

Health, Social Care and Sport
Committee
**Public Health (Wales) Bill:
Committee Stage 1 Report**

February 2017



National Assembly for Wales
Health, Social Care and Sport Committee

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this report can be found on the National Assembly's website:
www.assembly.wales/SeneddHealth

Copies of this report can also be obtained in accessible formats including Braille, large print; audio or hard copy from:

Health, Social Care and Sport Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: **0300 200 6565**

Email: **SeneddHealth@assembly.wales**

Twitter: **[@SeneddHealth](https://twitter.com/SeneddHealth)**

© National Assembly for Wales Commission Copyright 2017

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

Health, Social Care and Sport
Committee
**Public Health (Wales) Bill:
Committee Stage 1 Report**

February 2017



National Assembly for Wales
Health, Social Care and Sport Committee

Health, Social Care and Sport Committee

The Committee was established on 28 June 2016 to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters, encompassing (but not restricted to): the physical, mental and public health and well-being of the people of Wales, including the social care system.

Current Committee membership:



Dai Lloyd AM (Chair)
Plaid Cymru
South Wales West



Dawn Bowden AM
Welsh Labour
Merthyr Tydfil and Rhymney



Jayne Bryant AM
Welsh Labour
Newport West



Angela Burns AM
Welsh Conservative
Carmarthen West and South
Pembrokeshire



Rhun ap Iorwerth AM
Plaid Cymru
Ynys Môn



Caroline Jones AM
UKIP Wales
South Wales West



Julie Morgan AM
Welsh Labour
Cardiff North



Lynne Neagle AM
Welsh Labour
Torfaen

Contents

Recommendations.....	5
01. Introduction.....	8
02. Background.....	10
03. General principles and the need for legislation	12
04. Part 2: Tobacco and nicotine products – Chapter 1: Smoking.....	19
05. Part 2: Tobacco and nicotine products – Chapter 2: Retailers of tobacco and nicotine products	24
06. Part 2: Tobacco and nicotine products – Chapter 3: Prohibition on sale of tobacco and nicotine products	29
07. Part 2: Tobacco and nicotine products – Chapter 4: Handing over tobacco etc. to persons under 18	31
08. Part 3: Special procedures	33
09. Part 4: Intimate piercing	42
10. Part 5: Health Impact Assessments	46
11. Part 6: Pharmaceutical services.....	51
12. Part 7: Provision of toilets.....	56
13. Part 8: Miscellaneous and General	65

Recommendations

Recommendation 1. We recommend that the Assembly agrees the general principles of the Public Health (Wales) Bill. Page 18

Recommendation 2. We recommend the Minister urgently examines the potential, through this legislation and under existing powers, to introduce measures to tackle obesity and other priority public health issues, including:

- making provision for a statutory basis for nutritional standards in early years and care home settings and hospitals.
- strengthening the requirements of the Well-being of Future Generations (Wales) Act 2015 with regard to public services boards’ local well-being plans, to ensure these include actions to address public health issues, such as obesity, physical inactivity and loneliness and isolation.
- using powers under the Healthy Eating in Schools (Wales) Measure to ban any drinks with added sugar from being provided in school settings.
..... Page 18

Recommendation 3. We recommend that the Minister, as an immediate priority, undertakes the necessary work to enable the smoking restrictions to be extended to early years childcare and education settings; school gates (building on the work currently being undertaken to implement voluntary bans); and the perimeter areas of public playgrounds. Page 23

Recommendation 4. We recommend that the Minister looks into the scope for extending the restrictions to other play/sports facilities, such as playing fields, multi-use games areas, skate parks, etc., as well as to the grounds of other healthcare facilities. Page 23

Recommendation 5. We recommend that the Minister works with Local Health Boards to ensure smoking cessation support and advice is promoted extensively in healthcare settings, including in external smoking areas where these are provided. Page 23

Recommendation 6. We recommend that the Minister clarifies whether wholesale businesses that sell to the public will be subject to the national register of retailers of tobacco and nicotine products, and amends the Bill and accompanying explanatory material accordingly. Page 28

- Recommendation 7.** We recommend that work be undertaken as a matter of priority to add offences relating to the sale of illegal tobacco to the list of offences which can contribute towards the making of a Restricted Premises Order for a retail premises in Wales. Page 30
- Recommendation 8.** We recommend that the Welsh Government explores with the UK Government the need for further action to tackle the illegal tobacco trade, including the introduction of more effective sanctions and greater powers for trading standards officers. Page 30
- Recommendation 9.** We recommend that the list of special procedures named on the face of the Bill is amended to include use of lasers/intense pulsed light (IPL) for aesthetic, non-surgical purposes, such as tattoo removal or hair removal. Page 41
- Recommendation 10.** We recommend that the Minister revisits the definition of “tattooing” to ensure the definition in the Bill covers “tashing” or similar procedures which may not involve the use of colouring materials. Page 41
- Recommendation 11.** We recommend that the Minister undertakes urgent work to understand the scale at which body modification procedures are carried out in Wales and assess the risk this poses to public health, with a view to adding these to the legislation as soon as practically possible. Page 41
- Recommendation 12.** We recommend that the Bill should be amended so that there is no provision for a blanket exemption on the face of the Bill for any healthcare profession. Any healthcare profession, including doctors, dentists and nurses, should only become exempt from the licensing requirement via regulations and following consultation with the relevant professional bodies. Page 41
- Recommendation 13.** We recommend that the offences listed in Section 63(3) of the Bill be amended to include “sexual offences”. Page 41
- Recommendation 14.** We recommend that Section 92 of the Bill be amended to prohibit performing or making arrangements to perform an intimate piercing on a person who is under the age of 18. Page 45

Recommendation 15. We recommend that Health Impact Assessments (HIAs) be re-named as Health and Well-being Impact Assessments (HWIAs), to ensure an up-to-date understanding that is consistent with other legislation is delivered to the public and practitioners. Consequently, we urge the Minister to bring forward the necessary amendments during Stage 2 proceedings. Page 50

Recommendation 16. We recommend the Minister makes it explicit in the statutory guidance the expectation that toilet facilities in larger public buildings are made available for use by the public wherever practical and feasible. Page 63

Recommendation 17. We recommend the Minister, working with appropriate partners, develops a national map, using the information provided by local authority local toilet strategies, which assists the public with locating toilet facilities for public use across Wales. Page 63

Recommendation 18. We recommend the Minister, working with appropriate partners, gives thorough consideration to the development of an App which assists the public with locating toilet facilities for public use across Wales. Page 63

Recommendation 19. We recommend the Minister commissions the development of an easily recognisable logo that may be displayed at publicly accessible toilet facilities across Wales. Page 63

01. Introduction

1. On 7 November 2016, Rebecca Evans AM, Minister for Social Services and Public Health (the Minister) introduced the **Public Health (Wales) Bill** (the Bill) and accompanying **Explanatory Memorandum** and made a **statement on the Bill** in Plenary on 8 November.
2. At its meeting on 11 November 2016, the Assembly's Business Committee agreed to refer the Bill to the Health, Social Care and Sport Committee (the Committee) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report by 10 February 2016.¹

Terms of reference

3. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

To consider—

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 the Welsh Ministers a regulation-making power to extend the restrictions on smoking to additional premises or vehicles;
 - place restrictions on smoking in school grounds, hospital grounds and public playgrounds;
 - provide for the creation of a national register of retailers of tobacco and nicotine products;
 - provide the Welsh Ministers with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales;
 - prohibit the handing over of tobacco and/or nicotine products to a person under the age of 18;
 - provide for the creation of a mandatory licensing scheme for practitioners and businesses carrying out 'special procedures', namely acupuncture, body piercing, electrolysis and tattooing;
 - introduce a prohibition on the intimate piercing of persons under the age of 16 years;
 - require the Welsh Ministers to make regulations to require public bodies to carry out health impact assessments in specified circumstances;
 - 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;
 - 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; and

¹ National Assembly for Wales, Business Committee, **Report on the timetable for consideration of the Public Health (Wales) Bill**, November 2016

- enable a 'food authority' under the Food Hygiene Rating (Wales) Act 2013 to retain fixed penalty receipts resulting from offences under that Act, for the purpose of enforcing the food hygiene rating scheme.
- 2. any potential barriers to the implementation of these provisions and whether the Bill takes account of them;
- 3. whether there are any unintended consequences arising from the Bill;
- 4. the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum);
- 5. the appropriateness of the powers in the Bill for the Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum).

