

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Public Health \(Wales\) Bill / Bil Iechyd y Cyhoedd \(Cymru\)](#)

Evidence from Caerphilly Council – PHB 47 / Tystiolaeth gan Cyngor Caerffili
– PHB 47

HEALTH AND SOCIAL CARE COMMITTEE CONSULTATION ON PRINCIPLES OF THE PUBLIC HEALTH (WALES) BILL

Submission of Evidence by Head of Public Protection, Caerphilly Council.

Introduction:

Part 2: Tobacco and Nicotine Products Part 2 of the Bill includes provisions relating to tobacco and nicotine products, these include placing restrictions to bring the use of nicotine inhaling devices (NIDs) such as electronic cigarettes (e-cigarettes) in line with existing restrictions on smoking; creating a national register of retailers of tobacco and nicotine products; and prohibiting the handing over of tobacco or nicotine products to a person under the age of 18.

Do you agree that the use of e-cigarettes should be banned in enclosed public and work places in Wales, as is currently the case for smoking tobacco?

YES.

The use of e-cigarettes, in particular those that have the appearance of traditional cigarettes, undermines enforcement of smoke-free legislation, not only by local authorities but also those that manage smoke-free places. Many business owners have banned them for that reason.

Our Enforcement Officers have experienced difficulties where drivers have been witnessed smoking in their vehicles but have then been unable to prove whether it was a tobacco product or an e-cigarette. These cases demonstrate that where an individual is witnessed contravening the ban on smoking in a wholly or substantially enclosed public place they can simply claim that they were smoking an e-cigarette and it is extremely difficult for enforcing authorities to prove otherwise, thereby compromising the enforcement of the ban.

A key issue here is that the ban on smoking in public places has been very successful and is almost entirely self-policing by the public. E-cigarettes pose a real threat to that self-policing.

E-cigarettes also undermine the ability of managers of premises to enforce smoke free places, leading to many business banning them. Our officers that visit business premises on a regular basis, often hear concerns from owners and managers about confrontation when dealing with people “vaping”. Some vapers argue “it’s not against the law”.

We believe that the use of e-cigarettes in public places can help “normalise” smoking. See later.

There is uncertainty over the potential adverse health implications associated with e-cigarettes and despite recent studies suggesting some benefit to those quitting smoking the efficacy of e-cigarettes as an aid to smoking cessation is not entirely clear. It is therefore appropriate to take a precautionary approach to the risks associated with e-cigarettes. Currently people in Wales can breathe clean air in offices, shops, pubs and other public places and work environments. Having secured clean air in enclosed public spaces we do not want to see a step backwards.

What are your views on extending restrictions on smoking and ecigarettes to some non-enclosed spaces (examples might include hospital grounds and children's playgrounds)?

We are of the opinion that smoking should be discouraged in all public places, in particular those locations where there are children or vulnerable people. These include:

- *Playgrounds*
- *School grounds & their immediate vicinity*
- *Hospital & medical facility grounds*
- *Places promoted to children (e.g. "petting farms", fairgrounds and family centred leisure parks).*

There is a need for Fixed Penalty Notice powers which should be consistent powers with existing provisions. In drafting such provisions there is a need to consider that law currently places a responsibility on the person in control of premises to prevent smoking (e.g. hospital grounds) and that local authorities' usual enforcement approach is against the "person in control of premises" for permitting smoking. (Under the Health Act 2006 "*It is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person smoking there to stop smoking.*")

Do you believe the provisions in the Bill will achieve a balance between the potential benefits to smokers wishing to quit with any potential disbenefits related to the use of e-cigarettes?

Yes.

Our key concerns are the potential for e-cigarettes to undermine the enforcement of smoke free legislation; intentionally or inadvertently promote or normalise smoking; and the potential impact upon impact upon smoke free environments.

We are concerned that there is a real potential for e-cigarettes to intentionally or inadvertently promote smoking amongst those who currently do not smoke. In particular we feel there is a need to make every effort to deter young people from becoming smokers. We note the cautionary words of England's Chief Medical Officer that e-cigarettes should only be used to help smokers quit.

Do you have any views on whether the use of e-cigarettes renormalises smoking behaviours in smoke-free areas, and whether, given their appearance in replicating cigarettes, inadvertently promote smoking?

Yes. We take the view that anything that has the appearance of smoking helps “normalise” smoking and therefore promotes smoking behaviour and culture. We also question whether the term “inadvertently” is appropriate. For example, we are not aware that there is any technical reason why e cigarettes need to glow or emit a vapour.

