bars and hotels/tourism sectors. Evidence from these studies was not as robust as the evidence available on health effects. In particular, only one study of the effects of legislative restrictions on bars was found. This study looked at the effects of restrictions on bars in California, which suggested that the sector would gain from a complete smoking ban through increased levels of patronage.

The following table shows the estimated impact on each of the restaurant, bars (adjusted as described above) and hotels/tourism sectors and on the hospitality sector as a whole in Wales.

Potential impact on hospitality sector turnover (2003 prices)

	<b>Central estimate</b>	<b>Low estimate</b>	<b>High estimate</b>
	<b>£m</b>	<b>£m</b>	<b>£m</b>



Hotels	-6	-13	1
Restaurants	1	-6	8
Bars	46	-28	122
Total	42	-48	131
Total Sector Turnover	2,211	2,211	2,211
% of turnover	1.9	-2.2	5.9

Sources: Welsh Assembly Government, ONS (IDBR)

The aggregate consumption effects of -£48m, £342m and £131m for the low, central and high scenarios are equivalent to percentage change in turnover of -2.2%, 1.9% and 5.9% based on the IDBR data for 2003.

## 5. Costs

### 5.1 Option 1 – Voluntary Approach:

#### Costs to the Welsh Assembly Government

The costs of smoking cessation include the Smokers helpline and the All Wales Smoking Cessation Service. The total cost of these elements is ?1.5 million per annum and would be incurred under all three options.

There are no other costs to the Welsh Assembly Government of continuing with the voluntary approach.

#### Costs to Local Authorities

There would be no additional costs to Local Authorities of continuing with the voluntary approach.

### 5.2 Option 2 – Legislation but with Exemption for the Hospitality Sector

#### Costs to the Welsh Assembly Government

The costs of smoking cessation include the Smokers Helpline and the All Wales Smoking Cessation Service. The total cost of these elements is ?1.5 million per annum and would be incurred under all three options.

The public awareness campaign to raise awareness about the partial restrictions would be carried out before the ban came into force and is estimated to cost £1.5 million.

Signage costs would apply. All premises made smoke-free by legislation would require signage. The Welsh Assembly Government has agreed to make signage available to businesses and other premises. Under this option, with the exemption of the hospitality sector, this cost is estimated to be £40,000.

Monitoring and evaluation of the policy will also have a cost attached to it. This cost may be up to ? 500,000 in total. The costs of monitoring and evaluation for option 1 have been assumed to be zero, although some of this cost may be incurred even in the absence of legislation. The full ?500,000 cost has been included in year 1 for options 2 and 3.

### **Costs to Local Authorities**

The Welsh Assembly Government has agreed to make additional resources available to local authorities in Wales for recruitment and training of enforcement officers and activities to raise awareness of the proposed legislation among businesses in Wales. Option 2 would not require any enforcement in the hospitality sector. It is estimated that the costs would be 50% of those under option 3 (£400,000 in 2006-07 and £1 million per annum from 2007-08 onwards.)

### **Costs to the UK Exchequer**

A reduction in active smoking levels would result in a reduction in duty levels in Wales. However, it should be borne in mind that there is an overarching aim of reducing smoking, so reductions to the Exchequer are expected as a result of this initiative.

### **Impact on the Welsh Economy**

In line with government guidance "Green Book: Appraisal and Evaluation in Central Government" we have assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly equivalent macroeconomic effects.

#### **5.3 Option 3 – Comprehensive smoke-free legislation**

### **Costs to the Welsh Assembly Government**

The costs of smoking cessation include the Smokers helpline and the All Wales Smoking Cessation Service. The total cost of these elements is £1.5 million per annum and would be incurred under all three options.

The public awareness campaign to raise awareness about the ban would be carried out before the ban came into force and is anticipated to cost £1.5 million.

Signage costs would apply. All premises made smoke-free by legislation will require signage. The Welsh Assembly Government has agreed to make signage available to businesses and other premises at a cost of £60,000.

Monitoring and evaluation of the policy will also have a cost attached to it. This cost may be up to £500,000 in total. The costs of monitoring and evaluation for option 1 have been assumed to be zero, although some of this cost may be incurred even in the absence of legislation. The full £500,000 cost has been included in year 1 for options 2 and 3.