The Committee's approach

4. Between 10 November and 16 December 2016, the Committee conducted a public consultation to inform its work, based on the agreed terms of reference. The Committee received **41 responses**, which were published on the Assembly's website. In addition, the Committee heard oral evidence from a number of witnesses. The **schedule of oral evidence** sessions is published on the Assembly's website.

5. The Committee would like to thank all those who have contributed to its work.

Other Committees' consideration of the Bill

6. The Assembly's **Finance Committee** took evidence from the Minister on the financial implications of the Bill on 19 January 2017. It reported on its conclusions on 10 February 2017.

7. The Assembly's **Constitutional and Legislative Affairs Committee** took evidence from the Minister on the appropriateness of the provisions in the Bill that grant powers to make subordinate legislation on 21 November 2016. It reported on its conclusions on 10 February 2017.

02. Background

Legislative competence

8. The Explanatory Memorandum (EM) that accompanies the Bill states:

“The National Assembly for Wales (‘the Assembly’) has the legislative competence to make the provisions in the Public Health (Wales) Bill (‘the Bill’) pursuant to Part 4 of the Government of Wales Act 2006 (‘GOWA 2006’). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7.

Paragraphs 9, 12 and 15 of Schedule 7 set out the following subjects on which the Assembly may legislate.

Paragraph 9 ‘Health and Health Services’:

Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.

Paragraph 12 ‘Local Government’:

...Powers and duties of local authorities and their members and officers...

Paragraph 15 ‘Social Welfare’:

...Protection and well-being of children (including adoption and fostering) and of young adults...

The above subjects provide the National Assembly with the competence to make the provisions contained in the Bill. Part 2 of the Bill contains provisions which remove pre-commencement functions of a Minister of the Crown. Those provisions will be within the Assembly’s legislative competence if the Secretary of State consents to the provisions under Part 3 of Schedule 7 to GOWA 2006. Discussions with the UK Government are ongoing with a view to obtaining that consent. The Welsh Government anticipates that discussions on consent issues will be concluded during Stage 1.”

9. The Llywydd issued a **statement** on 7 November 2016, which stated that, in her opinion:

- most of the provisions of the Public Health (Wales) Bill, introduced on 7 November 2016, would be within the legislative competence of the National Assembly for Wales, with the exception of those contained in sections 3(6), 4(6), 14(8) and paragraphs 6 and 9 of Schedule 1;
- those provisions would not be within competence because they required the consent of the Secretary of State and such consent had not been obtained at the time of introduction.

10. In relation to Secretary of State consent, the Llywydd explained that her determination was consistent with previous decisions taken in the Fourth Assembly as to whether the Bill would be within competence if it were passed as drafted when introduced. The First Minister subsequently received confirmation that the Secretary of State for Wales had provided the consent required for these sections.

The Bill's purpose and intended effect

11. The EM states:

“The Public Health (Wales) Bill (‘the Bill’) utilises legislation as a mechanism for improving and protecting the health and well-being of the population of Wales. It comprises a set of provisions in discrete areas of public health policy.

While a number of the issues addressed in the Bill are already well established, the Bill also responds to new and emerging health challenges. Taken together the provisions are intended to have a cumulative positive benefit for the population of Wales and seek to put in place conditions which are conducive to good health, in which harms to health can be prevented.”

12. In her oral statement to introduce the Bill, the Minister said:

“We know the public health challenges we face are constantly evolving and becoming increasingly complex. Tackling them requires a comprehensive and multi-faceted response. While legislation has an important and proven role, it cannot bring about all the improvements and protections we want to see on its own. Instead, it forms one intrinsic part of a broader agenda—an agenda which includes our work across the breadth of Government to address the causes of ill health, as well as our tailored public health services, programmes, policies and campaigns. Taken together, they all make a cumulative positive contribution, helping us to prevent avoidable harm and reach our aspirations for a healthy and active Wales, and all closely linked to the principles of prudent healthcare.

While a single piece of legislation cannot be a panacea to resolve all public health challenges, it can make a very positive and practical difference. That is what this Bill seeks to achieve. It takes action in a number of specific areas for the benefit of particular groups within society as well as for communities as a whole.”²

² Record of Proceedings (RoP), Plenary, 8 November 2016

03. General principles and the need for legislation

Background

13. In June 2015, the then Minister for Health and Social Services introduced the Public Health (Wales) Bill, following consultation on a Public Health White Paper. The Bill was remitted for scrutiny by the Health and Social Care Committee of the Fourth Assembly.

14. Stage 4 proceedings (passing of the Bill in Plenary) took place on 16 March 2016. The motion to approve the Bill was not agreed by the Assembly. The Bill was therefore rejected and did not become an Act.

15. In November 2016, the Minister for Social Services and Public Health introduced a new Public Health (Wales) Bill. The Bill contains the original proposals considered by the previous Assembly but without the provisions restricting the use of nicotine inhaling devices in some public places. The Minister has stated that the Bill also benefits from already having received rigorous scrutiny and includes the changes which were made to improve it during the original amending stages.³

The Bill

16. In her statement to accompany the Bill, the Minister summarised the Bill's main provisions:

Tobacco and nicotine products

The Bill re-states existing restrictions on smoking in enclosed and substantially enclosed public and work places, and extends them to cover school grounds, hospital grounds and public playgrounds. It also allows for further settings to be made smoke-free in the future in certain circumstances.

The Bill will also create a national register of retailers of tobacco and nicotine products, which will help enforcement agencies to uphold restrictions on their sale and prevent access by children and young people. It will also create an offence of knowingly handing over tobacco or nicotine products to under 18s to further protect children from harm.

Special procedures

The Bill creates a mandatory licensing system for practitioners who carry out special procedures – namely acupuncture, body piercing, electrolysis and tattooing. This will help to protect people who choose to have these procedures from the harm that can occur if they are poorly carried out.

Intimate piercing

The Bill will prohibit the intimate body piercing of children under the age of 16, including tongue piercings. This important step aims to further protect children and young people from potential harm and being placed in vulnerable situations.

Health impact assessments

Following a change made during the previous scrutiny process, the Bill will require Welsh Ministers to make regulations about the use of health impact assessments by public bodies in certain circumstances. This will help ensure that before key decisions are made, they are

³ Written statement by the Minister for Social Services and Public Health: Public Health (Wales) Bill: 7 November 2016

informed by a full consideration of the potential effects on physical and mental health and wellbeing.

Pharmaceutical services

The Bill makes important changes to the way in which pharmaceutical services are planned, through the use of pharmaceutical needs assessments. These changes will help ensure the system better meets the broader public health needs of communities.

