

## Public Health (Wales) Bill: Consultation questions

### Tobacco and Nicotine Products

The Bill includes proposals to ban the use of nicotine inhaling devices, such as e-cigarettes, in enclosed spaces like restaurants, pubs and at work. Shops will also have to join a register for retailers of tobacco and nicotine products, and it will become an offence to “hand over” tobacco and e-cigarettes to anyone under the age of 18.

#### *Question 1*

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, on balance, this position is supported. The restrictions on smoking and e-cigarettes should be equal to ensure consistency in messages and support existing work to de-normalise smoking behaviours. Many organisations are already confused as to whether e-cigarettes fall under the smoking ban, and it is important to minimise this confusion and ensure consistency in messages. The use of e-cigarettes in public places is likely to cause confusion in the minds of the public of whatever age (whether smokers or non-smokers) and so potentially dilute the impact of the current legislation through a number of mechanisms (including by undermining enforcement).

E-cigarettes are designed to mimic tobacco containing cigarettes and it is often difficult to distinguish between them. This again could add to confusion of existing policies/laws if someone who is smoking an e-cigarette is mistakenly thought to be smoking a cigarette. Having different restrictions could make it more difficult to enforce the existing smoking ban.

Smoking in enclosed public places has been banned for many years and current smokers have become accustomed to smoking in designated smoking areas. Although for many people e-cigarettes are used as an aid to quitting, allowing e-cigarettes to be smoked in enclosed spaces could undermine the existing law. There is some evidence that smoking e-cigarettes can pollute air in enclosed spaces, potentially affecting others.<sup>7,8</sup> There is no longitudinal evidence of this due to the infancy of e-cigarettes, but it is important that the risk to others is minimised.

Currently there is little evidence to suggest that anything more than a negligible number of never-smokers regularly use e-cigarettes.<sup>1,2</sup> In addition, there is also little hard evidence that e-cigarettes are acting as a 'gateway' to smoking tobacco among children.<sup>3,4</sup> However, large scale use of e-cigarettes remains a very new phenomena, and some evidence is beginning to emerge from studies in the UK and overseas which suggests that e-cigarettes are being used by young people who have never previously used tobacco.<sup>5,6</sup> There is a need to take a pragmatic approach to e-cigarette use and it is therefore sensible to restrict its use in enclosed public and work places. Notwithstanding this, there are some concerns about the quality of currently available evidence to make a judgement one way or the other.

### *Question 2*

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

Yes. The smoking ban has been in place for a significant amount of time, and smokers are used to smoking in designated smoking areas. However, it may be difficult for someone who is making a quit attempt (by using e-cigarettes) to be exposed to cigarette smoke if e-cigarette use was in a designated smoking area. It will be necessary to have designated spaces for use of e-cigarettes as well as designated areas for smokers as part of any smoking ban.

There is a theoretical risk that those using e-cigarettes indoors could switch back to cigarettes if they had to go to designated smoking areas to smoke - especially if those areas were also designated for tobacco use.

### *Question 3*

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

E-cigarettes do have the potential to undermine the existing smoke-free regulations, and on balance, a precautionary approach should be adopted. As mentioned in response to Question 1, some evidence is beginning to emerge from studies which suggests that e-cigarettes are being used by young people who have never previously used tobacco.<sup>5,6</sup> There is potential that children and young people will be more susceptible to emulating behaviour of adults or role models if e-cigarette use becomes normalised. In addition, as well as the appearance of e-cigarettes, there is also marketing around different flavours which may be more likely to attract children and young people into tobacco use. Finally, the widespread use of e-cigarettes in public places could be a constant

temptation/reminder for smokers that are making a quit attempt, thus making it more difficult to make a successful quit attempt and more difficult for ex-smokers to stay quit.

#### *Question 4*

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?

Two thirds of current smokers started smoking before 18yrs of age.<sup>9</sup> It is even more concerning that almost 40% started smoking regularly before 16yrs of age.<sup>10</sup> Thus, to date, a large part of the profit model of tobacco companies has been based on attracting young people to take up smoking. It is therefore in the commercial interest of tobacco companies to target advertising at young people. This is happening now, with the variety of flavours of e-cigarettes, and the packaging seen as attractive to young people, in much the same way as ‘alcopops’ in the drinks industry.

Terminology is also important. The terms ‘vaping’ instead of smoking may suggest to children and young people that this is different and perhaps less harmful than smoking, which could lead those who may have never intended to try smoking to experiment instead with using e-cigs as a ‘safe way’ to smoke.

The most recent research suggests that those young people most likely to access e-cigarettes are those who engage in other substance-related risk behaviours including binge drinking, drinking to get drunk and alcohol-related violence.<sup>11</sup> Thus, current behaviours among the young are more consistent with teenagers viewing e-cigarettes as a recreational substance, or an appealing risky behaviour rather than as a smoking cessation tool.

