

PHB 36

Bil Iechyd y Cyhoedd (Cymru)

Public Health (Wales) Bill

Ymateb gan: Comisiynydd Plant Cymru

Response from: Children's Commissioner for Wales

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## Ymateb i Ymgynghoriad / Consultation Response

**Date / Dyddiad:** 16<sup>th</sup> December 2016

**Subject / Pwnc:** Response to the Health, Social Care and Sport Committee Inquiry into the general principles of the Public Health (Wales) Bill.

### Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim, under the Care Standards Act 2000, is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC), as stipulated in regulation 22 of the Children's Commissioner for Wales Regulations 2001. The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure, which places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential. I have not responded to every consultation question but only to those of direct relevance to my remit.

Submitted by:



**Professor Sally Holland**

**Children's Commissioner for Wales**

### **Introduction:**

The UNCRC stipulates that all organisations concerned with children should work towards what is best for each child, and that every child has the right to grow up to be healthy, the right to good quality healthcare, the right to be protected from things which harm them and the right to be kept safe. I welcome Welsh Government's commitment to the United Nations Convention on the Rights of the Child. In the consideration of children and young people's rights, I would urge Welsh Government to consider in particular how the right to good quality health care (UNCRC article 24) is delivered, and to give priority to ensuring that children and young people have an opportunity to share their views on issues that will affect them in all aspects and levels of decision making (UNCRC article 12).

I welcome the Public Health (Wales) Bill as an opportunity for effective collaborative working to improve health outcomes across Wales and reduce inequalities for children, young people and their families. I feel there is still a greater opportunity to reinforce a clearer vision of what the Bill intends to achieve, the outcomes against which it will be measured, and the goals and general principles of the legislation.

### **1. The general principles of the Public Health (Wales) Bill to improve and protect the health and well-being of the population of Wales, specifically to:**

#### ***Re-state restrictions on smoking in enclosed and substantially enclosed public and work places, and give Welsh Ministers a regulation-making power to extend the restrictions on smoking to additional premises or vehicles:***

I would support the restrictions on smoking in enclosed and substantially enclosed public and work places and agree that Welsh Ministers should have a regulation-making power to extend the restrictions on smoking to additional premises or vehicles. Ash's research report, *'Second Hand Smoke: The Impact on Children'*, highlights smoking in cars as being 'particularly hazardous as levels of SHS [second hand smoke] have been found to be dangerously high due to the enclosed space, even when the vehicle is well ventilated'<sup>1</sup>. The research also highlights increasing public support for restrictions to be placed on smoking in vehicles. I believe that restrictions ensuring cars are smoke free places would prove an effective way to protect children and young people from second hand smoke in vehicles.

Children and young people have also spoken to me on a number of occasions about the issue of exposure to second hand smoking in other public places including at bus shelters. It is vital that children and young people are able to congregate or wait to access public transport in places where their health is not disadvantaged and where they are protected from exposure to second hand smoke in public places. I am also aware of similar issues regarding smoking at the school gates, with ASH Wales's current campaign on smoke free school gates reporting that only 8 of Wales's local authorities currently have smoke free primary and secondary school gates.<sup>2</sup> I would therefore recommend extending restrictions on smoking to outdoor areas which are frequented by children and young people, including areas such as bus shelters, the margins of buildings with smoking restrictions in effect and school gates.

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<sup>1</sup> Ash (2014) *Secondhand Smoke: The Impact on Children*. Available online at [http://ash.org.uk/files/documents/ASH\\_596.pdf](http://ash.org.uk/files/documents/ASH_596.pdf). Accessed 09.12.16

<sup>2</sup> Ash (2014) *Secondhand Smoke: The Impact on Children*. Available online at [http://ash.org.uk/files/documents/ASH\\_596.pdf](http://ash.org.uk/files/documents/ASH_596.pdf). Accessed 09.12.16

***Place restrictions on smoking in school grounds, hospital grounds and public playgrounds:***

I am supportive of placing restrictions on smoking in school grounds, hospital grounds and public playgrounds to improve health related rights and outcomes for children, young people and the wider community where voluntary bans are currently ineffectual. Children and young people have the right to be healthy (UNCRC article 6), protected from things which harm them and to be kept safe (UNCRC article 19), to get an education (UNCRC article 28), play (UNCRC article 31) and meet their friends (UNCRC article 15) in a healthy environment. While the home is generally the source of second hand smoke for children and young people, they can be exposed to second hand smoke and the associated negative health impacts in other contexts and public places<sup>3</sup>.