Provision of toilets

The Bill places a duty on local authorities to prepare and publish local toilets strategies for their areas. This aims to improve planning of provision and access to toilets available for use by the public, and will benefit whole communities as well as groups such as older people.⁴

17. In her opening statement to Committee on 1 December, the Minister said:

“The Bill responds to some very significant public health issues, particularly regarding smoking and the potential public health harms of intimate piercings and special procedures if carried out in an unhygienic fashion, for example. But it also takes forward some policies that benefit the whole of communities.”⁵

Evidence from respondents

18. The Public Health (Wales) Bill was broadly welcomed by those who responded to the Committee’s consultation. Public Health Wales felt that the Bill:

“... will help ensure that the health and well-being of the population is considered and underpins the shared responsibility that all public bodies in Wales have for the health of the nation.”⁶

19. Some respondents were disappointed that provisions to restrict the use of nicotine inhaling devices in some public places had been removed, however they agreed that they would prefer to see the Bill passed without these provisions than not passed at all.⁷ The Royal College of General Practitioners (RCGP) told us:

“Overall, I think the Bill is good. Potentially, it could have covered some of the things that were in the previous Public Health Bill that had been taken out, but I understand that perhaps there were pressures to not include some of those elements, such as the e-cigarettes.”⁸

20. A number of respondents described the Bill as a “missed opportunity” to introduce measures to tackle some of the most significant public health issues. BMA Cymru Wales said:

⁴ [Written statement by the Minister for Social Services and Public Health: Public Health \(Wales\) Bill: 7 November 2016](#)

⁵ RoP, 1 December 2016, paragraph 136

⁶ Written evidence, PHB 04

⁷ Written evidence, PHB 08

⁸ RoP, 15 December 2016, paragraph 148

“Whilst we offer general support for the provisions in the Bill as it currently stands, we believe that now the Bill is being looked at afresh this presents a new opportunity to expand its scope.”⁹

21. Priority areas that respondents suggested could be included in the Bill were identified in written and oral evidence and include alcohol misuse; loneliness and isolation; air quality; and obesity.

Alcohol misuse

22. A number of respondents referred to the need to address the misuse of alcohol. Public Health Wales suggested that “Wales has the opportunity to follow Scotland’s lead in taking forward this important agenda, to reduce the substantial harm associated with excess alcohol consumption in Wales”.¹⁰ While the Chartered Institute for Environmental Health (CIEH) said it was disappointed that its proposal for minimum unit price (MUP) for alcohol during the original consultation on the 2015 Bill had not progressed. It said:

“Whilst we accepted that there was an argument for awaiting the outcome of the challenge to the Scottish Government proposed MUP before Welsh Government moved forward, that challenge has now been lost, and we reinforce our view that Welsh Government must take steps, which may include regulation to address the issue is the use and misuse of alcohol in Wales in order to improve the health of individual and the public health of the nation. This is an imperative and must be given urgent priority.”¹¹

23. However, the Minister told us:

“We don’t have the powers devolved to take action. All we can do at the moment is press the case with the UK Government and try and seek those powers, which we are actively doing, but without success.”¹²

Loneliness and isolation

24. Both the Older People’s Commissioner for Wales and Age Cymru identified loneliness and isolation as a serious public health issue. The Commissioner told us that “loneliness can have a serious impact on a person’s physical and mental health and wellbeing, and has an effect on mortality that is similar to smoking 15 cigarettes a day”. She went on to say:

“I have previously called for Loneliness and Isolation to be included in the Public Health (Wales) Bill as I believe it is one of the biggest public health issues facing our nation. I would like to see a duty placed on Public Services Boards, established by the Well-being of Future Generations (Wales) Act 2015, to ensure that they take account of loneliness and isolation in their local well-being plans, in a manner that reflects the potential assets that older people are, and aim to reduce the number of people feeling lonely and isolated in their communities. I also see a role for Public Health Wales, as the national public

⁹ Written evidence, PHB 08

¹⁰ Written evidence, PHB 04

¹¹ Written evidence, PHB 05

¹² RoP, 11 January 2017, paragraph 35

health agency that exists to protect and improve health and well-being, in addressing loneliness and isolation at the national level.”¹³

25. The Minister told us:

“I certainly would agree that there are significant public health implications of loneliness and isolation, certainly given the evidence that seems to be emerging about it being as bad for you as smoking and other evidence of that sort. You’ll be aware that Welsh Government’s committed to tackling loneliness and isolation. It was a manifesto commitment to take a refreshed approach to this. We’ll be partly doing that through our older people’s strategy, but obviously it will have to be cross cutting, and no doubt will be part of our ‘healthy and active’ approach, as well. But whether or not there are things that we could do in this Bill in order to address that would be another question. Certainly, it is something we are committed to dealing with.”¹⁴

26. She added in later evidence:

“I do think that the Well-being of Future Generations (Wales) Act will be an important mechanism for addressing things like obesity, physical inactivity and loneliness and isolation (...). But I’m not sure that putting a specific requirement in the Bill is necessarily the way to do that, because, under the Act, the public services boards have to publish their local well-being strategies, setting out the objectives that they want to see achieved on a local basis, and that will also demonstrate how the public services boards will be working towards meeting the goals of a healthier Wales, and that will include addressing all of the issues that you’ve just discussed there.”¹⁵

Air quality

27. The British Heart Foundation suggested that the Bill “falls short in this important area of public health”.¹⁶ a view supported by the British Lung Foundation. It called for the Bill to include “a general principle of seeking to reduce the impact of air pollution on the people of Wales, with specific legal duties for:

- local health boards and Public Health Wales to alert those most vulnerable to dirty air to forecasted high air pollution levels;
- local authorities to rigorously monitor air quality outside schools, and on active travel routes; and
- local authorities to regularly publish data on air quality monitoring in a standardised and accessible format.”

¹³ Written evidence, PHB 33

¹⁴ RoP, 1 December 2016, paragraph 264

¹⁵ RoP, 11 January 2017, paragraph 10

¹⁶ Written evidence, PHB 22

28. The Minister told us:

“The Welsh Government has recently consulted widely on air pollution. This is something that has been led by the Cabinet Secretary for Environment and Rural Affairs. The consultation closed, I believe, in December and I actually met the Cabinet Secretary this week to discuss how we can work together from a public health perspective in terms of addressing issues of air quality. The Cabinet Secretary said that she’d be happy to consider evidence that we receive as part of this inquiry, in terms of the wider work that she’s doing there, to address air quality. I think it would be (...) inconsistent if we were to take action within the public health Bill on air quality whilst there is an existing consultation, which has only just closed, at the moment.”¹⁷

Obesity

29. The latest Welsh Health Survey showed that 59% of adults in Wales were classified as overweight or obese.¹⁸ BMA Cymru Wales told us:

“Obesity is a very big subject in every way. Some people call it the new smoking as a determinant of health. It’s probably one of the biggest challenges we face and, until recently, it was increasing substantially. We do recognise that many of the levers of obesity – of which there are a multiple, and that’s one of the issues – are outwith the competence of the Assembly. They’re either at Westminster or at Brussels. So, hence, what we’ve focused on is not to talk about, say, advertising or food formulation, but instead things that are within competence of the Assembly, such as nutritional standards in certain settings and placing those on a statutory basis.”¹⁹

30. It stated:

“We believe that it could also be beneficial for the nutritional standards for hospital inpatients to be placed on a statutory basis, as well as for new nutritional standards for pre-school and care home settings to be similarly made statutory. Particularly when considering pre-school and care home settings, where there are many independent providers, we feel that having these standards applied on a statutory basis would greatly enhance the Welsh Government’s ability to see them effectively enforced. Provisions which fail to adhere to the new standards could then be subject to appropriate legal penalty.”

