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Llywodraeth Cymru
Welsh Government

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Cardiff Bay
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Dear David

PUBLIC HEALTH (WALES) BILL

Thank you once again for your Committee's consideration of the Public Health (Wales) Bill during Stage 1. I confirmed during the General Principles debate on the Bill on 8 December that I would provide a specific response to the Committee's report and its 19 recommendations. I hope the information provided demonstrates the careful consideration which has been given to each of them. In addition to my response to the specific recommendations, I also include my response to the Committee's comments on Part 2 of the Bill.

I hope that this letter helps to inform the Committee's work as the Bill progresses, and I look forward to further discussions with the Committee at Stage 2.

Best wishes,

Mark

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Response to the Health and Social Care Committee Stage 1 Report into the Public Health (Wales) Bill

I thank the Health and Social Care Committee for its detailed consideration of the Public Health (Wales) Bill. I am pleased that the Committee's report welcomed and acknowledged the importance of a number of our proposals within the Bill. I intend to respond positively to the vast majority of the Committee's 19 recommendations and provide further detail on my response to each below.

In addition, I note the Committee's comments in relation to Part 2 of the Bill (Tobacco and Nicotine Products), and the differences in views among Committee members in response to our proposals for restricting the use of nicotine inhaling devices (NIDs) in enclosed public places. In the absence of specific recommendations on Part 2 of the Bill, the response below sets out my position in relation to the Committee's observations.

Special procedures

The Committee's first seven recommendations all relate to the special procedures licensing system proposed in Part 3 of the Bill. I am pleased to confirm that I accept the majority of the recommendations, and welcome the Committee's support for legislating in this area.

In relation to **Recommendation 1**, I agree that thorough monitoring and evaluation will be integral to the success of the special procedures licensing scheme. My officials already work closely with local authorities on the enforcement of the current legislation surrounding acupuncture, body piercing, electrolysis, semi-permanent skin colouring and tattooing, and this would continue following introduction of the new licensing regime. It was therefore always my intention to work closely with local authorities to monitor the success of the licensing scheme. Guidance will also be produced to assist local authorities in discharging their responsibilities under the Bill. I therefore **accept** this recommendation and am content to put on record my commitment to work with local authorities on this issue.

Recommendation 2 calls for amendments to be made to the Bill aimed at strengthening record keeping and to provide for notifications to local authorities when an individual requires treatment as a result of undergoing a special procedure. I agree that this is an important issue and am grateful to the Committee for raising it in its report. Notification has an important purpose in enabling the prompt investigation, risk assessment and response to cases of infectious disease and contamination that present, or could present, a significant risk to human health. The recent events in Newport associated with premises providing body piercing and tattooing reinforce the need for information to be provided to local authorities in order to enable them to make appropriate links and investigate when an issue is found.

I therefore fully **accept the principle** behind this recommendation. However, I intend to take this matter forward in ways other than amendment to this Bill. Legislation already exists in the form of the Health Protection (Notifications) (Wales) Regulations 2010 to require registered medical practitioners and laboratories to notify a local authority when they suspect or diagnose a notifiable disease or causative agent. This legislation enables the local authority, in collaboration with Public Health Wales, to investigate the case if necessary. As this legislation is directly relevant to the issue underpinning the Committee's

recommendation, I will investigate the feasibility of amending these regulations to improve the information available to local authorities in relation to infections or diseases attributable to special procedures. I trust that this approach will be satisfactory to the Committee.

I have noted with interest the detailed consideration given by the Committee to the appropriateness of the four procedures covered by the licensing scheme. I welcome the Committee's conclusion that the potential risk of harm associated with the procedures of acupuncture, body piercing, electrolysis and tattooing is sufficient to warrant their inclusion. **Recommendations 3 and 4** both call for me to consider adding to the list of special procedures included on the face of the Bill, albeit in relation to two very different categories of procedure. Upon further consideration I am unable to accept these recommendations and **reject** both, for the reasons I outline below and which I previously discussed with the Committee.

In relation to the types of body modification procedure referred to in **Recommendation 3**, I am concerned by reports that body modification procedures such as tongue splitting, scarification and branding have the potential to cause harm to health. However, my view remains that such procedures should not be added without a greater understanding of the evidence and, in particular, the risks associated with them. I would also be concerned that by including them in the licensing system, it could be seen as legitimising them and making them more socially acceptable. I intend to undertake further work, with local authorities and Public Health Wales, to gather and assess information on these procedures and their prevalence in Wales. Once this work is complete, the regulation-making power available in the Bill would allow for the list of special procedures to be amended in future, if deemed appropriate.