#### *Question 5*

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

Yes. The creation of a national register is in line with the Tobacco Control Action Plan for Wales.<sup>12</sup> A register would help to enforce legislation on the display of tobacco products and tackle underage sales by helping trading standards officers to easily identify retailers and check compliance with regulations. A recent survey in England showed that nearly half of young smokers (44%) reported being able to purchase tobacco from retail premises despite the ban on the sale of tobacco products to those under the age of 18yrs.<sup>13</sup>

Smoking is also increasingly concentrated in less affluent areas, where many may purchase smuggled or fake tobacco products at reduced cost. This has the potential to undermine tobacco control measures, encourage higher consumption, and deprive small

businesses in these areas of legitimate trade.

A register would also provide an opportunity to disseminate key health information in relation to tobacco and nicotine products to retailers, and could provide an opportunity to deliver training/awareness raising information to prevent proxy sales and sales to those under the age of 18yrs.

### *Question 6*

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?

This is supported on the basis that it would help to reinforce the restriction of sales of either tobacco or e-cigarettes to those over 18yrs of age. It remains important however, that sufficient capacity is in place in local authority trading standards teams to monitor compliance and act on intelligence to catch anyone who flouts this offence.

## **Special Procedures**

The Bill includes a proposal to create a compulsory licensing system for people who carry out special procedures in Wales. These special procedures are tattooing, body piercing, acupuncture and electrolysis. The places where these special procedures are carried out will also need to be approved.

### *Question 7*

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?

Recognising the invasive nature of these procedures, further health protection measures are entirely feasible. For example, understanding of the types and levels of risk associated with the procedures is likely to be variable in the minds of the public and (potential) service users. Whilst Local Authorities may have voluntary powers relating to registering persons/ premises carrying out such procedures and have discretionary powers to create hygiene byelaws, this will tend to generate variation in public protection (e.g. in regulation) across Wales. The lack of record keeping makes surveillance (of impact, including harm) and redress challenging.

Therefore, the creation of a mandatory licensing scheme for both practitioners and businesses carrying out 'special procedures' is strongly endorsed. Such a register would be beneficial in recognising legitimate practitioners and businesses and help to regulate these procedures in Wales. It would help to ensure a consistent approach to regulation across Wales. Suitable resources would need to be made available to realise and sustain

the benefits of such a register.

There is some evidence that procedures such as piercing are a risk factor for hepatitis, though actual occurrences may be rare.<sup>14-16</sup> A recent review suggests there is a significant risk of transmission through piercing and tattooing procedures which are not done under sterile conditions, such as at home or in prison.<sup>17</sup> However, the risk of transmission would also extend to professional parlours where sterile conditions and infection control measures are not in place. Scarring from complications following such procedures can also have long-term psychological impacts.<sup>18-20</sup>

Ideally, the Bill would go further by requiring those registering to undertake such procedures to meet national standardised training where criteria of competency will have been met, hygiene standards, and age requirements and by ensuring that they have no criminal background that would make them unsuitable to undertake special procedures (e.g. Child Protection – CRB checks). We would advise that registration should include mandatory proof of identity of the practitioner. These measures would ensure that they have the knowledge, skills and experience needed to perform these procedures.

### *Question 8*

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

Yes, although the Bill presents an opportunity to go further and regulate the administration of the following procedures: colonic irrigation, body modification (to include stretching, scarification, sub-dermal implantation/3D implants, branding and tongue splitting), injection of any liquid into the body e.g. botox or dermal fillers, dental jewellery, chemical peels, and laser treatments such as used for tattoo removal or in hair removal. Consideration could also be given to sunbed use to protect users from the risks associated with excessive UV exposure.

### *Question 9*

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

Inclusion of the power is supported as this is an area where new procedures can appear rapidly the consumer may need protection to be put in place quickly.

### *Question 10*

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

It is apparent from current joint working on tobacco control that local authority trading standards teams are struggling to maintain capacity due to public service funding constraints. Adding responsibility for a licensing system for special procedures will add to the demands placed on these teams and may further diminish the support available across the breadth current public health activity, especially around alcohol and tobacco sales.

## **Intimate piercings**

The Bill includes a proposal to ban intimate body piercings for anyone under the age of 16 in Wales.

### *Question 11*

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?

Yes, an age restriction is supported. A ban on the intimate piercing of those aged under 16 yrs is supported to ensure consistency in arrangements (and so to improve current arrangements) and to better protect the public (including through informed choice). This will help to protect the public and ensure a clear and consistent message across Wales.

### *Question 12*

Do you agree with the list of intimate body parts defined in the Bill? Whether any other types of piercings (for example naval piercing, tongue piercing) should be prohibited on young people under the age of 16.

All piercings carry the risk of infection. However, in the case of tongue piercing there is the additional risk that the airway could become partially or wholly obstructed due to swelling secondary to infection. For this reason, we would endorse the inclusion of tongue piercing in the list of prohibited procedures for people under the age of 16yrs.

## **Community pharmacies**

The Bill will require local health boards in Wales to review the need for pharmaceutical services in its area, and that any decisions relating to community pharmacies are based on the needs of local communities.