### **Costs to Local Authorities**

The Welsh Assembly Government has agreed to make additional resources available to local authorities in Wales for recruitment and training of enforcement officers and activities to raise awareness of the proposed legislation among businesses in Wales (£800,000 in 2006-07 and £2 million per annum from 2007-08 onwards.)

### **Costs to the UK Exchequer**

A reduction in active smoking levels would result in a reduction in duty levels in Wales. However, it should be borne in mind that there is an overarching aim of reducing smoking, so reductions to the Exchequer are expected as a result of this initiative.

### **Impact on the Welsh Economy**

In line with government guidance "Green Book: Appraisal and Evaluation in Central Government" we have assumed that a reduction in consumer expenditure on tobacco would be offset by an increase in expenditure elsewhere in the economy with broadly equivalent macroeconomic effects.

### **Costs to Other Bodies, Individuals and Business**

Individual businesses will be required to have signage in place in their premises. Signage will be available from the Welsh Assembly Government (see above).

The impact on small businesses is not expected to be any greater than on business as a whole.

### **5.4 Summary of costs and benefits**

A table showing the relative scale of costs and benefits for each of the three options is attached at Annex A.

## **6. Competition Assessment**

6.1 Application of the competition filter test suggests that the smoke-free regulations are unlikely to have a significant detrimental effect on competition. The comprehensive nature of the restrictions set out in the Health Act and the regulations for Wales makes for a level playing field.

## **7. Consultation**

7.1 The Assembly Committee on Smoking in Public Places carried out a public consultation on the health risks of second-hand smoke and the economic impact of restrictions on smoking in public places as part of its deliberations before issuing its report in May 2005.

7.2 In June 2005 the UK Department of Health issued a consultation document relating to the smoke-free provisions in the Health Bill. The consultation document invited responses to the Department of Health but also made provision for responses from Wales to be sent to the Welsh Assembly Government. This consultation received over 57,000 responses from England and Wales, with over 90 per cent of respondents expressing support for a complete ban on smoking in all enclosed public places and workplaces.

7.3 A twelve week consultation on the draft Smoking in Public Places (Wales) Regulations took place between 21 July and 13 October 2006, and an earlier draft of this Regulatory Appraisal formed part of the consultation documentation. Comments were received on the draft Regulatory Appraisal from sectors of the gaming industry. The Bingo Association and the Gala Coral Group, while supporting the smoke-free premises proposals, argued that on the basis of recent evidence from Scotland the smoke-free legislation would have a "disproportionate and significant" impact on the bingo sector and also, in the view of Gala Coral, on the casino sector. Two other organisations in this sector who also responded to the consultation, the Rank Group Gaming Division and the British Casino Association, made no comment on this point. Keep Wales Tidy suggested that the legislation would result in a short-term increase in smoking-related litter outside public buildings.

## **8. Significant Costs**

8.1 The analysis carried out by the University of Glamorgan for the Welsh Model concluded that "In no cases does the net present value become negative which implies that even using the most disadvantageous assumptions the model predicts that the overall effect of a ban on smoking in public places will be positive". This does not rule out the possibility that individual premises within the leisure and hospitality sector, e.g. some licensed premises and bingo venues, may experience a negative impact from the ban.

## **9. Review**

9.1 A monitoring and evaluation plan has been prepared to measure the impact of smoke-free legislation. This will provide the following data:

- Changes in smoking prevalence and tobacco consumption (through data routinely collected in the Welsh Health Survey);

- Measurement of the impact of the smoking ban on children’s exposure to environmental tobacco smoke;
- Measurement of the impact that the ban has on drinking behaviour (in terms of both frequency and location);
- Monitoring of public opinion of the ban;
- Monitoring of changes in incidence and prevalence of smoking-related diseases;
- Monitoring of the economic impact of the ban on the licensed trade.

9.2 Baseline data collection is being carried out during the current financial year. The timetable for follow-up data collection will be linked to the introduction of the ban.