We are also concerned by the nature of e-cigarette advertising; we note the reappearance of 1950’s style marketing of tobacco products.

Workplaces have worked hard to implement the smoke free premises legislation and the use of e-cigarettes undermines this work.

We are concerned that e-cigarettes encourage young people to think that smoking is acceptable and therefore has the potential to act as a gateway to both e-cigarettes and tobacco based products.

Data relating to smoking behaviour in Wales leads us conclude that we cannot afford to step back from promoting smoke free behaviour and the health and societal benefits associated with that approach.

Do you have any views on whether e-cigarettes are particularly appealing to young people and could lead to a greater uptake of their use among this age group, and which may ultimately lead to smoking tobacco products?

Yes we feel they are. We feel every effort must be made to prevent young people developing nicotine addiction or smoking behaviours.

Some e-cigarettes utilise scented or flavoured refills that may be attractive to younger users, which is a particular concern if combined with the highly addictive properties of nicotine. Some of these are branded in ways that may be particularly attractive to younger users, such as “Gummy Bear, Cherry cola and Bubble Gum”.

Some products are being packaged and marketed in a way that is closely associated with that of conventional cigarettes. For example, we are not aware that there is any technical reason why e cigarettes need to glow or emit a vapour. We are also concerned by the nature of e-cigarette advertising; e.g. consistent with the 1950’s style marketing of tobacco products.

Many of these factors reinforce the association with conventional tobacco cigarettes and may normalise smoking related behaviour.

Do you have any views on whether restricting the use of e-cigarettes in current smoke-free areas will aid managers of premises to enforce the current non-smoking regime?

Yes. A number of licensed premises have independently introduced bans on the use of e-cigarettes within their premises in recognition of the difficulty they cause their staff in applying the smoking ban within their premises.

Our colleagues that visit business premises on a regular basis, often hear concerns from owners and managers about confrontation when dealing with people “vaping”. Some vapers argue “it’s not against the law”.

Some employers have had difficulties. e.g. we have had problems with lorry drivers smoking in their cabs and when tackled claimed they were vaping an e-cig, which made taking action

difficult. We have also received complaints from their own office based staff that colleagues have been using e-cigarettes at their desks and that they may be also be inhaling the vapours in a similar way to second hand smoke. Hence we have subsequently amended our no smoking policy to include e-cigs.

The proposed legislation in smoke-free places should apply equally to tobacco based products and all forms of e-cigarettes.

Do you have any views on the level of fines to be imposed on a person guilty of offences listed under this Part?

The power to issue Fixed Penalty Notices and other enforcement provisions need to be consistent with other smoking legislation, and the fines need to be set at such a level as to be a deterrent to (re)offending.

Do you agree with the proposal to establish a national register of retailers of tobacco and nicotine products?

Yes. We support the proposal.

Do you believe the establishment of a register will help protect under 18s from accessing tobacco and nicotine products?

The introduction of a register will provide an additional control on the availability of tobacco; a register would contain detailed information on those people and premises from which tobacco can be sold legitimately. Furthermore it would restrict access to the trade to those people and premises where tobacco should not be sold. It will be easier for enforcement officers to identify those premises where tobacco is permitted to be sold, which will in turn assist with the enforcement of underage sales and the display ban.

The success of such a measure would be dependent on the legislation including provisions to control access to the register such as a “fit & proper persons” or “suitable persons” test. This is explored further in response to subsequent questions.

If a register is to be established it needs to cover all those that manufacture, distribute and sell tobacco products. We feel that having a register only for the end retailers is not comprehensive and will not cover other parts of the tobacco chain that feed the habit including those under age. An offence should be created where tobacco products can only be sold, distributed, etc to those registered.

We note that section 29(5) provides that ‘A registered person who fails, without reasonable excuse, to comply with section 25 (duty to notify certain changes) commits an offence’. We are concerned by the use of the phrase ‘reasonable excuse’:

- a) Firstly, as it is out of step with the more robust due diligence offence common to most current consumer protection legislation, i.e. the two limbed all reasonable precautions and all due diligence defence. There is concern that with section 29(5) as currently worded, individuals failing to notify changes to the register will be able to evade enforcement action. There will

be no definition of what is reasonable and so these explanations would need to be tested in court with associated wasting of resources.