Recommendation 4 refers specifically to non-surgical cosmetic procedures as considered by Sir Bruce Keogh's Review of the Regulation of Cosmetic Interventions. I am grateful to the Committee for the evidence collected on this matter, and share the Committee's disappointment at the apparent lack of progress in implementing the review's recommendations. I remain of the view, however, that action would best be taken jointly with the UK Government. With this in mind, I wrote to the Secretary of State for Health on 8 December to request an immediate update on progress. If the response does not provide me with sufficient assurance about UK Government proposals to control these procedures, I will consider alternative courses of action. These could include consideration of using the regulation-making power which the Bill will provide to amend the list of special procedures in future. Further consideration may also be need to be given to the role of Healthcare Inspectorate Wales in this context, and we will give careful thought to this as we analyse responses to the 'Our Health, Our Health Service' Green Paper.

In addition to the steps I outline above, in rejecting the recommendations to add to the current list of special procedures on the face of the Bill, I am particularly mindful of the need to ensure local authorities have sufficient capacity, resource and expertise effectively to enforce the new legislation. My view is that an incremental approach to adding to the list of special procedures is most appropriate, as this will provide local authorities with time to embed new activity for the four initial procedures, before adding further procedures to the licensing system.

I am content to **accept the principle** of **Recommendation 5**, which calls for the special procedures licensing scheme to ensure that licence holders undertake training on specific topics. I intend to deal with this recommendation in a way which also addresses a

recommendation of the Constitutional and Legislative Affairs Committee to include some core, basic licensing conditions and criteria on the face of the Bill (Recommendation 5 of that Committee's report). Accordingly I have tabled amendments to place some core subjects on the face of the Bill, which regulations made on the licensing conditions and criteria must cover.

I have carefully considered **Recommendation 6** in relation to preventing the performance of a special procedure on an individual who is intoxicated or otherwise unable to give appropriate consent to the procedure. I fully agree that practitioners should not perform a special procedure on an individual in such circumstances, and so **accept the principle** of the recommendation. When providing evidence to the Committee during Stage 1, I outlined a number of safeguards which I intend to put in place to address this issue. These included creating a specific licensing condition to prevent the licence holder from performing a procedure on a person who may be under the influence of drugs or alcohol, and creating a licensing condition whereby the individual undergoing the procedure would need to confirm that they were not under the influence of drugs or alcohol. My view remains that these steps are appropriate, but in light of the Committee's recommendation I have brought forward an amendment to the Bill explicitly to state that this issue will be covered in the licensing conditions. This approach will achieve the same policy objective as the Committee's recommendation seeks to deliver, as a breach of licensing conditions will constitute an offence. My intended approach would also avoid confusion in the criminal law, which could be caused by the creation of a stand alone criminal offence of performing a special procedure on intoxicated persons in this Bill. If a person is unable to give valid consent, it is already an offence, for example common assault or assault occasioning actual bodily harm, to undertake a procedure (such as a tattoo) on them.

During my evidence to the Committee during Stage 1, I indicated my intention to revisit the level of fine associated with offences under section 67 of the Bill. This was in direct response to the convincing evidence provided during Stage 1 that higher penalties are needed for the special procedures offences, in order to provide a sufficient level of deterrent and better to reflect the seriousness of them. I am pleased to **accept Recommendation 7** and have tabled an amendment to increase the penalty for an offence under Part 3 of the Bill, from a level 3 fine to an unlimited fine. The fine will be 'unlimited' as the upper limit associated with what was previously known as a 'Level 5' fine has been removed by the UK Government. Increasing the fine level will also bring parity with legislation relating to sunbeds, with which a number of stakeholders drew parallels in their Stage 1 evidence.

On a related matter, I can also confirm that I have brought forward an equivalent amendment to increase the level of fine associated with offences under Part 4 of the Bill (Intimate Piercing).