## 10. Summary

10.1 Option 1 makes minimal progress towards the Assembly Government's health objectives. Experience to date suggests that, without statutory backing, any further significant decrease in exposure to second-hand smoke in the workplace is unlikely.

10.2 Option 2: Partial restrictions would deliver some health benefits, but would not address the problem of the heavy exposure to second-hand smoke currently experienced by workers in the hospitality sector.

10.3 Option 3: A comprehensive ban on smoking in all enclosed public places and workplaces would achieve significant health benefits, and is also likely to lead to a reduction in active smoking. The overall economic impact is expected to be positive.

### Summary of costs and benefits:

The following table shows the relative scale of costs and benefits for each of the three options. Each of the net present value (NPV) figures has been calculated from forecasting the economic impact of each option over a 30-year period:

NPV in 2006 prices (£m) based on 30 year appraisal.			
Option 1	Option 2	Option 3	
(i) Health Benefits			

Reduced exposure to ETS	97.45	243.68	974.50
Reduced Active Smoking	0	262.41	524.81
Reduced exposure to ETS	14.13	35.32	141.30
Reduced Active Smoking	-	-	-
(ii) Resource savings			
Reduced exposure to ETS	3.25	8.19	32.52
Reduced Active Smoking	0	12.34	24.67
Reduced exposure to ETS	6.87	11.21	44.86
Reduced Active Smoking	0	2.69	5.27
Cost of increased smoking breaks	0	-7.61	-7.61
Cost savings from reduced fire hazards	11.42	114.21	114.21
Reduced cleaning and decorating costs	14.47	144.67	144.67
(iii) Hospitality Sector Impacts (See note)	0	0	159.9
(iv) Implementation and Enforcement Costs			
Smoking cessation	-28.55	-28.55	-28.55

Public awareness	0	-1.5	-1.5
Signage	0	-0.04	-0.06
Monitoring and Evaluation	0	-0.5	-0.5
Costs to Local Authorities	0	-18.44	-36.87
Total NPV	119.04	778.08	2091.62

Note: The net effect on the Welsh economy of any impact on the hospitality sector will be reduced as any change in spending is redistributed to or from other sectors of the economy. For the purposes of the summary table, a net economic effect of 20% has been assumed, following the model.

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## Smoke-Free Premises etc (Wales) Regulations 2007

### Report on the Response to the Consultation, July - October 2006

## Introduction

1. On 21 July 2006 the Welsh Assembly Government issued a consultation paper on the Smoke-Free Premises etc (Wales) Regulations. The consultation ended on 13 October 2006 and 188 submissions were received.

2. This consultation invited comments on the content of proposed Regulations to be made under powers conferred in the Health Act 2006, which makes provision for the prohibition of smoking in certain premises, places and vehicles. The Health Act received Royal Assent on 19 July 2006.

3. The draft Smoke-Free Premises etc. (Wales) Regulations make provisions in relation to the following powers conferred on the National Assembly for Wales:

- to specify what "enclosed or substantially enclosed" means.
- to exempt specified descriptions of premises or specified areas of them.
- to make regulations for vehicles to be smoke-free and for exemptions.
- to specify the form, content and display of no-smoking signage.
- to designate enforcement authorities, and to provide for transfer of cases between enforcement authorities and the authorisation of enforcement officers.
- to specify the form of penalty notices.

4. Over 680 copies of the consultation paper were distributed to organisations in Wales and to organisations based in England whose remit covers Wales. Further copies were available on request, and the paper was also published on the Welsh Assembly Government website and on the dedicated website

[www.smokingbanwales.co.uk](http://www.smokingbanwales.co.uk)

5. This document outlines the main points arising from the consultation and the Welsh Assembly Government's reponse.

## **Summary of reponses**

6. 129 submissions from organisations and 59 submissions from individuals were received in response to the consultation, by post, email or through the dedicated website. Annex A lists all the organisations that responded to the consultation. Responses from individuals have been given the same consideration as those from organisations, but the names of individual respondents are not provided in this document.

