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Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
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Llywodraeth Cymru
Welsh Government

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David Melding AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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26 January 2016

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 nine recommendations. I hope the information provided demonstrates the careful consideration which has been given to each of them.

I am copying this letter to David Rees AM, Chair of the Health and Social Care Committee.

Best wishes,
Mark

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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 Constitutional and Legislative Affairs Committee Stage 1 Report into the Public Health (Wales) Bill

I thank the Constitutional and Legislative Affairs Committee for its detailed consideration of the Public Health (Wales) Bill. I have considered each of the Committee's recommendations and am responding accordingly.

Recommendation 1 relates to definitions concerning workplaces which would be required under the Bill to be smoke-free. The Committee put forward two alternative suggestions for amendments to the Bill on this point. I **accept** the second of the approaches suggested by the Committee, and have tabled an amendment to require regulations made to define what is meant by "enclosed" and "substantially enclosed" to be subject to the affirmative procedure. My general view, as I previously outlined to the Committee, is that the definition of "enclosed" and "substantially enclosed" is a technical provision which may require amendment in the future, and is therefore appropriate to be dealt with in regulations. I am, however, happy to provide additional assurance to Members by applying the affirmative procedure to the regulations, and I trust the Committee will be satisfied by this approach.

In respect of **Recommendation 2**, where the Committee recommends amending section 12 to clarify that public authorities will be the enforcement authorities under this Chapter of the Bill, I **accept the principle** of the recommendation. I am happy to reiterate the indication I gave when providing evidence to the Committee that public authorities will be the enforcement agencies. However, I am unable to commit to amending the Bill on this point, as further work would first be needed around the definition of "public authorities". It is the intention to designate county and county borough councils (local authorities) as enforcement authorities for the enforcement of the smoke-free requirements in public premises and workplaces, as well as any additional smoke-free premises. However, the circumstance may arise in certain instances where it will be helpful to designate additional enforcement authorities: for example, the police are designated for enforcement of our regulations on smoking in cars carrying children, which came into force last year. In considering any potential amendment to the Bill, therefore, I would need to be satisfied that this course of action would not preclude other appropriate enforcement authorities from being designated, if required.

Recommendations 3, 4 and 7, whilst relating to different parts of the Bill, each call for amendments to be made which require the Welsh Ministers to consult on regulations to be made under specific sections of the Bill. It is my and this Government's general approach to consult prior to introducing both primary and secondary legislation into the Assembly. It was therefore always my intention to consult on the regulations covered by these recommendations. However, in order to provide greater confidence to Members, I am happy to **accept** all three recommendations and have brought forward amendments which require the Welsh Ministers, before making regulations under section 23(3), section 40(2) and section 76(1), to consider whether there are representative persons of those likely to be affected by the regulations, and to carry out consultation with any representative persons whom the Welsh Ministers consider it appropriate to consult. Regulations under these sections would relate to the form and process of making an application for entry in the register of retailers of tobacco and nicotine products, adding new offences to the Restricted Premises Order regime, and amending the list of special procedures covered by the licensing system being introduced by the Bill.

In relation to special procedures, I have given careful consideration to **Recommendation 5**. This calls for amendments to be made to include some basic core licensing criteria in section 51, and some basic core conditions in section 52. I have concluded that I am content to **accept** this recommendation and have tabled amendments to place some core subjects on the face of the Bill, to which the regulations made on the licensing conditions and criteria must relate. These subjects include, for example, infection control measures and record keeping requirements. Whilst doing this, I have retained the current approach taken in the Bill which enables the Welsh Ministers to utilise regulations to develop tailored licensing criteria and conditions for an individual special procedure, the location it is practiced from, and the basis upon which it is performed. The practice of special procedures varies significantly, and so it is important that the licensing criteria are developed to take account of the variance. For example, it is envisaged that the requirements will be different for an individual practicing tattooing from a single premises to those for a practitioner practicing acupuncture peripatetically. The approach I am taking in response to this recommendation also seeks to address a recommendation of the Health and Social Care Committee (Recommendation 5 of its report).

Recommendations 6 and 8 call for amendments to be made to the Bill to apply the affirmative procedure to the making of regulations under section 58(6) and section 77(1). These regulations relate to exempting certain premises or vehicles from the approval requirements for the performance of special procedures, and to extend the definition of “body piercing”. I am content to **accept** both recommendations and have tabled amendments to this effect. In relation to section 77(1) specifically, I have also tabled an amendment to further clarify the definition of “body piercing” within the Bill, and to ensure the definition captures the attachment to, implantation of, or removal of jewellery or objects from an individual’s body.

Recommendation 9 calls for an amendment to apply the negative procedure to commencement orders that include transitional, transitory or saving provision, made in accordance with section 101(3)(b). I am **rejecting** this recommendation as the making of commencement orders is not normally subject to any procedure, as they bring into force what the National Assembly has already approved. I see no reason, therefore, to deviate from the current convention in relation to commencement orders.