Use of the well established two limbed due diligence system would enable enforcement officers to assess the adequacy of an individual's defence based on tried and tested case law, well before a case has to enter the court system

- b) Secondly, the very use of the word 'excuse' in section 29(5) sends out quite the wrong message to the trade, and there is a danger that the current wording will encourage individuals simply to 'come up with an excuse' in the expectation that this will be acceptable.

Do you believe a strengthened Restricted Premises Order regime, with a national register, will aid local authorities in enforcing tobacco and nicotine offences?

Yes. The proposed link to restricted sales orders (RSOs) and restricted premises orders (RPOs) under the Children & Young Persons Act are welcome. However, we see it as essential that the range of offences triggering an RPO is extended to include all tobacco related breaches, for example the supply of illegal (counterfeit and non-duty paid) tobacco, tobacco labelling offences, non-compliance with the tobacco display ban; and not just underage sales. It is hoped that these matters will be addressed through the proposed power for Welsh Ministers to make regulations under section 12D of the Children and Young Persons Act and the range of offences triggering an RPO extended accordingly.

However, our experience of "Registers" introduced under other legal provisions suggest that their efficacy can be limited if they are not also accompanied by robust enforcement powers. Some registers are merely administrative or informative.

Our enforcement officers will need effective powers to ensure that the register has the desired effect. These need to include power to restrict access to the register and to remove persons from the register where there has been a relevant infringement of the law, including offences concerning underage sales. We feel that there should be a provision to consider suitability of a retailer - whether the retailer is a "fit & proper" person. For example, whether a retailer been convicted for the sale of alcohol, solvents or other age restricted products to minors. The section 24 provision that an application to register will not be granted if an RPO or RSO is already in place goes some way towards this, but of course does not take account of the selling to minors of other age restricted products.

We welcome the section 23(2)(g) clarification that in addition to sellers of tobacco and nicotine products with a High Street presence, those supplying via online, telephone and mail order channels will be required to indicate this on the register. However, it is unclear from the wording of section 22(1) whether the requirement to register applies only to those based in Wales rather than those outside Wales supplying to customers in Wales, i.e. 'The registration authority must maintain a register of persons carrying on a tobacco or nicotine business at premises in Wales'.

We are disappointed with the section 23(3) definition of a "tobacco or nicotine business" as being a business involving the sale by retail of tobacco or cigarette papers or nicotine products'. Limiting the scope of the register to retail would be a lost opportunity to regulate throughout the supply chain. The illicit supply and sale of tobacco has been identified as a growing concern by Trading Standards in Wales. A register must not inadvertently add to the problem of illicit trade in cigarettes. The penalties of failing to register therefore need to be robust. We emphasise that the definitions of "business" need to be carefully considered to encompass not only legitimate traders but also those persons who are trading illegally in tobacco from

domestic premises. We feel it should also include online suppliers. Effectively the provisions must apply to anyone who is *selling* tobacco products in Wales.

We support the need for robust and proportionate penalty for offences and proposed powers of entry (to retail premises) or the ability to seek a warrant (for domestic premises). These are obviously vital. We also support the need for powers to seize tobacco goods in all relevant premises including those that are not registered.

What are your views on creating a new offence for knowingly handing over tobacco and nicotine products to a person under 18, which is the legal age of sale in Wales?

We support the proposals which would bring tobacco products into line with alcohol sales.

Do you believe the proposals relating to tobacco and nicotine products contained in the Bill will contribute to improving public health in Wales?

Yes.

Smoking remains the single greatest avoidable cause of death in Wales (**PHW, 2012**). The introduction of the ban on smoking in enclosed public spaces in 2007 has been hugely successful in reducing exposure to environmental tobacco smoke and in strengthening public awareness and attitudes towards it. However, reducing the prevalence of smoking, remains a key health priority. Protecting young people from the effects of smoking and deterring young people from taking up the habit are particularly important. Therefore we welcome the proposals and additional powers to help control the availability of tobacco and its potential health impact.

Part 3: Special Procedures Part 3 of the Bill includes provision to create a compulsory, national licensing system for practitioners of specified special procedures in Wales, these procedures are acupuncture, body piercing, electrolysis and tattooing.

What are your views on creating a compulsory, national licensing system for practitioners of specified special procedures in Wales, and that the premises or vehicle from which the practitioners operate must be approved?

We support WG proposals to regulate for special procedures including the creation of a direct offence of failing to register, a full set of enforcement powers including powers of entry, seizure, prohibition, etc to enable the effective regulation of illegal operators.