## **General overview**

7. The majority of the 59 responses received from individuals were by email. Most of these did not relate to the scope of the draft regulations or the particular questions raised by the consultation. About a third of individual responses simply expressed strong support for the smoke-free legislation. About two thirds, including six individuals not resident in Wales, expressed opposition to the principle of smoke-free public places and/or the application of the ban to licensed premises. This issue lies



beyond the scope of the Welsh regulations. Clause 3 (3) of the Health Act 2006 sets out that pubs and licensed clubs are an integral part of the proposed smoke-free regime for both England and Wales and cannot be exempted (apart from the possibility of exemptions for residential elements within such premises).

8. The overwhelming majority of responses from NHS organisations, local government and the voluntary sector were strongly supportive of smoke-free legislation and generally content with the regulations.

9. Responses from organisations representing the licensed trade and some gaming organisations expressed concerns about the potential impact of the legislation on their businesses. Concerns were also expressed that 2 April 2007 had been announced as the coming into force date for the legislation in Wales.

### **Specific issues**

10. The consultation document asked specific questions on a number of issues in the regulations. Comments made on these and other aspects of the draft regulations are set out below, together with the response of the Welsh Assembly Government to the points made.

### **Views on definitions of "enclosed" and "substantially enclosed" premises**

11. Several respondents expressed the view that the definitions should be made simpler. The definition of "enclosed" and "substantially enclosed" premises proposed by the Welsh Assembly Government is in line with that set out in Scotland's smoke-free regulations and proposed in the draft regulations for England and Northern Ireland. This is an area where consistency between UK countries is important. It is not proposed to amend the definition.

12. The need for consistent application across Wales of the "substantially enclosed" definition was raised by respondents from business, particularly in the context of local authority planning applications for smoking shelters. The importance of consistency in this regard is recognised by the Welsh Assembly Government, as well as by the Welsh Local Government Association. Mechanisms to assist this are currently under discussion between the Welsh Assembly Government and local authorities.

13. A number of NHS, health professional and voluntary sector organisations called for the extension of the legislation to cover settings which might not be caught by the definitions in the regulations. These included sports facilities, all railway and bus stations and all bus shelters. Some NHS and health professional organisations also argued for an extension to cover hospital grounds, although other respondents from the NHS did not support this. The Health Act 2006 conferred powers on the National Assembly for Wales to designate additional smoke-free places not covered by the definitions in the Bill, in cases where, without the designation, persons present are likely to be exposed to smoke. The Welsh Assembly Government has already indicated that it intends to defer consideration of the use of this power until the initial smoke-free regime in enclosed public places is in force and has bedded down.

## **Views on proposals for private accommodation**

14. The proposed approach set out in the draft regulations is that, apart from in parts of a private dwelling that are used solely as a place of work, the person who lives in private premises can decide themselves whether or not people are allowed to smoke in the premises. This was generally accepted by respondents. However, a wide range of local government, health and voluntary sector organisations expressed reservations and concerns about domiciliary workers such as health care workers, carers and cleaners being exposed to second-hand smoke while visiting the homes of clients who are smokers. It was felt to be important that the employers of such workers, who have a duty of care towards their staff, should have clear policies in place covering this issue. The Welsh Assembly Government acknowledges these concerns. Before the legislation comes into force, specific guidance will be issued to the NHS, local authorities and care service providers in which the need for employing organisations to have policies in place on this issue will be addressed.

15. The consultation document indicated that self-contained accommodation for temporary or holiday use would be treated like private accommodation and would not be required to be smoke-free. The British Holiday and Home Parks Association and the Wales Tourism Alliance sought assurances that rented holiday caravans, chalets and lodges would be covered by this interpretation. The Welsh Assembly Government is satisfied that privately owned caravans and holiday homes are adequately provided for in the proposed regulations. The guidance to be issued before the legislation comes into force will make it clear that this approach will be applied to all forms of self-contained accommodation for temporary or holiday use, including cottages, chalets, lodges, caravans, etc. Decisions about the smoke-free status of such accommodation will continue to rest with the proprietor. The guidance will also recommend that proprietors of such temporary accommodation may wish to clearly specify in their advertising whether all or any of their accommodation is smoke-free.