It is worth noting that there is clear evidence of voluntary bans being effective in some areas, for example following an ASH Wales campaign, from March of this year all 22 local authorities in Wales have implemented the voluntary ban to achieve smoke free playgrounds<sup>4</sup>. All of the health boards in Wales and Velindre Cancer Centre also operate voluntary smoking bans throughout all of their premises and grounds, however voluntary bans can be difficult to reinforce. Legislation would give clear direction around restrictions on smoking and could enable consistent enforcement of the smoking ban across Wales in areas where voluntary bans are currently ineffectual.

***Provide for the creation of a national register of retailers of tobacco and nicotine products:***

I agree that a register of tobacco retailers would be likely to improve the ability of trading standards officers to monitor display bans and also assist in the reduction of underage sales of tobacco and nicotine products.

I consider the proposed enforcements and penalty arrangements for the tobacco retailers' register appropriate. The risk of removal from a national register and thus the ability to legally sell tobacco should act as a deterrent to retailers to illegally sell to under 18s or to breach display ban rules and could contribute towards reducing the number of children and young people in Wales who are smoking.

***Provide Welsh Ministers with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales:***

I agree that Welsh Ministers should be equipped with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO). Further thought would need to be given to the practicalities in enforcing infringements due to the low level of prosecutions for noncompliance with underage sales of tobacco.

***Prohibit the handing over of tobacco and/or nicotine products to a person under the age of 18:***

I support the prohibition of handing over tobacco and/or nicotine products to a person under the age of 18. Due to the increase in online and other remote sales and the variation in retailers' existing voluntary policies across Wales, there is a need for legislation to prohibit the handing over of tobacco and/or nicotine related products to ensure a consistent approach and message across Wales to children and young people under the age of 18.

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<sup>3</sup> Holliday JC, Moore GF, Moore LAR. Changes in child exposure to secondhand smoke after implementation of smoke-free legislation in Wales: a repeated cross-sectional study. *Bmc Public Health*. 2009;9: 430. Accessed 09.12.16. Available online at <http://bmcpublikehealth.biomedcentral.com/articles/10.1186/1471-2458-9-430>

<sup>4</sup> Ash (2014) *Secondhand Smoke: The Impact on Children*. Available online at [http://ash.org.uk/files/documents/ASH\\_596.pdf](http://ash.org.uk/files/documents/ASH_596.pdf). Accessed 09.12.16

***Provide for the creation of a mandatory licensing scheme for practitioners and businesses carrying out 'special procedures', namely acupuncture, body piercing, electrolysis and tattooing:***

I welcome the creation of a mandatory licensing scheme for practitioners and businesses carrying out 'special procedures' and the addition of local authorities keeping a Special Procedures Register which will be open to the general public.

It is my view that a national licensing system for practitioners and businesses providing mandatory licensing conditions will ensure the provision of consistent standards in relation to cleanliness, hygiene and also infection control for all practitioners and businesses operating any of the 'special procedures' listed. The scheme may also provide additional opportunities to standardise training and investment in continued professional development for practitioners and businesses operating in this area, to quality assure practice to a required standard.

In addition to the 'special procedures' listed, I would urge Welsh Government to consider the extension of the 'special procedures' listing to include wider body modification procedures including but not limited to scarification and branding, injection of liquids such as botox, and laser treatments.

***Introduce a prohibition on the intimate piercing of persons under the age of 16 years:***

I agree with the introduction of a prohibition on the intimate piercing of persons under the age of 16 years. It is my view that this would ensure a clear and consistent message of the protection of children and young people across Wales and align with Welsh Government's guidance in relation to consent for medical treatment in which 16 and 17 years olds have the ability to consent to medical treatment without the need for their parent's permission<sup>5</sup>. In 2011 my office consulted with 16 and 17 year olds about intimate cosmetic piercings. The majority of the young people agreed that no one under the age of 16 should be allowed to have an intimate cosmetic piercing regardless of whether they had permission or not<sup>6</sup>.

It is important to recognise, however, that in prohibiting the intimate piercing of under 16s, there are still safeguarding considerations to be addressed in relation to the intimate piercing of young people aged 16 and 17 in relation to their health, safety and welfare. If carried out incorrectly or in an unhygienic manner, for example, risks could include permanent risks to health or disfigurement, including blood borne viruses infection, scarring, nerve damage or loss of sensation. Young people aged 16-17 have greater protection in the law than those aged 18 and over in a number of areas, including additional protections relating to sexual offences and protection for those on Care Orders. It is vital to ensure that businesses and practitioners working in this field access training and access to ongoing support around the safeguarding of children to ensure that children's rights to protection and health are maintained within these provisions.

Aneurin Bevan University Health Board's recent report on 'The Technical Report of a Blood-Borne Virus Look-Back Exercise related to a body piercing and tattooing studio in Newport, South Wales' also recognises that the 'piercing/tattooing of intimate areas can be considered a safeguarding issue, if the client is not of age or is vulnerable in other ways'. The report makes recommendations around safeguarding training and other specific issues which I would draw to the attention of Welsh Government, including but not limited to:

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<sup>5</sup> Welsh Government (2008) *Reference guide for consent to examination or treatment*. Available online at: <http://www.wales.nhs.uk/Publications/treatmentgd-e.pdf>. Accessed 12.12.16

<sup>6</sup> Children's Commissioner for Wales (2011) *Consultation Response: Cosmetic piercing of young people*. Available on request.