We are of the view that current legislation does not adequately protect the public. Environmental Health Officers are relying on legislation that is not made specifically for the purpose of tackling illegal operators.

We have the following concerns regarding existing provisions:

- There is no requirement for a practitioner to have training or experience to set up a tattoo studio. However the need to understand the importance and practical application of hygienic practices and infection control procedures is essential to

protect the public. The public need some assurance that a practitioner is competent to perform what they are doing without putting them at risk.

- Currently, an unregistered tattooist applying unsafe practices in unhygienic premises only commits the offence of being unregistered under the byelaws. This may be viewed as a purely administrative offence when Courts are considering sentencing.
- Current registration requirements rely on being able to prove that a person is carrying on a business and this can be difficult because most unregistered tattooists ('scratchers') work from home and deny that they receive payment.
- There is no facility to refuse registration unless a previous successful prosecution has been taken for breach of bye laws and the magistrate cancelled a previous registration. However, Local Authorities are still reliant on the applicant informing them that they have been prosecuted in another area.
- The current application process does not require any proof of identity, criminal records checks or "fit and proper person test", therefore, even if an applicant had been prosecuted in another LA then there would be no way of knowing.
- Current regulation relies in part on the use of legislation not specifically intended for such use e.g. The Public Health (Control of Diseases) Act 1984 and The Health and Safety at Work etc. Act 1974. Several local authorities in Wales have used Part 2A Orders to seize equipment from unregistered and unhygienic premises, however these provisions do not always provide the appropriate enforcement tools to safeguard the public and to tackle "scratchers".
- A domestic premises can be registered to carry out skin piercing and comply initially with the byelaws. However, unless there is a separate entrance, the Health and Safety Executive are responsible for the enforcement of H&S legislation within that premises. The HSE have previously been reluctant to transfer enforcement responsibility to local authorities in such a situation. Therefore, if there is a serious risk such as lack of sterilisation, Officers are unable to serve prohibition notices as they would in a commercial setting. The only option would be to simply prosecute for non-compliance with the byelaws or to apply to the courts for a Part 2A order- both being a time consuming process.
- New procedures are being developed and becoming increasingly popular such as body modification, dermal implants, branding, tongue splitting and scarification all of which have potential to spread infection or cause permanent damage.
- Existing legislation does not prevent the sales of relatively cheap tattooing equipment over the internet. Anyone can purchase a kit and start operating, possessing no basic training, no knowledge of infection control and not using an autoclave or equivalent sterilisation procedure.

We agree with the concerns of the Chartered Institute of Environmental Health (CIEH) that many procedures are being done by people with little if any knowledge of anatomy, infection control or healing processes (**CIEH, 2014**).

We would offer the following observations on the proposal regulations:

- Level 3 fine (£1,000) is a little low and we have experience of an individual against whom we have secured multiple convictions resulting in low fines that have not deterred the illegal tattooing activity.
- It is recommended that the penalty includes the possibility of a custodial sentence of in excess of 6 months to enable us to apply for RIPA authorisation from the Magistrates

Court when necessary. This would enable us to be able to undertake surveillance on a private dwelling where illegal tattooing may be taking place for example, which we may need in order to provide sufficient evidence for the Magistrates to issue a warrant for Power of Entry when we subsequently apply for this.

- In determining whether to grant a license a Local Authority should be able to consider whether the applicant is a “fit and proper person” and such a test should be included (akin to our tried and tested procedures for taxi licensing). The test should permit the LA to take into account “any other information” (beyond the “relevant offences” listed in the draft bill) in determining that question. The current proposals do not offer sufficient safeguards.
- We would be opposed to grandfather rights for existing traders.

Do you agree with the types of special procedures defined in the Bill?

Yes. We support the proposals to include Acupuncture, Tattooing, Body piercing and Electrolysis. These share a theme of preventing blood borne viruses.

However, we strongly support the view that legislation should enable other body modification procedures to be addressed, some of which present significant risks. The aim must be to ensure that all procedures that involve piercing, body modification / enhancement or any invasive treatment or procedure where there is a risk of infection or injury are covered by some form of control or regulation. We are concerned about a growing range of procedures including Botox, dermal fillers, sculpting, microdermabrasion, dermal rolling and dermal implants. We also recognise that new and novel procedures are continually being developed and WG should ensure that the register and any associated enforcement powers will be applicable to the widest range of circumstances and developing trends

However, we also acknowledge the need to take a considered and incremental approach to encompassing these matters over time. We therefore support framing the provisions in such a way that additional procedures might be added in the future.