16. The consultation document proposed that communal areas within private dwellings which are used as places of work (e.g. communal lifts and corridors; shared kitchens or laundries in dormitory-style accommodation) would be required to be smoke-free. Some respondents queried whether this should apply to sheltered housing and suggested that there would be enforcement difficulties. The Welsh Assembly Government believes that it is right to ensure that such communal areas are smoke-free, to protect the health of all persons who use these common parts.

## **Views on types of residential accommodation that should be exempted under smoke-free legislation**

17. NHS and local government respondents suggested that a figure should be set on the proportion of bedrooms in any hotel that could be designated as not smoke-free. Licensed Victuallers Wales felt that operators should be able to designate as many or as few bedrooms for smoking as they wished, and to change the designation according to customer demand. Local government respondents commented that difficulties could arise if proprietors were able to alter frequently or at short notice the designation of hotel bedrooms which are not smoke-free.

18. The Welsh Assembly Government does not currently propose to set a limitation on the number of

bedrooms in hotels that can be designated for smoking. This is a judgement for the person in charge of the premises, who will be required by the regulations to specify the designation of bedrooms in writing. Frequent re-designation has not emerged as an issue in Scotland; should it do so in Wales, powers are available to amend the regulations as appropriate.

19. Several health and social services organisations commented that when considering the designation of bedrooms in care homes as not smoke-free, account should be taken of the fire risk posed by elderly confused patients, making it preferable to have a designated smoking room. This option is available in the proposed regulations.

20. In relation to the exemption for residential mental health units, the Wales Collaboration for Mental Health noted that smoking by people with mental health problems needed to be addressed, and the Welsh Local Government Association and the Directors of Public Protection Wales called on the Welsh Assembly Government to achieve smoke-free environments for staff and residents in residential mental health units as soon as possible. Issues relating to mental health units will be covered in the guidance to be issued by the Welsh Assembly Government.

### **Views on provision for an exemption for performers**

21. Many (but not all) arts and media organisations, with support from some business organisations, were in favour of an exemption for performers. The Theatrical Management Association (TMA) argued that a ban on performers smoking on stage would unnecessarily and unjustifiably affect the freedom of producers, directors and performers to perform fully and interpret accurately the artistic intentions of writers. The TMA also wanted an exemption for rehearsals as well as actual performances, on the grounds that non-smokers or inexperienced smokers would need to practice smoking behaviour. Both the TMA and the Film Agency for Wales suggested that extension of the ban to performers would create difficulties for touring productions and would deter film and television companies from coming to work in Wales.

22. Responses from other sectors, particularly the health service, opposed the exemption on the grounds that it would expose audiences and fellow actors to the health risks of second-hand smoke. Strong concerns were expressed by the Welsh Local Government Association and local authorities about enforcement difficulties arising from the exemption. The Chartered Institute of Environmental Health's Director for Wales commented: "We oppose any arrangement whereby there has to be a determination as to whether the artistic integrity of a play or piece of theatre requires the smoking of tobacco. As enforcement officers, Environmental Health Practitioners and other local authority enforcement officers are not qualified to make such a determination, and we do not know of any party that would be so qualified."

23. Having considered the consultation responses, the Assembly Government does not intend to amend the regulations to provide an exemption for performers. The health rationale for smoke-free provision applies in all enclosed settings. It is felt that provision of an exemption for performers would undermine this health message and would appear unfair to the wider public.

### **Views on proposals for exempting research and testing facilities**

24. Most respondents were in favour of an exemption for research and testing facilities, although some expressed concerns that workers in such facilities should have adequate protection. Tobacco product manufacturers asked for clarification on whether this exemption would extend to allowing specialist tobacconists to taste and test their products on their premises in clearly designated rooms. The Welsh Assembly Government's view and intention is that this exemption does not cover specialist tobacconists.

### **Views on proposals to make certain vehicles smoke-free**

25. Respondents from a range of sectors sought clarification on whether private vehicles that were used occasionally for work purposes would be required to be smoke-free at all times and display no-smoking signs. The Welsh Assembly Government's intention is that private vehicle space, like private residences, should not be required to be smoke-free. In response to the concerns raised, it is proposed to amend the wording of the regulations to make it clear that a vehicle used primarily for private purposes by a person who owns or has a right to use it in an unrestricted way will not be required to be smoke-free. This is similar to the approach in Scottish regulations.

