

Rebecca Evans AC/AM
Gweinidog Iechyd y Cyhoedd a Gwasanaethau Cymdeithasol
Minister for Social Services and Public Health



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA-L/RE/5437/16

Huw Irranca-Davies AM
Chair of the Constitutional and Legislative Affairs Committee
National Assembly for Wales
Ty Hywel,
Cardiff Bay
Cardiff
CF99 1NA

12 January 2017

Dear Huw Irranca-Davies,

Public Health (Wales) Bill

I would like to thank you and the Committee for the opportunity to discuss the Public Health (Wales) Bill on 21 November 2016, and for your follow-up letter of 13 December 2016.

I am pleased to provide the Committee with further information on the following issues, which were raised during the session:

- a) The Welsh Government's view about whether any provisions in the Bill would be outside the National Assembly's legislative competence if the Wales Bill was in place now;
- b) Section 15 of the Bill; and
- c) Section 90(5) of the Bill.

This information is presented below.

The Wales Bill

As I indicated to the Committee during my oral evidence, the Wales Bill is not due to come into force until next year. At present, it is anticipated that the Bill's reserved powers model

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

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.

will come into force in April 2018, but this is of course subject to both the Assembly consenting to the Wales Bill later this month and the UK Government not changing the anticipated coming into force date.

The Public Health (Wales) Bill is being advanced ahead of the move to that model, and I understand that an Assembly Bill that has completed the Stage 1 general principles plenary debate by April 2018 will proceed under the conferred powers model under the Government of Wales Act 2006.

The Wales Bill will not have an impact on our ability to enforce the provisions in the Public Health (Wales) Bill because the Public Health (Wales) Bill contains its own subordinate legislation enabling and enforcement provisions. The new reserved powers model in the Wales Bill will not remove or repeal enabling and enforcement powers contained within the Public Health (Wales) Bill.

Turning to the Committee's question as to whether any provisions in the Public Health (Wales) Bill would be outside the Assembly's legislative competence if the Wales Bill was in place now, I am content that none would be. The purpose of the Public Health (Wales) Bill is to improve and safeguard the health of the people of Wales. Health is currently a devolved matter under the Government of Wales Act 2006, and it remains as such under the Wales Bill.

I am content that if the Wales Bill were to be in place now, the Public Health (Wales) Bill would be within the Assembly's legislative competence.

Section 15 (Enforcement authorities)

I note the recommendation of your predecessor Committee that section 15 of the Bill should be amended to clarify that public authorities will be the enforcement authorities. I also note that, in accepting the principle behind the recommendation, the previous Minister in charge outlined that while our intention is to designate local authorities as enforcement authorities for the smoke-free requirements in public premises and workplaces, the circumstance may arise in certain instances where it will be helpful to designate additional enforcement authorities. In considering any amendments to the Bill, therefore, I need to be satisfied that this course of action would not preclude other appropriate enforcement authorities from being designated, if required.

As I indicated to the Committee during my oral evidence, I instructed officials to undertake further work on this issue during Stage 1, with a view to potentially bringing forward amendments at Stage 2. In view of this recent work I am now content to confirm that it is my intention to bring forward amendments at Stage 2 which will meet the recommendation of your predecessor Committee.

Section 90 (Power to add or remove special procedures)

Section 90(1) allows Welsh Ministers to make regulations to add or remove special procedures from the list of procedures which are captured by the licensing system. If a change is made to the list in future, provisions in Part 3 of the Bill may need to be modified to ensure the Bill works in terms of that new procedure. For example, if a new special procedure were to be added to the list, we would need to define it and that definition would best be placed in the interpretation section. Section 90(5) allows for this type of consequential amendment to be made to Part 3 of the Bill by way of regulations, subject to the affirmative procedure. It therefore provides a very narrow regulation-making power which helps to ensure the legal framework is future-proofed and able to respond to an industry which is continually evolving.

I hope that this information will be helpful to the Committee.

I am copying this response to Dai Lloyd AM, Chair of the Health, Social Care and Sport Committee and Jane Hutt AM, Leader of the House and Chief Whip.

Kind regards,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid.

Rebecca Evans AC / AM

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Minister for Social Services and Public Health