Intimate piercing

The Committee made three recommendations regarding Part 4 of the Bill, which provides a prohibition on performing, or making arrangements to perform, an intimate piercing on a child under the age of sixteen. I welcome the Committee's support for this part of the Bill, and the overwhelming support from witnesses who provided evidence during Stage 1. I share the Committee's concern to learn of incidences of intimate piercings being undertaken on young people under the age of sixteen, which reinforce the need for this

legislation. I also welcome the Committee's acknowledgement of the rationale for setting the restriction at the age of sixteen rather than eighteen.

I **accept** all three recommendations, and will be responding positively to each of them. In response to **Recommendation 8**, I have tabled amendments to the Bill explicitly to require that the mandatory licensing conditions provided for in section 52 (under the special procedures part of the Bill) will include a proof of age requirement. This will strengthen the provisions around proof of age for intimate piercing, and will also have the benefit of applying to the existing age restriction for tattooing. It is also my intention that section 78 of the Bill will reflect the defence in section 146 of the Licensing Act 2003, therefore expanding on the current defence in section 78(3). This will provide that, if a person performing an intimate piercing has taken reasonable steps to establish an individual's age, there will be a defence that the person accused of an offence exercised all due diligence to avoid committing it.

Following the commitments I previously made to the Committee, I accept **Recommendation 9** in response to the clear evidence from witnesses that tongue piercing presents specific health risks, for example due to the risk of complications and dental damage. I have therefore tabled an amendment to add the tongue to the list of intimate body parts where piercing will be prohibited on a child under the age of sixteen. I am grateful to the stakeholders who provided evidence on this matter which has led to this important change to the Bill, which will further protect children in Wales from avoidable harm.

I also previously indicated to the Committee that I would be content to revise the Bill's Explanatory Memorandum to set out more clearly the differences between the procedures covered by Part 4 of the Bill and offences covered by the Female Genital Mutilation Act 2003. The purpose of the Female Genital Mutilation Act 2003 is very different to that of the intimate piercing provisions in the Public Health (Wales) Bill, as Female Genital Mutilation involves procedures including the partial or total removal of the external female genital organs for cultural or other non-therapeutic reasons. I will provide greater clarity on the distinction between the two pieces of legislation in the revised Explanatory Memorandum when this is produced following Stage 2 proceedings. I am therefore happy to accept **Recommendation 10** in full.

Pharmaceutical services

I welcome the Committee's support for this part of the Bill, particularly given its keen interest in pharmaceutical services as shown through its previous inquiries into this topic. I am pleased to be able to **accept** the four recommendations for this part of the Bill. In relation to **Recommendation 11**, regulations made under the Bill will include the detailed minimum requirements for information that health boards must include in their pharmaceutical needs assessments (PNAs). Guidance will also be produced to support health boards in undertaking PNAs, which will include a template document and examples of best practice in undertaking assessments.

I have noted the concerns of some witnesses, including BMA Cymru and GPC Wales, about the potential impacts of the changes on dispensing doctors in rural areas. I can confirm that I will expect health boards to give full consideration to the impact of PNAs on GPs. Regulations made under the Bill will include details of the services which should be

considered by health boards when developing their PNAs. This will include the services provided by dispensing doctors, and therefore meet **Recommendation 12**. In order to provide further reassurance, and as I previously indicated to the Committee, I have written to the Chair of GPC Wales to confirm my intention for GPC Wales to be actively involved in contributing to the detail of how PNAs will be conducted in Wales. In addition, under the current regulations, when determining an application to provide pharmaceutical services in rural areas, a health board is required to consider whether granting the application will prejudice the proper provision of general medical services in its area. It is the intention that in future, as regulations make provision for applications to be determined against PNAs, similar provision will be made to ensure that general medical services are not prejudiced.

Turning to **Recommendation 13**, whilst the procedure for relocating a pharmacy was simplified in the pharmaceutical regulations laid in 2013, I am content to agree that as part of consulting on regulations made under the Bill, consideration will be given to whether and how the procedure can be simplified further. While I am not convinced that it is appropriate or necessary for timescales for dealing with applications to be prescribed in regulations, I accept that guidance under the Bill could helpfully outline expectations in relation to this. Accordingly, indicative timelines and examples of best practice in dealing with applications will be included in the guidance to accompany the changes to control of entry resulting from the introduction of PNA. In addition, PNA will provide a more objective basis for decision-making and will reduce disputes regarding applications, which should have a positive effect on expediting applications in future.