26. Clarification was also sought on the situation with regards to taxis. The consultation document issued by the Welsh Assembly Government noted that vehicles would be smoke-free if used to transport members of the public. The guidance to be issued once the regulations are made will make clear that this applies to drivers as well as passengers.

### **Views on proposals for no smoking signs in smoke-free premises and vehicles**

27. Most respondents were broadly content with the signage proposals. The Royal Mail Group expressed concerns that signage was required at all entrances, not just entrances used by the public. A few English-based companies felt that signage requirements should be the same in England and Wales.

29. The consultation sought views on whether a minimum size should be specified for the wording of smoke-free signage in premises. Comments received from WLGA and the Directors of Public Protection for Wales suggested that it might be appropriate to specify a size for the text on smoke-free signage in premises in order to avoid the deliberate use of very small text, and this view was supported by other respondents from local government and the health sector. However, no specific proposals were put forward. Respondents from business argued that the size of text should not be specified and, in some cases, that the use of the no-smoking symbol alone was sufficient. Some respondents called for inclusion of other information on signs, including names and numbers to report breaches of the legislation.

30. Few comments were received on vehicle signs. Some respondents expressed satisfaction that existing no smoking signage in vehicles would in most cases fit the requirements of the regulations. Others, including the Royal Mail group, felt that a requirement to display signs in vehicles was unduly onerous.

31. The Welsh Assembly Government's intention is that the provisions for signage should be proportionate and not present unnecessary burdens on business. The draft regulations specify a minimum size for the notice in premises and for the size of the no-smoking symbol displayed on the signs. Precise specification of a minimum size for wording would raise issues about design of signage which could be overly prescriptive. A further consideration is that the Assembly Government will be making available and disseminating free signs with wording of an adequate size. It is therefore proposed that the provisions for signage should remain unchanged.

32. A number of organisations, chiefly those representing the hospitality sector, requested a "sunset clause" on signage requirements by which they would cease to be necessary after a certain time. The Health Act 2006 requires no-smoking signs to be displayed in all smoke-free premises. The Department of Health is committed to conducting a full review of smoke-free legislation three years after implementation, and it is likely that signage will be included in that review.

### **Bilingual signage in premises**

33. Several local authorities and strategic partnerships in North Wales commented on the use of the word "mangre" as the Welsh equivalent term for "premises" in the prescribed bilingual signage for premises. They argued that this was an old-fashioned term no longer in common use and that people would not know its meaning. Suggested alternatives to the phrase "yn y fangre hon" ("in these premises") included "yn yr adeilad hwn" ("in this building") and "yn y lle hwn" ("in this place").

34. The use of "mangre" to translate "premises" on the signage was given careful consideration by the Welsh Assembly Government's Translation Service, the Welsh Language Unit and the Legal Services Department. The Welsh term for premises has been the focus of extensive research and discussion among legislative translators since the establishment of the National Assembly for Wales, and "mangre" has now become the term generally used in this context in NAW legislation. Given the wide definition of "premises" in the Health Act 2006 (e.g. not only buildings but marquees), the advice from the Assembly Government Legal Services Department was that only "mangre" could encompass the range of locations that need to be covered. It is considered that "adeilad" is too specific and "lle" too imprecise.

35. While it is obviously desirable that public signage should use clear language wherever possible, and this point was carefully considered by the Welsh Assembly Government, it is also important in this case to bear in mind that the purpose of the smoke-free sign is to warn people that an offence may be committed. Wording that conveys too narrow or too vague a concept of location needs to be avoided, so that there is no scope for argument. It is therefore seen as important that smoke-free signage should reflect the terminology used in the regulations.

### **Duties to prevent smoking in smoke-free vehicles**

36. Concerns were expressed by the Confederation of Passenger Transport, First Great Western Trains, Arriva Trains and the Wales TUC about the role of drivers in preventing smoking on public transport. These comments highlighted potential difficulties which might be faced by drivers of moving vehicles and sought clarification on the defences set out in Clause 8 (5) of the Health Act.