31. It also suggested that the Bill be amended “to include a specific statutory requirement for public bodies in Wales to develop and take forward strategies for tackling obesity. We recognise that a key vehicle that could be used for delivering this already exists through the requirement placed upon Public Service Boards by the Well-being of Future Generation Act to produce Local Well-being Plans.

¹⁷ RoP, 11 January 2017, paragraph 37

¹⁸ Welsh Government publication, [Welsh Health Survey 2015](#)

¹⁹ RoP, 15 December 2016, paragraph 157

These plans are required to contain objectives that have been designed to help further the seven well-being goals defined by the Act, with progress against the plans being subject to annual review.”²⁰

32. The Minister told us:

“With regard to nutritional standards, I know that was something that was included in the Bill the first time around, but then it was removed because, actually, we thought, ‘Well, we can just get on and make some progress with nutritional standards without them necessarily needing to be on the face of the Bill.’ So, when I came to committee last time, I said that we were currently looking at the nutritional standards for early years settings and older people in care homes, and I’m pleased to say we’re making good progress with that. So, we’re finalising those nutritional standards at the moment. Many nurseries, for example, are already covered under this legislation, because they actually sit on the sites of schools, so they’ll be covered under the schools legislation, and we’re already introducing a wide range of nutritional standards and nutritional work in our hospital settings. For example, all local health boards have received directions in relation to mandatory food and fluid nutrition standards for patients, mandatory food and drink standards for vending machines, and also guidance in terms of food and drink for the people who are visiting the hospitals as well. And we’re having ongoing discussions with stakeholders in terms of what we can do to improve nutritional standards in canteen settings and in retail settings in hospitals as well.

So, this work is already going on, and we also have the revised nutritional criteria for the corporate health standard as well, which requires all of our health boards to achieve gold standard in that, and to make the necessary changes that they have to do in order to achieve that through nutritional improvements as well. So, whilst I understand there’s a keenness to explore what more we can possibly add to the Bill, I do think that nutritional standards have been addressed, and are being addressed, outside of the scope of the Bill.”²¹

Our view

33. We broadly welcome the proposals in the Public Health (Wales) Bill, and believe these measures will have a positive impact on public health. We have made a number of recommendations which we believe will strengthen the legislation and will avoid some potential unintended consequences. These are detailed in the following chapters.

34. Our support for the Bill comes with an important caveat however. During our consideration of the general principles of this Bill, and the extent to which its provisions will contribute to improving the health of the people of Wales, we have been constantly reminded that the biggest public health challenge facing our nation is obesity. We share the concerns of stakeholders that the Public Health (Wales) Bill lacks explicit measures to tackle this issue. Obesity is such a serious threat to population health that it must not be shied away from, no matter how difficult or complex a challenge it is. We agree with the Minister that no one piece of legislation can address all the determinants of obesity;

²⁰ Written evidence, PHB 08

²¹ RoP, 11 January 2017, paragraphs 5 and 6

indeed, it is widely recognised that tackling obesity will require a multi-faceted approach. As such, we believe it is incumbent on the Welsh Government to utilise all available levers, including opportunities presented by legislation, to introduce measures aimed at reducing obesity.

35. It has come to our attention during evidence gathering that there are already steps that can be taken by the Welsh Government, but full advantage is not being made of existing powers in this area.

36. We believe there is merit in taking action on some of the priority areas identified by stakeholders. These include:

- making provision for a statutory basis for nutritional standards in early years and care home settings and hospitals;
- strengthening the requirements of the Well-being of Future Generations (Wales) Act 2015 with regard to public services boards’ local well-being plans, to ensure these include actions to address public health issues, such as obesity, physical inactivity and loneliness and isolation;
- using powers under the Healthy Eating in Schools (Wales) Measure to ban any drinks with added sugar from being provided in school settings. We believe this will also contribute to improving oral health among children and young people.

37. With regard to loneliness and isolation, we note and welcome the Minister’s commitment to tackling loneliness and isolation, albeit not as part of this Bill. We will also be conducting our own inquiry into loneliness and isolation looking at, amongst other things the scale and cause of the problem; the impact on older people in terms of mental and physical health; and current policy solutions in Wales. We look forward to presenting our findings to the Minister and working with her to help address this important issue.

38. We note the Welsh Government’s recent consultation on air pollution and ask the Minister to keep us updated on the work she is undertaking with the Cabinet Secretary for Environment and Rural Affairs in terms of addressing issues of air quality from a public health perspective.

Recommendation 1. We recommend that the National Assembly agrees the general principles of the Public Health (Wales) Bill.

Recommendation 2. We recommend the Minister urgently examines the potential, through this legislation and under existing powers, to introduce measures to tackle obesity and other priority public health issues, including:

- making provision for a statutory basis for nutritional standards in early years and care home settings and hospitals.
- strengthening the requirements of the Well-being of Future Generations (Wales) Act 2015 with regard to public services boards’ local well-being plans, to ensure these include actions to address public health issues, such as obesity, physical inactivity and loneliness and isolation.
- using powers under the Healthy Eating in Schools (Wales) Measure to ban any drinks with added sugar from being provided in school settings.

04. Part 2: Tobacco and nicotine products – Chapter 1: Smoking

39. Chapter 1 of the Bill is a re-statement of restrictions on smoking in enclosed and substantially enclosed public and work places, plus restrictions on smoking in school grounds, hospital grounds and public playgrounds. Section 10 includes provision to add additional smoke-free premises via regulations if the Welsh Ministers are satisfied that doing so is “likely to contribute towards the promotion of the health of the people of Wales”.

40. For the purposes of this Chapter, references to “smoking” are to smoking tobacco or anything which contains tobacco, or to smoking any other substance; and smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

41. The EM states that the intended effect of the provisions “is to further reduce children’s exposure to adult smoking behaviours in their everyday lives, and therefore to make them less likely to grow up thinking that smoking is a normal or aspirational adult behaviour”.²²

42. In her evidence to the Committee, the Minister clarified the rationale for choosing school grounds, hospital grounds and public playgrounds:

“[they] were identified as priority areas in our tobacco control action plan for Wales, and these areas have continued to be highlighted by stakeholders as particular areas of concern, mostly because of the health message that you have in hospitals, but also of sending the right message to children and not making children be surrounded by tobacco and smoking in areas that are designed for them.”²³

43. There was widespread support from stakeholders for these provisions. Only one respondent, Japan Tobacco International, did not support extending the smoking ban to outdoor spaces. It suggested that there was limited scientific literature on outside tobacco smoke and, as such, extending the ban to outdoor spaces was “excessive”.²⁴

44. The CIEH suggested that the restrictions on school grounds should be widened to include early years education settings (e.g. nurseries, playgroups).²⁵ This was supported by Public Health Wales, who told us:

“Our focus is particularly on places where children are present. We feel that we need to be much more focused on trying to remove smoking as something that’s seen. So, early years settings are an obvious one because, obviously, they’re a bit like schools. We feel that there’s no place for smoking where very young children are and it can be seen by very young children.”²⁶

²² Explanatory Memorandum, paragraph 67

²³ RoP, 1 December 2016, paragraph 155

²⁴ Written evidence, PHB 24

²⁵ Written evidence, PHB 05

²⁶ RoP, 7 December 2016, paragraph 37

45. One respondent, Fontem Ventures, called for a change in the definition to remove the word “lit” before “tobacco”. In its view, “if the aim of the Bill is to help reduce the health impact of tobacco and the carcinogens it contains, then it is right to ensure all forms of tobacco, not just traditional ‘lit’ tobacco, are covered”.²⁷

46. Public Health Wales also supported the Children’s Commissioner for Wales²⁸ and ASH Wales Cymru²⁹ in their view that the restrictions should be extended to the school gates/perimeter areas of school grounds on the basis that if parents or other adults are permitted to smoke at the school gates in clear view of children, this will have a negative impact on the intended goal of “de-normalisation”.