I have considered in detail the concerns of the Welsh Language Commissioner as referenced in **Recommendation 14**, and am pleased to **accept** this recommendation by providing additional clarity about my position on these issues. The primary purpose of the provisions in the Bill is to secure pharmaceutical services which meet the needs of local populations, and I accept that Welsh language services will be part of this. In preparing their assessments of pharmaceutical need it will be necessary for health boards to consider any relevant factors:- including the prevalence of Welsh speakers, the availability of pharmaceutical services in the Welsh language from existing pharmacies, and the extent to which the availability of pharmaceutical services in the Welsh language contribute to the adequacy or inadequacy of access to pharmaceutical services. Where such assessments identify that the pharmaceutical services available to a community are inadequate because they are not available in the Welsh language, a health board will need to consider this alongside other unmet pharmaceutical needs when planning pharmaceutical services. In order to prepare the ground for future PNAs, I have recently agreed with Community Pharmacy Wales that they will undertake a survey of the use of the Welsh language in community pharmacies. The survey will help us understand how often and in what circumstances the Welsh language is used by pharmacists and other pharmacy staff currently, and the mechanisms used by pharmacies to promote the availability of Welsh language services. This will provide a useful baseline against which progress in promoting access to Welsh language pharmaceutical services can be measured.

Provision of toilets

I am pleased to confirm that I intend to respond positively to each of the four recommendations on Part 6 of the Bill. I welcome the Committee's acknowledgement of the balance struck in the Bill by placing a duty on local authorities to prepare and publish

local toilets strategies, whilst not placing a specific implementation duty which would place significant financial burdens on authorities. Whilst my view remains that the Bill strikes the appropriate balance, I have also noted the genuine concerns from some witnesses with regard to implementation of the local strategies. I also agree with the Committee's conclusion that adequate monitoring of the strategies will be crucial in assessing whether they have delivered improved access to public toilets across Wales. I have therefore reflected on **Recommendation 15** and concluded that there is scope further to strengthen local accountability of the strategies. I **accept** this recommendation and have tabled an amendment to require local authorities to publish periodically a progress report detailing how the needs of communities for public toilets are being met.

I recognise the importance of the issues referred to in **Recommendation 16** regarding the appropriate distribution of facilities and the need for facilities to be conveniently located for both local residents and those passing through a local authority's area. The Bill provides that the Welsh Ministers may issue guidance to local authorities about the matters which they should take into consideration when preparing, reviewing or publishing a local toilets strategy, and requires a local authority to have regard to any such guidance. I have strengthened this element of the Bill by tabling an amendment to *require* the Welsh Ministers to issue such guidance. This guidance will cover the specific issues referenced in the Committee's recommendation.

I remain of the view that it should be for local authorities, through their relationship with their local populations, to prepare and review their own local toilets strategies. I **accept the principle** of **Recommendation 17**, but remain of the view that local accountability for the monitoring of toilets strategies is most appropriate. However, to reflect the spirit of the Committee's recommendation, I have brought forward an amendment that requires the guidance provided to local authorities to cover the provision of toilet facilities on trunk roads and other main transport corridors. I also intend to include in the guidance the provision of toilets at national sites, such as visitor sites, to ensure toilet provision is given adequate consideration by local authorities. I trust that this approach will be satisfactory to the Committee.

I **accept Recommendation 18** and have addressed this matter by tabling amendments that require the Welsh Ministers to publish guidance which makes clear the need for a local toilets strategy to contain an assessment of the accessibility of toilet facilities in buildings that are wholly or partly in receipt of public funding, and the need to promote the facilities available for public use. The Bill already provides that local authorities must have regard to any guidance issued.

Issues not covered by the Bill

During Stage 1 scrutiny I paid particular attention to the evidence provided to the Committee about the extent to which the Bill reflects Wales' priorities for improving public health. As I outlined to the Committee, I believe the Bill takes important practical legislative steps to improve and protect the population's health, in a number of discrete areas of public health policy. There are numerous additional public health issues which I am equally committed to progressing in a variety of ways outside of this specific Bill, whether through public health services, campaigns, pressing for actions at UK level, or through other forms of action. I remain committed to pursuing such actions in the important areas

which were referenced in evidence to the Committee, including obesity, physical activity and mental health.