### *Question 13*

Do you believe the proposals in the Bill will achieve the aim of improving the planning and delivery of pharmaceutical services in Wales?

Yes, on balance, the proposal is supported in principle. However, some suggestions/reservations are outlined below.

Regardless of the overall mode of completion, the phrase “pharmaceutical needs assessment” must be more clearly defined before any implementation/roll-out to ensure a systematic, comparable and equitable approach across Health Boards. In particular, the White Paper strongly implied that “pharmaceutical” activity encompasses (or should encompass) activity which goes beyond the traditional dispensing work of pharmacies; this still needs to be defined.

Likewise, the resource implications (e.g. data and intelligence) of pharmaceutical needs assessments must be understood and addressed before implementation. The role of Public Health Wales in supporting Health Boards to meet any future requirements in relation to local pharmaceutical needs assessments should also be defined.

### *Question 14*

What are your views on whether the proposals will encourage existing pharmacies to adapt and expand their services in response to local needs?

Pharmacies have been shown to be effective at delivering enhanced services such as smoking cessation, harm minimisation in substance misuse, flu vaccination, and emergency hormonal contraception.<sup>21,22</sup> Currently, the majority of pharmacy time is spent dispensing prescriptions and providing advice on medicines. We believe the legislation proposed in the Public Health (Wales) Bill will encourage existing pharmacies to adapt and expand their services in response to local needs. The risk of another contractor making a successful application to join the pharmaceutical list in their area, if they fail to respond to need will be an effective incentive. This can help to ensure services are available where needed.

We also believe that undertaking and incorporating such assessments of need will help to improve the planning and delivery of pharmaceutical services by making them more integrated and aligned with wider health needs assessment and service planning.

### **Public toilets**

The Bill includes a proposal that will require local authorities to prepare a local strategy to plan how they will meet the needs of their communities for accessing public toilet facilities. However, the Bill does not require local authorities to actually provide toilet facilities.

### *Question 15*

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?

While recognising the obvious importance of access to toilets for public use, PTHB is not offering a position on this Question. Local authorities are much better placed to understand the financial opportunity cost of imposing such a duty on local authorities in times of financial austerity.

### *Question 16*

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

Not necessarily. It is important to recognise the strain already placed on local government services, and that there will be an opportunity cost when prioritising services with limited resources. The preparation of a local toilet strategy may not result in improved provision and accessibility without adequate resources to implement such a strategy. There is a risk that expectations are raised inappropriately in communities when the necessary resources to deliver on a strategy are not going to be made available.

### *Question 17*

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?

Yes. The Bill is clear that a local authority must consult any person it considers is likely to be interested in the provision of toilets in its area that are available for use by the public before it publishes its local toilets strategy. While more could be done to engage with communities, the requirement to consult publicly will provide that facility for engagement.

### *Question 18*

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

This would promote a greater recognition of the importance of toilet facilities, and may improve the signage and standard of existing provision in public buildings. However, it must also be recognised that access to toilets cuts across both the public and private sector.

## Other comments

### *Question 19*

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

No. It is disappointing that regulation of food standards in settings such as pre-school and care homes are not included in the Public Health (Wales) Bill. Food standards can make an important impact on public health. Good nutrition in very young children is essential for future growth development and health, while poor nutrition in care homes is likely to undermine their health and well-being and increase the chances of the need for health services intervention.

Food standards is an issue that could be strengthened so that there is no missed opportunity to place mandatory food standards on all food or drink supplied by or procured for settings directly controlled, commissioned or inspected by public sector organisations. Over 300,000 people are currently employed in the public sector in Wales. Offering healthy choices as the norm to them, and the public they serve, could make a significant contribution to the adult obesity problem.

Minimum unit pricing for alcohol remains a key priority for improving public health. This is not included within this Bill, although it is welcomed that legislation is being considered in the draft Public Health (Minimum Price for Alcohol) Bill.

### *Question 20*

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

As above. Minimum unit pricing for alcohol is not included in the Public Health (Wales) Bill and we are aware of current testing of Scotland's decision to include this. It is highly important that this is taken forward in the future when the position is clarified. There is a strong evidence base for a link between alcohol affordability and levels of harm and until this prudent initiative is implemented alcohol-related morbidity, mortality and cost will continue to impact on society.

### *Question 21*

Are there any other comments you would like to make on any aspect of the Bill?

We consider that it is important the Public Health (Wales) Bill contains a commitment to progressing health in all policies which may impact on the health and well-being of the people of Wales. The mandatory requirement to consider the health impact in draft policies would help to raise the profile of public health in society, increasing awareness and knowledge of important public health issues across government departments and in all sectors.

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**Adults: Children:**  
March 2010: 2,297 adult smokers March 2013: 2,178 children aged 11–18  
March 2012: 12,436 adults March 2014: 2,068 children aged 11–18  
February 2013: 12,171 adults  
March 2014: 12,269 adults  
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