47. Other areas where witnesses suggested restrictions should be imposed included prison estates and secure hospitals,³⁰ bus shelters³¹ and beaches.³²

48. In relation to public playgrounds, a number of respondents raised concerns around the definition of a play area. The CIEH felt that the definition should be expanded to include open spaces used for recreation such as football and rugby pitches, as did Public Health Wales.³³ The Welsh Local Government Association (WLGGA)³⁴, Directors of Public Protection Wales (DPPW)³⁵ and RCGP³⁶ felt the definition would benefit from clarity.

49. Another area of concern to a number of respondents³⁷ was the area immediately outside buildings with smoking restrictions. Liz Vann, Senior Chartered Environmental Health Officer at Torfaen County Borough Council stated:

“It is disappointing that this is not being extended to have a ‘limit’ to prevent people smoking in doorways, windows and access and egress of the entrance ways to business premises. Complaints are being received relating to the fact that patrons and staff have to walk through a ‘smoking fog’ in some instances, where there is no specific area for smokers, for instance high street public houses and businesses.”

50. Both Public Health Wales³⁸ and Local Health Board Directors of Public Health suggested that consideration be given to extending the restrictions to outdoor eating areas, as had been done in Australia. Dr Gill Richardson of Aneurin Bevan Local Health Board stated:

“A lot of smokers have moved, for instance, say, from the restaurant and public house into the beer garden, but actually there are a lot of children in the beer garden or the outdoor dining space and there isn’t a choice for families, now,

²⁷ Written evidence, PHB 35

²⁸ Written evidence, PHB 36

²⁹ Written evidence, PHB 29

³⁰ Written evidence, PHB 03 and PHB 16

³¹ Written evidence, PHB 36

³² Written evidence, PHB 29

³³ Written evidence, PHB 04

³⁴ RoP, 15 December 2016, paragraph 26

³⁵ Written evidence, PHB 07

³⁶ RoP, 15 December 2016, paragraph 170

³⁷ Written evidence, PHB 03, PHB 04, PHB 36 and RoP, 15 December 2016, paragraph 170

³⁸ RoP, 7 December 2016, paragraph 64

who want to eat outside, but perhaps don't want their children exposed to second-hand smoke.”³⁹

51. Generally, there was support for restrictions on smoking in hospital grounds as it was felt that this would help local health boards in enforcing their smoke-free policies. The Bill does, however, make provision for hospital managers to designate any area within the hospital grounds as an area where smoking is permitted.

52. ASH Wales Cymru disagreed with this provision, stating:

“The message that people (patients, visitors and staff) should not expect their smoking behaviour to be facilitated by the National Health Service therefore needs to be reinforced in an unambiguous way. It should be made clear that you cannot come to NHS premises and expect to smoke, given that smoking is the single largest avoidable cause for many serious illnesses.”⁴⁰

53. Some respondents felt that the restrictions should go further and cover all healthcare facilities (health centres, clinics, etc.). Public Health Wales stated:

“We're not sure of the rationale for just including hospitals in this Bill. We think any premises that are predominantly used for healthcare should be included.”⁴¹

54. A number of respondents emphasised the need for support for smokers. North Wales Community Health Council highlighted the difficulties associated with giving up smoking and how, in times of stress or bad news, people may need a cigarette to help them cope.⁴² The RCGP told us:

“It's important that, when people are admitted to hospital, they're always asked about their smoking status, and that there's an active offer, as it were, of nicotine-replacement products so that they're getting the nicotine fix even if they're not smoking.”⁴³

55. The Local Health Board Directors of Public Health agreed that it was important to give supportive nicotine replacement so that patients were “not going to be having nicotine withdrawal at a time when they're extremely low and dependent”.⁴⁴

56. The Minister acknowledged that there could be “further areas that might be desirable to bring into the scope of the Bill in future” and that she was “open to ideas as to what we could look at in a practical way”.⁴⁵

Offences and enforcement

57. Section 3 introduces provisions that make it a criminal offence to smoke in smoke-free premises or in a smoke-free vehicle. The offence may only be tried in the magistrates' court and is punishable on conviction by a fine not exceeding level 1 on the standard scale (currently £200).

³⁹ RoP, 7 December 2016, paragraph 178

⁴⁰ Written evidence, PHB 29

⁴¹ RoP, 7 December 2016, paragraph 61

⁴² Written evidence, PHB 09

⁴³ RoP, 15 December 2016, paragraph 177

⁴⁴ RoP, 7 December 2016, paragraph 198

⁴⁵ RoP 1 December 2016, paragraph 155

58. Overall, there was support for these provisions, with the Welsh NHS Confederation stating:

“While there is evidence of voluntary bans being effective in some areas, at present, without clear legal backing, voluntary behaviours are difficult to enforce. Legislation would send a clear message around smoking being prohibited in these areas and make consistent enforcement much easier.”⁴⁶

Smoke-free premises and exemptions

59. Section 5 determines “workplaces” as smoke-free premises and provides a definition of “workplace” for the purposes of this Chapter. This restates existing smoking restrictions.

60. Cytûn: Churches Together in Wales raised concern about the definition of “workplace” in relation to its possible impact on clergy and their families. It said:

“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.”⁴⁷

Smoke-free vehicles

61. Section 12 gives power to the Welsh Ministers to make regulations providing for vehicles to be smoke-free.

62. The Welsh Government’s Statement of Policy Intent states that the intention is that all vehicles used for the transportation of the public or for work purposes by more than one person should be smoke-free all of the time. It is not the current policy intention to require private vehicles, including privately rented vehicles, to be smoke-free unless they are carrying persons under the age of 18, or unless the private rental includes a driver, in which case the rental is a workplace and so should be smoke-free.⁴⁸

63. This provision was generally welcomed by respondents. The Children’s Commissioner for Wales drew attention to ASH Wales Cymru’s research report, ‘[Second Hand Smoke: The Impact on Children](#)’ which highlighted 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”.⁴⁹

Our view

64. We support the proposed restrictions on smoking in school grounds, hospital grounds and public playgrounds, and believe this will play an important part in protecting people from the harms of second-hand smoke, as well as providing fewer opportunities for the activity of smoking to be seen. However, we believe that this same protection should be offered to a greater number of children by extending the smoking restrictions to early years childcare and education settings; school gates (building on the work currently being undertaken to implement voluntary bans); and the perimeter areas of public playgrounds. By further reducing the opportunities for children to witness smoking

⁴⁶ Written evidence, PHB 03

⁴⁷ Written evidence, PHB 13

⁴⁸ Welsh Government [Statement of Policy Intent](#), page 10

⁴⁹ Written evidence, PHB 36

behaviour, we believe that restricting smoking in these additional areas will make a stronger contribution to the goal of de-normalisation of smoking.

65. With regard to hospital grounds, we note that there is provision in the Bill for hospital managers to designate any area within the hospital grounds as an area where smoking is permitted. We believe that where such facilities are made available, they provide an opportunity to promote smoking cessation support and advice. These opportunities must therefore be used to the full.

Recommendation 3. We recommend that the Minister, as an immediate priority, undertakes the necessary work to enable the smoking restrictions to be extended to early years childcare and education settings; school gates (building on the work currently being undertaken to implement voluntary bans); and the perimeter areas of public playgrounds.