In terms of specific potential additions to the Bill, I note that the most commonly raised issue during the Committee's consideration of the Bill was that of Health Impact Assessment (HIA). I followed with particular interest the evidence of expert witnesses from organisations such as BMA Cymru on this issue. I have consistently stated my support for HIA as an important mechanism for ensuring health is considered across a range of activity, in order to both maximise potential health benefits, and help eliminate or mitigate potential negative impacts. I fully support and encourage the use of HIA where appropriate and proportionate.

In terms of legislation specifically, on balance I remain of the view that the current legislative framework, including the Well-being of Future Generations (Wales) Act 2015 as passed by the Assembly last year, will be instrumental in ensuring that public bodies in Wales undertake assessments of health when making decisions across their functions. Importantly, this helps deliver a 'Health in All Policies' approach, and promotes the appropriate use of HIA. However, I am also mindful of the views of some stakeholders who put forward the view that further measures could be taken to improve the specific use of HIA., I will reflect further on the Committee's conclusions on this matter.

Tobacco and nicotine products (Part 2 of the Bill)

Part 2 of the Bill contains a number of important measures designed to further protect the population of Wales, particularly children and young people, from tobacco and nicotine addiction. It is therefore a significant part of the Bill, which received a great deal of consideration during Stage 1. Whilst the Committee report did not include specific recommendations on Part 2 of the Bill, I have carefully considered the observations made in the report, and briefly summarise my response below.

I welcome the Committee's general support, as well as that from the clear majority of stakeholders, for the provisions to introduce a **national register of retailers of tobacco and nicotine products**. I am particularly encouraged to note the Committee's view that the register should apply equally to retailers of nicotine inhaling devices (such as e-cigarettes), as to those selling other nicotine or tobacco products. I am also encouraged by the Committee's conclusion that the opportunities that the register presents could have positive impacts on underage smoking. In addition, I share the Committee's conclusions that the register will support improved enforcement of legislation relevant to tobacco and nicotine products, that the costs to be incurred by businesses are reasonable and proportionate, and that the provisions to allow for additional offences to contribute to a **Restricted Premises Order** are to be welcomed. I am grateful to the Committee for its comments on this proposal and will continue to reflect on the detail of these as the Bill progresses.

Similarly, I am pleased to note the Committee's conclusions in relation to the offence of **knowingly handing over tobacco or nicotine products** to a person under the age of eighteen. I share the Committee's conclusion that this is an important additional step in preventing young people from accessing tobacco and nicotine products.

Finally, I note the extensive consideration that the Committee gave to the provisions in the Bill to **restrict the use of nicotine inhaling devices (such as e-cigarettes) in enclosed public places and workplaces**, and that the Committee failed to reach a consensus position on these provisions. While the Committee was unable to provide specific recommendations on this matter, I have nevertheless considered the various views put forward in the Committee's report. I am grateful to the Committee for giving full consideration to a range of issues which form important elements of the overall debate about the relative benefits and risks of e-cigarettes to public health.

I have always been clear in recognising that the state of evidence in relation to the use of e-cigarettes in enclosed public places remains contested. As I stated during the general principles debate on 8 December, in such circumstances where there is a credible risk of harm, as put forward by numerous expert health organisations, then it is most appropriate to apply the precautionary principle, rather than be prepared to do nothing in the hope that harm may not occur. It remains my view that the Bill as introduced strikes an appropriate balance by providing the simplest, clearest and most proportionate means of preventing the potential harm which could arise from the proliferation of e-cigarettes, while doing nothing to interfere with their use in harm reduction.

However, as I stated on 8 December, I have carefully reflected on the sections of the Committee's report which put forward an approach which would limit the places where the use of an e-cigarette would be prohibited to those where the risk of renormalisation and the potential risk to children would be greatest.

This approach would have the effect of refocusing the Bill in the way advocated by some members of the Committee and more clearly differentiating between the restrictions on the use of e-cigarettes and the general smoke-free requirements. Importantly, this approach would also retain the primary purpose of the legislation in respect of e-cigarettes, to prevent the renormalisation of smoking-type behaviour for our children and young people. I will, therefore, bring forward a series of amendments at Stages 2 and 3 which will seek to define more precisely those places where use of an e-cigarette would be prohibited in future. At Stage 2 I have tabled amendments covering educational establishments for those under 18, places where food is served, public transport and hospitals.

I look forward to further constructive discussions with the Committee on this matter as the Bill progresses through the remainder of the scrutiny process, in order to allow the many benefits of the Bill for the population of Wales to be realised.