What are your views on the provision which gives Welsh Ministers the power to amend the list of special procedures through secondary legislation?

We absolutely support that (see above) and also welcome the anticipated opportunity to be consulted upon and to work with WG officials in framing any proposals.

We feel that we need to get ahead of the game and be able to address the next body modification development to emerge. A local studio in our county borough is keen to expand into scarification and tongue splitting. Other procedures are already becoming more popular e.g. branding, dermal implants, microdermabrasion. All these procedures provide the potential for serious harm and infection.

Whilst we feel there is a strong case that procedures such as tongue splitting, branding, dermal implants and scarification should be prohibited, we recognise that to do so may drive activities underground and cause further issues or potentially make it more appealing to some people.

The Bill includes a list of specific professions that are exempt from needing a licence to practice special procedures. Do you have any views on the list?

We are content with these because these professions should have the necessary understanding of good hygiene and infection control. However, we support the proposed provision that individual professions could be required to have a licence in relation to certain procedures that their regulating body feels do not fall within the scope of their competence.

Do you have any views on whether enforcing the licensing system would result in any particular difficulties for local authorities?

We feel that the proposed licensing system would enable local authorities to undertake public protection duties more effectively and more readily. The establishment of a licensing scheme enabling local authorities to recover their costs will ensure that finance is available to deliver.

The proposals would give enhanced enforcement powers and greater flexibility to deal with public health risks in relation to both those that operate legitimately and those that chose not to.

There is a loophole in current legislation enforced by the Health Inspectorate Wales in respect of the use of lasers. Class 3b and 4 lasers (4 being what is used in a hospital setting) only have to be registered with the HIW if used in certain circumstances. Where this class of laser is used on a mobile or ad hoc basis there is no requirement to register therefore this highly dangerous equipment could be used unregulated. We will be facing an increase in the use of lasers when fashion dictates that tattoos are no longer "trendy" and the increase in poor artwork by illegal tattooists will see a demand in laser removal.

Do you believe the proposals relating to special procedures contained in the Bill will contribute to improving public health in Wales?

Yes.

See <http://www.wales.nhs.uk/sitesplus/888/news/37472> (The recent Newport case)

Proposals contained in the Bill such as requiring a standard of competency will make a significant contribution to protecting health from risks associated with such procedures.

Evidence of public health risk in relation to such procedures is clear. We take the view that any procedure that involves the piercing of the skin poses a very real risk of infection and disease from blood born viruses many of which can be a serious risk to health and that anyone undertaking such procedures should be competent to do so without putting a person at risk.

Current controls are outdated and inadequate. We need to be able to protect the public to better prevent people from undertaking these procedures if they are not competent or are not fit and proper person to be undertaking such practices. We need also to ensure that the conditions in which such practices take place are hygienic and will prevent infection risks.

We are seeing in our day to day work evidence of a growing range of procedures that put the public at risk. These include: dermal implants, beading, ashing, scarring, dermal fillers, tongue splitting, and a range of other procedures that we might loosely describe as "body

modification". We feel strongly that regulations should permit all such procedures to be controlled and that the regulations should allow the list of procedures to be extended to cover any form of body modification that may arise in the future.

Some procedures such as "ashing" might not fall within the regulations as proposed. Ashing may fall outside of the current definition of tattooing (which relies on the use of pigmentation) and care is needed that definitions do not inadvertently exclude procedures that are intended to be covered.

In relation to extending the list, we recognise from an enforcement perspective that we are familiar with the necessary controls and safeguards needed in relation to more traditional procedures. There is merit in a considered and stepped approach to extending the list of special procedures so that we are able to develop training, suitable competence assessments and necessary guidance in relation to the more novel procedures. We are also aware that consideration is needed in distinguishing between a legal service that we might appropriately control and what might be considered an illegal act of assault. We feel some clarity will be required in relation to that question.

Educational establishments:

Some further consideration may be needed about how best to apply or amend the proposals in relation to students of educational establishments.

Apprentices.

Section 48(3) and (4) need to better address the supervision and training of apprentices

An issue linked to apprentices, is that performing a 'special procedure' needs to be defined as an action that breaks the skin in our view. Otherwise there could be confusion about whether apprentices are performing a special procedure, when they have done every other part of the process but break the skin.