Recommendation 4. We recommend that the Minister explores extending the restrictions to other play/sports facilities, such as playing fields, multi-use games areas, skate parks, etc., as well as to the grounds of other healthcare facilities.

Recommendation 5. We recommend that the Minister works with Local Health Boards to ensure smoking cessation support and advice is promoted extensively in healthcare settings. This should be particularly emphasised in external smoking areas, where these are provided.

05. Part 2: Tobacco and nicotine products – Chapter 2: Retailers of tobacco and nicotine products

Register of retailers

66. Chapter 2 of the Bill includes provisions for the establishment of a national register of retailers of tobacco and nicotine products.

67. The EM states that the purpose of the provisions in Chapter 2 is to:

“... protect children and young people under the age of 18 from the harms associated with tobacco and nicotine use. This will be achieved by providing local authorities with a definitive list of retailers who sell tobacco and/or nicotine products within their authority area. This will assist trading standards officers within these areas in enforcing existing tobacco legislation, and provide retailers with guidance and information on their responsibilities linked to tobacco and nicotine products legislation.”⁵⁰

68. The Minister told us:

“The creation of the register will give local authorities for the first time a full picture as to which retailers are selling nicotine products. They don’t have that information at the moment. This will help them in their enforcement duties, because they know where these retailers are, but it will also help them in supporting retailers as well, in terms of giving them information and advice to prevent them being in a position where they’re selling to under-18s.”⁵¹

69. All retailers who sell either tobacco products or nicotine products in Wales will have to register with a national Registration Authority (to be specified in regulations) in order to be permitted to sell these products. The Registration Authority will be required to publish a list of the names of all registered persons, and the address of each premises at which tobacco or nicotine products are sold. This list, and other information in the register relating to premises within their areas, must be made available to the relevant local authority.

70. The proposals are welcomed by most, with the exception of the Association of Convenience Stores (ACS) and National Federation of Retail Newsagents (NFRN), who stated that this would focus enforcement action on legitimate, responsible retailers and do little to tackle illegal trade. Pembrokeshire County Council is also opposed, for similar reasons. It stated:

“The Tobacco Retailers Register will penalise those that do not flout the law whilst doing very little for those that do and sell tobacco products on the black market. There is the whole process of keeping it up to date and relevant. How do you remove someone? It will become a distraction and utilise resources better used elsewhere.”⁵²

⁵⁰ Explanatory Memorandum, paragraph 96

⁵¹ RoP, 1 December 2016, paragraph 182

⁵² Written evidence, PHB 28

71. Those respondents who supported the creation of a register believed it would strengthen the tobacco control agenda in Wales and was in line with the Tobacco Action Plan for Wales. The British Heart Foundation suggested it would help “counter illicit trade, tackle underage sales and support tobacco control research.”⁵³

72. The CIEH told us:

“I think it’s extremely important, from an enforcement point of view, that we know who the retailers are, who lawfully are retailing tobacco. Then, you can say, by exception, ‘If you’re not on the register, you’re not a lawful retailer of tobacco’. And we need that really hard line so that we can look at places where tobacco is being sold from garages in residential areas and say, ‘Look, you can’t be doing this, you’re not a lawful retailer of tobacco and therefore you are committing an offence’.

The one concern we have is that we don’t think that the wording of the Act covers sufficiently well online retail sales in Wales from outside Wales.”⁵⁴

73. A number of respondents believed the proposals would be further strengthened by the inclusion of a “fit and proper person test”.⁵⁵ Rhondda Cynon Taf County Borough Council said:

“We feel that success of such a measure will be strengthened by including provisions to control access to the register such as a ‘fit & proper persons’ or ‘suitable person’s’ test. For example, whether a retailer has been convicted for the sale of alcohol, solvents or other age restricted products to minors.”⁵⁶

74. The CIEH agreed:

“... the chartered institute (...) would very much like to see a fit-and-proper-person test. There are individuals who have convictions that mean, to our mind, they shouldn’t be selling tobacco, particularly where they’ve sold tobacco or alcohol or other age-restricted products in breach of that legislation—they shouldn’t be selling cigarettes to children. We’ve seen that the removal of alcohol licenses from certain premises for breaches of legislation has been an extremely effective way of dealing with sales to underage people. I think that a replication of that sort of test would be very useful.”⁵⁷

75. While other respondents⁵⁸ felt that the register should also cover those who manufacture, distribute and sell tobacco products, as this would “ensure that the register covers other parts of the tobacco chain”.⁵⁹

⁵³ Written evidence, PHB 22

⁵⁴ RoP, 19 January 2017, paragraphs 183 and 188

⁵⁵ Written evidence, PHB 05, PHB 07, PHB 28. RoP, 15 December 2016, paragraph 51

⁵⁶ Written evidence, PHB 31

⁵⁷ RoP, 19 January 2017, paragraph 188

⁵⁸ Written evidence, PHB 07, PHB 28

⁵⁹ Written evidence, PHB 04

76. This view was supported by the CIEH, who stated:

“We would particularly support wholesalers being included, places like cash-and-carries, where they do sell to retailers for onward retail sale, but there is also a provision for people who have a card, if you like, to buy for their own personal use. We’re very anxious that they shouldn’t fall through the gap.”⁶⁰

77. Local authority representatives suggested that an offence should be created where tobacco could only be distributed or sold to people who were actually on the register, as did the DPPW, who also suggested there was a case for including powers to refuse registration.⁶¹

78. The RCGP particularly welcomed the inclusion of nicotine products because, “despite the limited evidence of these causing harm, the increasing use of these devices, particularly by children and young people is concerning as the future consequences to their health is yet to be determined”.⁶² Although a number of respondents⁶³ suggested there should be separate registers for tobacco and for nicotine products, “given these are very different products that require different messages to be relayed to the retailer”.⁶⁴

79. Community Pharmacy Wales (CPW) and the Company Chemists Association (CCA) highlighted the important role of nicotine replacement therapy (NRT) in smoking cessation, and suggested that pharmacies which supply medically-licensed nicotine products should be exempt from the requirements of the legislation.⁶⁵ While the Royal Pharmaceutical Society (RPS) called for all pharmacies supplying NRT to be automatically included in register.⁶⁶

80. In her evidence on 11 January 2017, the Minister confirmed that “retailers and pharmacists who sell nicotine-replacement therapies that have been given a licence for medical use won’t be required to be part of the register. However, many of them sell things that have been licensed for medical purposes alongside other nicotine products. So, those who sell both would have to be registered on the basis that they are selling ones that haven’t been registered for medical use”.⁶⁷

81. Section 47(2) states that regulations to be made under the affirmative procedure would specify the description of “nicotine product”. The Welsh Government’s Statement of Policy Intent states that the Welsh Ministers intend to use the regulation-making power in this section to define “nicotine products” as any nicotine product that is subject to an age restriction on sale. It states that nicotine products which do not have an age of sale restriction, or which are licensed as medicines, will not be included within the definition of “nicotine product”.⁶⁸

82. Section 28 provides that the Welsh Ministers may, through regulations, make provisions for a fee to be paid when submitting an application to the Registration Authority. The Welsh Government’s Statement of Policy Intent says that “the precise detail of the fee structure is yet to be determined, but the current intention is for there to be a £30 fee to cover the application and registration of one

⁶⁰ RoP, 19 January 2017, paragraph 190

⁶¹ Written evidence, PHB 07

⁶² Written evidence, PHB 06

⁶³ Written evidence, PHB 35, PHB 39

⁶⁴ Written evidence, PHB 29

⁶⁵ Written evidence, PHB 12, PHB 23

⁶⁶ Written evidence, PHB 34

⁶⁷ RoP, 11 January 2017, paragraph 60

⁶⁸ Welsh Government [Statement of Policy Intent](#), page 26

premises, with a further £10 for each additional initial premises”.⁶⁹ The Minister confirmed that there would be consultation on the regulations, as set out on the face of the Bill, including the level of the fee, before the regulations are laid.⁷⁰

83. The ACS, NFRN and Japan Tobacco International all opposed the introduction of a registration fee and highlighted the example of the Scottish Tobacco Retailer’s Register, which “has a high compliance rate, despite being free-of-charge for the trade”.⁷¹ Local authority representatives and DPPW, however, emphasised the need for fee-setting to allow for cost-recovery.