- All tattooing and body piercing practitioners should have DBS checks completed and undergo safeguarding training.
- Education of young people about risks of tattooing and piercing including blood borne viruses and bacterial infections should be supported nationally.
- All premises performing body piercing/tattooing should keep detailed client lists and consent forms with address and contact numbers.
- Intimate piercing should only be performed over the age of 16 where documented proof of age is demonstrated <sup>7</sup>.

***Require Welsh Ministers to make regulations to require public bodies to carry out health impact assessments in specified circumstances:***

The proposal for regulations requiring public bodies to undertake Health Impact Assessments in specified circumstances would support the realisation of children’s rights in relation to being healthy and having access to good quality healthcare, in relation to organisations concerned with children working together towards what is best for each individual child, and would support the nation in working towards the Well-being of the Future Generations (Wales) Act 2015’s well-being goals around a healthier Wales. The Welsh NHS Confederation have called previously for the introduction of Health Impact Assessments across Wales and a ‘Health in All Policies’ approach across all sectors. Implementing regulations requiring public bodies to carry out Health Impact Assessments in specific circumstances would ensure that the impacts of policy and developments on health, well-being and equity could be identified, positive impacts could be strengthened and negative impacts mitigated or minimised effectively to ensure quality of access to quality healthcare for all people across Wales.

It is crucial to ensure that Health Impact Assessments embed children’s rights, take a participatory approach and value community views, including those of children and young people. Health Impact Assessments should be produced collaboratively and comprehensively in relation to policies and developments which may impact on the health and well-being of children and young people in Wales and should be explicitly linked with population needs assessments under the Social Services and Well-Being (Wales) Act (2014) and the Wellbeing plans referred to under the Wellbeing of Future Generations (Wales) Act (2015).

***Change the arrangements for determining applications for entry onto the pharmaceutical list of health boards (LHBs), to a system based on the pharmaceutical needs of local communities:***

Community based pharmacists can play an important role in improving and promoting the health and well-being of children, young people and their families. Integrating pharmaceutical services into Local Health Board planning and collaborative working is therefore key in promoting and increasing positive health and well-being within the community.

Changing the arrangements to a system based on local needs and working more closely with community based health services provides an opportunity to increase awareness with the general public of health related services available in their areas. Moving to a system based on the pharmaceutical needs of local communities should include a pharmaceutical needs assessment within, or which links explicitly to, the local health and well-being needs assessments undertaken under the Social Services and Well-Being (Wales) Act (2014).

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<sup>7</sup> Aneurin Bevan University Health Board (2016) *The Technical Report of a Blood-Borne Virus Look-Back Exercise related to a body piercing and tattooing studio in Newport, South Wales*. Available online at [www.wales.nhs.uk/sitesplus/866/news/42624](http://www.wales.nhs.uk/sitesplus/866/news/42624). Accessed 09.12.16

***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:***

Availability and accessibility of clean public toilet facilities is an issue which affects all of the population but can particularly affect young children, pregnant women, disabled children and those with chronic health needs. I am pleased to welcome a requirement for 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, which my office called for in responding to the previous consultation on the Public Health (Wales) Bill White paper<sup>8</sup>. These strategies should include specified timescales for achievements in relation to identified areas and outcomes and should be reviewed to ensure that they remain in line with the needs of the population.

In 2004 my office published *Lifting the Lid*<sup>9</sup>, a report highlighting recurring issues around school toilets in Wales. It was striking how strongly children and young people felt about inadequate and dirty toilet provision, not to mention the public health issue of prevention of illness. Although there have been some improvements, the state of the school toilets is something that children have raised with my office time and time again. A young person who is part of my Community Ambassador scheme also recently shared with me their concerns about discrimination of disabled people and wider equalities in relation to access to public toilet facilities, having to request a key from the business provider in order to use the disabled toilet despite this not being required for access to non-disabled toilet facilities. The existing examples of adequate and good public toilet facilities highlight the need to improve equity in relation to accessing public toilet facilities. It is an issue that still needs to be prioritised to achieve sufficient change for children and young people in Wales.

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<sup>8</sup> Children's Commissioner for Wales (2014) *Consultation Response: to the Public Health (Wales) Bill white paper*. Available on request.

<sup>9</sup> *Lifting the Lid on the Nation's School Toilets*, The Children's Commissioner for Wales (2004)  
<http://www.childcomwales.org.uk/uploads/publications/27.pdf>