Questions were also raised about what action could be taken by conductors or other staff if a passenger refused to stop smoking. Para. 42 below notes the work being taken forward to prepare an enforcement protocol for Wales. This will specifically address the application of the legislation in public transport settings, including the defences set out in Clause 8 (5) of the Health Act, and will take into account the issues of front-line staff safety and the driver's over-riding responsibility for passenger safety as raised in the consultation by transport bodies. Recommended action for staff in the case of passengers who refuse to stop smoking will be in line with existing transport company procedures for dealing with unruly or anti-social behaviour.

## **Views on enforcement**

37. There was broad support for the proposed approach to enforcement set out in the consultation document. The Welsh Local Government Association, the Directors of Public Protection Wales and the Wales Heads of Environmental Health Group welcomed the opportunity to ensure the effective enforcement of the legislation and noted the early financial support from the Welsh Assembly Government to enable local government to prepare for this new responsibility. They also welcomed the flexibility to determine local approaches to the authorisation of enforcement officers, which will need to be tailored to particular local circumstances, and to transfer enforcement functions, which will allow collaboration between authorities and help to ensure a consistent approach to businesses operating across several local authority areas.

38. The Association of Chief Police Officers in Wales supported the proposals, and noted that, whilst the police would not take the lead in enforcing these regulations, they would clearly be willing to assist any members of enforcement authorities where necessary.

39. Some respondents raised the issue of the role of the Health and Safety Executive (HSE) in enforcement. The HSE has an England and Wales remit. It has taken the view that it would not be appropriate for it to take enforcement powers in relation to the provisions of the Health Bill but that, as in Scotland, its inspectors will draw any obvious breaches of the legislation to the attention of employers and, if appropriate, notify local authorities of any flagrant breaches.

40. Both local government and businesses expressed agreement with the proposal that the approach to enforcement should focus on awareness-raising and encouragement of compliance. They also favoured inspections being based on risk and combined with other inspections where possible; local government responses noted that this was in line with the recommendations of the Hampton review on regulatory inspections and enforcement.

41. Responses from business emphasised the need for a consistent approach to enforcement across Wales, a view that was shared by local government. The Welsh Heads of Environmental Health Group highlighted the need for the Assembly Government to introduce reporting mechanisms demonstrating local compliance, and noted that this would assist in achieving consistent enforcement. WLGA, the Directors of Public Protection in Wales and Trading Standards Wales commented that an enforcement protocol setting out guidance on suggested mechanisms of enforcement would also help to achieve a consistent approach.



42. The Welsh Assembly Government welcomes the broad support for the proposed enforcement arrangements and non-confrontational approach to enforcement. In the light of the comments received, work is now being taken forward with a group convened by the Welsh Local Government Association to draw up an enforcement protocol for Wales. This will set out recommended procedures to be followed by local authority enforcement officers, and will provide guidance on recommended action by owners and managers to demonstrate their compliance with the law.

## **Offences and penalties**

43. A number of respondents, particularly from business, queried the absence of a fixed penalty notice for the offence of failing to prevent smoking in a smoke-free place. They also expressed the view that the level of fine for this offence was disproportionate in comparison with the fine level for individuals who smoked in a smoke-free place. As noted in the Welsh Assembly Government consultation document, the offences relating to this legislation are set out in the Health Act 2006 and are not a matter for regulation by the Assembly Government. Similarly the levels of penalties, which were subject to consultation by the UK Department of Health in 2005, will be dealt with in the Smoke-free (Penalties and Discounted Amounts) Regulations which will be made by the UK Secretary of State for Health and will apply to England and Wales.

## **Annex A: Organisations Responding To the Consultation**

- Arriva Trains Wales Ltd
- ASH in Wales
- ASH Scotland
- Association of British Bookmakers Ltd
- Association of Chief Police Officers, Wales
- Association of Transport Co-ordinating Officers Cymru
- Asthma UK Cymru
- Blacks Leisure Group
- Blaenau Gwent Local Health Board
- Board of Community Health Councils in Wales
- Bridgend County Borough Council, Personal Services Directorate
- Bridgend Local Health Board
- British Beer and Pub Association
- British Casino Association
- British Heart Foundation
- British Holiday & Home Parks Association Ltd
- British Hospitality Association
- British Institute of Innkeepers
- British Lung Foundation Wales
- British Medical Association Wales
- British Psychological Society
- Bryn Llewelyn Guest House
- Business in Sport & Leisure Limited
- Caerphilly County Borough Council
- Caerphilly Local Public Health Team