Offences and enforcement

84. Local authorities will be responsible for enforcing these provisions. The Bill provides local authority officers with powers of entry to premises in Wales where there are reasonable grounds to believe that an offence has been, or may be being, committed. The powers of entry would not extend to premises used wholly or mainly as a dwelling without a warrant from a justice of the peace. The Bill includes provision for powers of inspection for authorised local authority officers, and for offences, subject to a fine not exceeding level 3 on the standard scale (currently set at £1,000), for those who obstruct such officers.

85. Section 46 provides that authorised officers may issue fixed penalty notices in relation to certain offences, other than those relating to operating a tobacco or nicotine business without being registered, or to obstructing an authorised officer. For the purposes of this chapter, an “authorised officer” is any person (whether or not an officer of the local authority) authorised by a local authority.⁷²

86. ASH Wales Cymru stated that for a tobacco retailers’ register to be effective it needed to provide a deterrent among retailers for breaches of tobacco legislation, so had to be accompanied by sufficient sanctions. It suggested that the retail register in Scotland had been less successful in terms of enforcement because “there have been very few prosecutions and the register doesn’t improve the ability of enforcement officers to tackle illicit tobacco outside legitimate retailers”.⁷³

87. Both the ACS and NFRN called for more effective sanctions to be made available to trading standards officers, including the revocation of alcohol licences for those selling illicit tobacco. The NFRN felt that not enough was being done to penalise those caught selling illicit tobacco, while the ACS suggested that illicit tobacco retailers would not sign up to the register and risk enforcement action because the punishment for non-compliance was as great as the benefits to them of evading duty.⁷⁴

Our view

88. We are generally content with the provisions contained in this Chapter. We note the concerns of tobacco retailers that, in their view, only legitimate, responsible retailers will be affected, as those operating illegally are unlikely to comply. However, we believe there is sufficient evidence to suggest that the introduction of a register will strengthen the tobacco control agenda in Wales.

89. We do, however, believe that the Minister should look at the implementation and effectiveness of the Scottish Tobacco Retailer’s Register to see what lessons can be learned.

⁶⁹ Welsh Government [Statement of Policy Intent](#), page 21

⁷⁰ RoP, 1 December 2016, paragraph 185

⁷¹ Written evidence, PHB 30, PHB 32, PHB 24

⁷² Public Health (Wales) Bill, as introduced, Section 36

⁷³ Written evidence, PHB 29

⁷⁴ Written evidence, PHB 30, PHB 32

90. We believe that the provisions in this Chapter should apply to wholesale businesses that also sell to the public, as well as retailers. We would ask that the Minister clarifies her intentions in this regard.

Recommendation 6. We recommend that the Minister clarifies whether wholesale businesses that sell to the public will be subject to the national register of retailers of tobacco and nicotine products, and amends the Bill and accompanying explanatory material accordingly.

06. Part 2: Tobacco and nicotine products – Chapter 3: Prohibition on sale of tobacco and nicotine products

91. Section 48 amends Section 12D of the Children and Young Persons Act 1933 to allow the Welsh Ministers to make regulations to amend the definition of tobacco or nicotine offences. This will enable the Welsh Ministers to include additional tobacco or nicotine offences for which a local authority can apply for a Restricted Premises Order (RPO) for a retail premises in Wales.

92. The Welsh Ministers will only be able to add new offences if they are satisfied that the offence is one that relates to the supply, sale, transport, display, offer for sale, advertising or possession of tobacco or nicotine, and is punishable by a level 4 fine on the standard scale (currently £2,500) or greater.

93. The EM states:

“It is anticipated that combining a strengthened RPO regime with a national register will add benefit by enhancing existing levers available to local authorities for enforcement of tobacco and nicotine offences. These provisions will also support the policy aim of reducing access to tobacco and nicotine products by under 18s.”⁷⁵

94. Some respondents were concerned that a retailer would need to commit three relevant tobacco or nicotine offences within a three year period before an RPO would be issued. Public Health Wales⁷⁶ and the Welsh NHS Confederation told us that, as prosecutions for non-compliance with under-age sales were infrequent, it was highly unlikely that any premises would be found to have infringed the regulations on three occasions in a three year period. Therefore, in practice, prosecution was unlikely. The Welsh NHS Confederation suggested:

“... that consideration be given to a 12 month order following a single infringement or at least the powers to make an application to a magistrate to grant an RSO or RPO. We would suggest that repeated infringement should carry a longer term restriction.”⁷⁷

95. ASH Wales Cymru felt that severe sanctions were needed for failing to comply with the law. It proposed the introduction of a “one strike policy”, where one infraction against the law would result in expulsion from the retailers’ register.⁷⁸ Pembrokeshire County Council welcomed the proposals but also felt they were “insufficient in scope themselves”.⁷⁹

96. DPPW, while welcoming the proposed link to RSOs and RPOs under the Children & Young Persons Act 1933, stated that it was “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”,⁸⁰ as did Rhondda Cynon Taf County Borough Council.⁸¹ ACS also

⁷⁵ Explanatory Memorandum, paragraph 97

⁷⁶ Written evidence, PHB 04

⁷⁷ Written evidence, PHB 03

⁷⁸ Written evidence PHB 29

⁷⁹ Written evidence, PHB 28

⁸⁰ Written evidence, PHB 07

recommended that the scope of the use of RPOs and RSOs be extended to include illicit tobacco offences.⁸²

Our view

97. While we welcome the provisions contained in this Chapter, we share witnesses concerns regarding the supply of illegal (counterfeit and non-duty paid) tobacco, and believe that all opportunities for action to tackle this issue should be used. We note that the Statement of Policy Intent accompanying the Bill states that “potential offences which could be considered for inclusion, subject to consultation, could include those relating to the sale of illegal tobacco”.

Recommendation 7. We recommend that work be undertaken as a matter of priority to add offences relating to the sale of illegal tobacco to the list of offences which can contribute towards the making of a Restricted Premises Order for retail premises in Wales.

Recommendation 8. We recommend that the Welsh Government explores with the UK Government the need for further action to tackle the illegal tobacco trade, including the introduction of more effective sanctions and greater powers for trading standards officers.

⁸¹ Written evidence, PHB 31

⁸² Written evidence, PHB 30

07. Part 2: Tobacco and nicotine products – Chapter 4: Handing over tobacco etc. to persons under 18

98. Section 49 of the Bill makes it an offence to knowingly hand over tobacco, cigarette papers or nicotine products during the course of delivery of goods to a person who is under the age of 18, unless they are accompanied by someone who is aged 18 or older.

99. The EM states:

“In recognition of the potential for persons under the age of 18 to access tobacco and nicotine products via remote sales, and the voluntary nature of the policies currently in place, the Bill creates a new offence of knowingly handing over these products to a person under the legal age of sale in Wales. The primary purpose of the offence is to reduce the risk of young people under the age of 18 from accessing tobacco products and/or nicotine products which form part of the delivery.”⁸³

100. The Minister confirmed that an offence is only committed if the tobacco is knowingly handed over by the delivery driver to a person who is under 18. She told us:

“Supermarkets should already be really familiar with these kind of offences anyway and with age verification processes, because they should have similar processes in place already to deal with sales of alcohol.”⁸⁴

101. The Minister also said that she intended issuing guidance to supermarkets and other retailers, which highlighted the importance of alerting their drivers if any of their deliveries contained tobacco or nicotine products.