Proving a business exists.

There should be no need to prove a premises is operating as a business at a given moment in time. A premises should be deemed to be operating as a business at all times it is licensed, similar to a hackney carriage.

FPNs.

The use of FPNs for 'minor' breaches of the legislation may be useful.

Section 52(2)(c): Information to be communicated to clients.

Perhaps this information should be specified in the regulations, as it has been in the Sunbeds legislation – prescribed information to provide to a person each time that person seeks a treatment and prescribed posters to be displayed in a prominent position.

A National Register

We take the view that it would be sensible to have one single national register that is administered by one local authority in Wales. This would be an efficient, collaborative method of delivery. A number of local authority Environmental Health departments have indicated their willingness to take on that responsibility on a cost recovery basis. We would

underline the importance of local authority administration because of the potential intelligence / data sharing issues in relation to applicants between enforcement agencies.

Part 4: Intimate Piercing Part 4 of the Bill includes provision to prohibit the intimate piercing of anyone under the age of 16 in Wales.

Do you believe an age restriction is required for intimate body piercing? What are your views on prohibiting the intimate piercing of anyone under the age of 16 in Wales?

We agree that there should be an age restriction for intimate body piercing, but consider that prohibiting the intimate piercing of anyone under the age of 18 would be more appropriate. This is because:

because:

- The decision to have an intimate body piercing should be made by a mature individual, we believe that 16 years of age is not sufficiently mature.
- Intimate body piercings require a higher standard of aftercare than tattoos, as they are potentially more susceptible to infection. This level of aftercare requires a mature approach to which a 16 year may not be capable of fully committing.
- Whilst the jewellery inserted into an intimate body piercing may be removed any scarring or damage inflicted by the procedure will be permanent. This is particularly important when the skin the subject of the piercing is still growing and its function may be compromised by scarring or thickening. At 16 years an individual is still growing and therefore the risk of damage to skin is greater.

We also notes that there is potential for confusion to arise if there is a different age restriction for body piercing and for tattooing. We consider that it would be easier for practitioners, enforcement agencies and individuals if the age restriction for both was to be the same.

From a Safeguarding perspective a child is defined as anyone who has not yet reached their eighteenth birthday. The fact that a child has reached 16 years of age, is living independently or is in further education, is a member of the armed forces, is in hospital or in custody in the secure estate does not change his or her status or entitlement to services or protection under current legislation. We believe that intimate piercing of a child should be prohibited and that the age restriction for intimate piercing should be 18 years.

Do you agree with the list of intimate body parts defined in the Bill?

Yes. However we also feel there is a case to add the tongue. In addition to the relatively higher risks of infections associated with tongue piercing, we are aware that there are sexual connotations with piercing of the tongue and for that reason consider there is a case to include in the list of intimate parts.

Do you have any views on the proposals to place a duty on local authorities to enforce the provisions, and to provide local authorities with the power to enter premises, as set out in the Bill?

We support such proposals including the proposal to make it an offence “to enter into arrangements”. This would support enforcement of the provisions including “test purchasing” by local authorities.

We recognise the need for police support in particular in relation to evidence gathering given the intimate nature of such offences and the provisions need to take account of that.

Any duties placed upon local authorities need to be supported by adequate funding.

Do you believe the proposals relating to intimate piercing contained in the Bill will contribute to improving public health in Wales?

Yes, see above.

Part 6: Provision of Toilets Part 6 of the Bill includes provision to require local authorities to prepare a local strategy to plan how they will meet the needs of their communities for accessing toilet facilities for public use.

· What are your views on the proposal that each local authority in Wales will be under a duty to prepare and publish a local toilets strategy for its area?

We agree that the provision of, and access to, toilets for public use is important, particularly to older people and those with specific needs.

However, we question whether placing a duty on local authorities to develop a strategy is appropriate, acknowledging firstly the difficult financial climate within which any duty would consume resource and secondly that a strategy will not of itself bring about enhanced provision. Care is needed that WG does not merely impose an administrative and financial burden that delivers no real benefit to the public.

Local Authorities are being forced to make difficult choices around the prioritisation of services to their communities many of which have a significant impact on health & well-being. Any duty regarding the provision of public toilets may result in local authorities being forced to disinvest in other services that are of equal or greater priority.

· Do you believe that preparing a local toilet strategy will ultimately lead to improved provision of public toilets?