- Cancer Research UK Cymru
- Cardiff Local Health Board
- Carmarthen Town Council
- Carmarthenshire Community Health Council
- Carmarthenshire NHS Trust
- Cartrefi Cymru
- Ceredigion & Mid Wales NHS Trust
- Ceredigion Local Health Board
- Chamber Wales
- Chartered Institute of Environmental Health
- City and County of Swansea
- Coal Industry Social Welfare Organisation
- Confederation of British Industry Cymru / Wales
- Confederation of Passenger Transport Wales
- Conwy County Borough Council
- Conwy Tobacco Group
- Creative Industries Support Services
- Ceredigion County Council
- Cymorth Cymru
- Denbighshire County Council
- Denbighshire County Council, Planning and Public Protection Services
- Denbighshire Tobacco Working Group (Denbighshire LHB)
- Dolman Theatre, Newport
- Domiciliary Care Association Wales
- Equity
- Family Housing Association (Wales) Ltd
- Federation of Small Businesses
- First Great Western Trains
- Flintshire Health and Social Care & Well Being Partnership
- Gala Coral Group
- Gallaher Limited
- Green Bay - Talbot Studios (Richard Staniforth)
- Gwent Community Health Council
- Gwent Community Health Council
- Gwent Healthcare NHS Trust
- Gwyl Cadi Ha
- Gwynedd Council, Administration and Public Protection Service
- Gwynedd Health Improvement Alliance
- Gwynedd Local Health Board
- Gyrfa Cymru - Careers Wales
- Help the Hospices
- Hunters and Frankau
- Isle of Anglesey County Council
- Keep Wales Tidy
- Licensed Victuallers' Wales
- Llanarth Court Psychiatric Hospital



- Macmillan Cancer Support
- Merthyr Tydfil County Borough Council
- Merthyr Tydfil Local Tobacco Control Forum
- National Association of Licensing and Enforcement Officers
- National Operatic and Dramatic Association
- National Public Health Service
- Neath Port Talbot County Borough Council
- North East Wales NHS Trust, Administration Department
- North Wales Fire and Rescue Service
- North Wales Fire and Rescue Service
- Pembrokeshire and Derwen NHS Trust
- Pembrokeshire County Council
- Pembrokeshire Local Health Board
- Pendyffryn Club
- Philip Morris Limited
- Pontypridd & Rhondda NHS Trust
- Pontypridd and Rhondda NHS Trust - A&E Department
- Powerlifting Wales
- Powys Tobacco Control Forum
- Provincial Grand Lodge of Freemasons (South Wales Eastern Division)
- Punch Taverns
- Rank Group Gaming Division
- Royal College of Midwives
- Royal College of Nursing Wales
- Royal College of Psychiatrists
- Royal Mail Group Plc
- S4C
- Sherman Theatre
- Smoke Free Cardiff Partnership
- South East Wales Economic Forum
- South Wales Fire & Rescue Service
- Surgery & Anaesthetics Directorate, Royal Glamorgan Hospital
- Swansea & District LVA
- Swansea NHS Trust
- Tenby Town Council
- Tesco Stores Ltd
- The Bingo Association
- The Chartered Society of Physiotherapy
- The Imported Tobacco Products Advisory Council
- The Museum of Modern Art Wales
- Theatr Mwldan
- Theatrical Management Association
- Tobacco Manufacturers' Association
- Torfaen LHB and Local Public Health Team
- Trading Standards Wales
- University of Wales Bangor

- Vale of Glamorgan Council
- Vale of Glamorgan Local Health Board
- Wales Centre for Health
- Wales Collaboration for Mental Health
- Wales Heads of Environmental Health Group
- Wales Tourism Alliance
- Wales TUC Cymru
- Welsh Consumer Council
- Welsh Local Government Association/ Directors of Public Protection Wales
- Welsh Sports Association
- Wrexham Council, Transport Manager
- Wrexham County Borough Council