

PHB 13

Bil Iechyd y Cyhoedd (Cymru)

Public Health (Wales) Bill

Ymateb gan: Cytûn

Response from: Cytûn

To:– The Health, Social Care & Sport Committee, National Assembly for Wales

Response from Cytûn and CLAS to the Consultation on the Public Health (Wales) Bill

1. Cytûn: Churches Together in Wales represents 16 Christian denominations in Wales (see the full list at: <http://www.cytun.org.uk/us.html>), which between them engage the majority of Christian clergy currently serving in Wales. CLAS (the Churches' Legislation Advisory Service: Reg Charity No. 256303) is an ecumenical body representing all the major denominations in the United Kingdom and many of the smaller ones, together with the United Synagogue, in their dealings with government on issues of secular law and policy.
2. This submission relates to Sections 5 & 6 of the Public Health (Wales) Bill, as introduced, which extend the definition of 'workplaces' for the purposes of the smoke-free designation. We are concerned about the possible impact that this may have on clergy and their families.
3. The clergy of most of the major denominations are required by the nature of their offices to live in the parsonage house or manse. Moreover, for tax purposes in matters such as travel expenses the "place of work" of a minister of religion is normally defined by HMRC as that minister's residence rather than the place of worship that he or she serves – principally because an individual minister may have pastoral charge of more than one church. This applies even if the cleric works from his/her personally owned property rather than from a clergy house owned by the church.
4. The parsonage house is often used for meetings, one-to-one pastoral counselling, bible study groups, marriage preparation and suchlike. It is not entirely clear to us whether or not that means that they are "workplaces" for the purposes of the definition in Clause 5(2)(b), although we assume in this response that they are.
5. The vast majority of people have a workplace and a home: clergy are highly unusual in that they have no such separation. Some clergy (and some members of clergy families and others who live with clergy) smoke; and we are concerned that, perhaps inadvertently, the impact of the legislation as drafted might bear unduly harshly on such people.
6. First, it is not entirely clear to us whether the definition in 5(2)(b) extends to (eg) a parishioner who is invited for a casual coffee in the family living-room as opposed to the minister's study/office. Does the living-room then attract the provisions of the legislation? Or would it attract the savings in 6(3) or 6(5)?

7. Secondly, Clause 5(5) says that such premises are smoke-free “only when used as a place of work”. The ordination promises of clergy make it clear that their “work” is all-consuming, covering all of their lives. They have no set working hours. As worded, it would appear therefore that this clause would require clergy houses to be smoke-free at all times, as the minister would be “on call” even when enjoying private time with his/her family. Or would the effect of 5(5) be that a minister’s study/office would only be regarded as smoke-free when another person was present in the room but not when the minister was working alone?
8. Thirdly, we wonder whether a ban on someone (or a member of that person’s family) smoking *in his or her own home* is entirely consonant with Article 8 ECHR (Right to respect for private and family life). Article 8(2) provides a saving for interference by a public authority with the exercise of the right where it is “... necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. Presumably the Welsh Government would contend that a ban would be “for the protection of health”; we wonder, however, whether this degree of interference in private life is “necessary in a democratic society”.
9. In a letter to us dated 14 September 2015 regarding the Public Health (Wales) Bill 2015-16, Matthew Morris of the Government Business Team stated that:
Section 10 of the bill gives Welsh Ministers powers to exempt premises, or parts of premises, from the requirement to be smoke-free. ... All types of premises, including dwellings that are also workplaces, will be considered when making regulations under section 10 and the regulations will be subject to a full public consultation.
10. Sections 10 and 11 of the new Bill repeat these provisions for making regulations. We would prefer to see safeguards for clergy and their families included on the face of the legislation rather than in regulations. At the very least, however, we would ask the Committee to recommend to Welsh Ministers that they include in the regulations exemption for *at least* those parts of parsonage houses that are the dwelling of the minister and his or her family or, preferably, for parsonage houses completely. This exemption would be made on the grounds:
 - that parsonages represent the only significant category of private dwellings to which members of “the public” are routinely admitted at all times of day and night and on all days of the week in the course of the occupant’s work.
 - that the whole of the dwelling is classified by HMRC and by the church as a place of work, so it is not possible to define “those parts of the premises that are used as a place of work” in the same way as might be possible in the case of others who use one room only of a dwelling as a workplace.
11. We would be happy to provide any further information which might be of assistance to the Committee in its deliberations.

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13th December 2016. This evidence may be published in full.