See above

· Do you believe the provision in the Bill to ensure appropriate engagement with communities is sufficient to guarantee the views of local people are taken into account in the development of local toilet strategies?

The consultation requirements set in Para 92 are too vague to be meaningful.

· Do you have any views on whether the Welsh Ministers' ability to issue guidance on the development of strategies would lead to a more consistent approach across local authorities?

In our experience, such guidance leads to more consistent approaches.

· What are your views on considering toilet facilities within settings in receipt of public funding when developing local strategies?

There are obvious benefits from opening other public toilet facilities (eg: leisure centres and libraries) to the general public and in the context of the current financial climate this may be the only opportunity to deliver such facilities as local authorities are being forced to prioritise service provision to make financial savings.

· Do you believe including changing facilities for babies and for disabled people within the term 'toilets' is sufficient to ensure that the needs of all groups are taken into account in the development of local toilet strategies?

Generally yes, but in the current financial climate it is unlikely that local authorities will be able to afford to make significant alterations to any buildings to create such provision if it does not already exist.

· Do you believe the proposals relating to toilet provision in the Bill will contribute to improving public health in Wales?

No - as stated above, placing a duty on local authorities to develop a strategy will not of itself bring about enhanced provision or result in improvements in public health.

Finance questions

What are your views on the costs and benefits of implementing the Bill? (You may want to look at the overall costs and benefits of the Bill or those of individual sections.)

We are generally very supportive of the measures set out in the Bill. However, we are naturally concerned by the capacity within local government to deliver additional responsibilities successfully at a time when service cuts and reductions in service standards are all too apparent. We have a great deal of expertise and experience and local authority Environmental Health Departments across Wales are keen to support these new powers and measures. However ask WG to ensure that such work can be adequately resourced and in particular to consider:

- Undertaking regulatory risk and impact assessment to understand the consequences of the proposed legislation on enforcing authorities and on those subject to regulation,
- a detailed understanding and quantification of the costs of effective regulation and enforcement so that WG and local authorities can plan properly for implementation,
- Where possible provisions should allow for full cost recovery or in the absence of a cost recovery mechanism (typically fees & charges) additional resource must be made available to local authorities specifically for the purpose of this legislation,
- In drafting the legislation, WG should avoid unnecessary complexity or ambiguity, ensure that provisions are capable of being enforced in a practical and efficient way and that any potential defences are fully and properly understood.
- There appears to be no money for the initial inspection of the tobacco retailer outlets by each Authority and subsequent follow up visits in the case of non-compliance. The proposal states that inspection of premises for compliance with the new requirement will be undertaken as part of enforcement officers regular schedule of inspections. With Authorities working toward an intelligence led enforcement approach, this could mean that some tobacco retailers who have failed to register could be operating un-registered for up to a year, until they are next inspected. This means that the register is not up-to-date.
- The initial monitoring of compliance of the tobacco register may not take place by Authorities if not funded as this may require inspections/visits to take place outside of the routine inspection programme.

How accurate are the estimates of costs and benefits identified in the Regulatory Impact Assessment, and have any potential costs or benefits been missed out?

What financial impact will the Bill's proposals have on you/your organisation? Are there any other ways that the aims of the Bill could be met in a more cost-effective way than the approaches taken in the Bill's proposals?

Do you consider that the additional costs of the Bill's proposals to businesses, local authorities, community councils and local health boards are reasonable and proportionate?

Delegated powers

The Bill contains powers for Welsh Ministers to make regulations and issue guidance.

In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?

Yes

Other comments

Are there any other comments you wish to make about specific sections of the Bill?

Do you believe that the issues included in this Bill reflect the priorities for improving public health in Wales?

Yes

Are there any other areas of public health which you believe require legislation to help improve the health of people in Wales?

Through our licensing teams and through a broad range of officers working closely with local residents in our communities, we are all too familiar with the problems caused by alcohol. However, we understand that Minimum Unit Pricing is a proposal to be taken forward in a future draft bill – something that we would welcome and will be pleased to work with officials working towards that.

We are also aware of public health concerns around obesity, nutrition and exercise – and we have an interest in this area through our vital role in relation to the regulation of food standards and food labelling and our general contribution to the wider public health agenda. We acknowledge the potential contribution of the Future Generations Act and Active Travel Act for example in this area but note also the potential for planning controls and licensing arrangements to play a greater part. We also recognise that some of these issues may need action at the level of UK Government.

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