102. Overall, there was support for this proposal. Respondents who commented on this section felt that, with the growth of on line shopping, any mechanism to reduce the access children and teenagers under 18 have to tobacco and nicotine products was to be welcomed.⁸⁵

103. CPW ⁸⁶ and CCA noted that medically-licensed nicotine replacement therapy is available to under 18s, and questioned whether this part of the Bill might impact on the ability of young people to access smoking cessation products.

104. In her evidence on 11 January 2017, the Minister stated:

“Our approach is the same as in the regulations that come under the Children and Families Act 2014 regarding the sale and proxy purchase of nicotine-inhaling products. These regulations provide an exemption for medicines to be handed over to under-18s. So, there should be no issue in terms of under-18s receiving those medicines.”⁸⁷

⁸³ Explanatory Memorandum, paragraph 109

⁸⁴ RoP, 1 December 2016, paragraph 194

⁸⁵ Written evidence, PHB 03, PHB 04, PHB 05, PHB 06

⁸⁶ Written evidence, PHB 12, PHB 23

⁸⁷ RoP, 11 January 2017, paragraph 64

Our view

105. We are content with the provisions contained in this Chapter. We note that responsibility will lie with the person handing over the tobacco/nicotine product. We therefore welcome the Minister's commitment to issue guidance to supermarkets and other retailers, highlighting the importance of alerting their drivers to any such products contained in their deliveries.

08. Part 3: Special procedures

Meaning of special procedure and interpretation of the Part

106. Part 3 of the Bill provides for the creation of a compulsory, national licensing system for practitioners and businesses carrying out specified special procedures. For the purposes of the Bill, special procedures are defined as acupuncture, body piercing, electrolysis and tattooing.

107. The Minister's official confirmed that under the Bill there was no automatic right to a licence, even for those already licensed or registered with a local authority under the Local Government Act 1972.⁸⁸

108. Section 90 of the Bill gives power to the Welsh Ministers to add to the list of special procedures, or to remove procedures, via regulations. This will be done following consultation, and will be subject to the affirmative procedure.

109. The Welsh Government's stated aim for this part of the Bill is:

“to ensure that individual practitioners practice to appropriate standards (for example relating to hygiene, record keeping and age verification), as well as ensure that special procedures are only carried out in suitable environments. The overall purpose is to ensure that where these special procedures are provided in Wales, they are carried out in a manner which is not potentially harmful to health.”⁸⁹

110. The Minister confirmed that the four processes being introduced in the Bill at this time had been chosen because they posed harm to human health if not performed in a hygienic manner, and also because they were currently regulated by local authorities:

“These are things that local authorities are familiar with, so they'll be able to hit the ground running in terms of this new rule.”⁹⁰

111. Respondents who commented on this Part welcomed the introduction of a compulsory national licensing scheme, as well as the ability for the Welsh Ministers to amend the list of procedures. However, many respondents felt there were other procedures that should be included on the face of the Bill.⁹¹ These included:

- body modification, including scarification, branding and sub-dermal implants;
- injection of liquid into the body, such as Botox, dermal fillers;
- dental jewellery;
- chemical peels/cosmetic skin peeling;
- laser treatment, such as used for tattoo removal or hair removal;
- tongue bifurcation (tongue splitting).

⁸⁸ RoP, 11 January 2017, paragraph 85

⁸⁹ Explanatory Memorandum, paragraph 125

⁹⁰ RoP, 1 December 2016, paragraph 202

⁹¹ Written evidence PHB 03, PHB 05, PHB 05, PHB 08, PHB 10, PHB15, PHB 25, PHB 37

112. For the purposes of this Part, tattooing is defined as “the insertion into punctures made in an individual’s skin, or mucous membrane, of any colouring or material designed to leave a semi-permanent or permanent mark (including micro pigmentation)”.⁹² The CIEH raised concerns regarding this definition, as it may not cover the process of “tashing”, in which the ashes of a person or animal are used in the tattoo process, effectively becoming incorporated into the tattoo. It stated:

“We know that ‘tashing’ is carried out widely in Wales and whilst we have reservations about the practice from a public health standpoint (ashes may not be sterile, may be contaminated with heavy metals, etc) it is our view that it should either be specifically included and controlled within the legislation or specifically precluded by it.”⁹³

113. It also highlighted that some materials used in tattooing are not colouring materials as defined, in that they do not colour skin, but rather fluoresce when exposed to UV lights. In its view:

“The public health risk from such materials is the same as that posed by ink, we consider that the definition should include materials that are not colouring materials *per se*, but which cause a change in the texture of the skin or in the way in which it reacts to light, extremes of temperature, etc.”⁹⁴

114. The RCGP suggested that a simpler way forward may be to apply the definition “any procedure which involves piercing the skin or mucous membrane” rather than naming specific procedures, as these were the ones that, from a medical perspective, posed the biggest, long-term health risks, such as hepatitis and HIV.

115. In response, the Minister stated that the Bill includes provision to add any procedure that is “capable of being performed for aesthetic or therapeutic purposes, and the performance for those purposes is capable of causing harm to human health”.⁹⁵

116. She went on to say:

“I think the Bill is better futureproofed in terms of allowing us to add further procedures to it in future by not being restricted just to things that pierce the skin. For example, artificial UV tanning, chemical peels, colonic irrigation – all of these things might come under the therapeutic or aesthetic definition and also are capable of causing harm to the individual, but they don’t pierce the skin. So, I think that the Bill as drafted, will give us greater scope to respond to changing fashions, changing trends and, as you suggest, procedures perhaps we can’t even imagine now that might become popular in just a few years’ time as well.”⁹⁶

Performance of a special procedure and licensing

117. It is intended that, in order to perform any of the special procedures defined within the Bill, an individual must be licensed and the premises or vehicle from which they operate approved. Individual

⁹² Public Health (Wales) Bill, as introduced, Section 91(1)

⁹³ Written evidence, PHB 05

⁹⁴ *ibid*

⁹⁵ RoP, 11 January 2017, paragraph 84

⁹⁶ RoP, 11 January 2017, paragraph 84

licenses and approvals will be valid for a period of three years. Temporary licenses and approvals will also be available for exhibitions and events.⁹⁷

118. Following the establishment of the licensing system, it will be an offence for a practitioner to conduct any special procedure without a licence or to perform them from premises or vehicles that are not approved.⁹⁸

119. The Welsh Ministers must, by way of regulations, set licensing criteria and mandatory licensing conditions, so that standards of practice and enforcement of special procedures are consistent throughout Wales. The licensing criteria will specify, amongst other things, an individual's eligibility for a licence based upon their ability to demonstrate knowledge of infection control, first aid and their legal obligations – for example not to tattoo an individual who is under the age of 18 years. The licensing criteria may also cover such things as standards of competence to perform a special procedure. This may include the applicable training undertaken by the applicant or their knowledge of the special procedure.

120. In relation to a practitioner's competence, the Minister told us:

“We've looked at the evidence from the Newport case, and that clearly shows that just being registered doesn't show you are competent to carry out the procedure. So we want local authorities to test the competence of all those individuals currently registered.”⁹⁹

121. The mandatory licensing conditions will set out the requirements a licence holder must meet in order to retain their licence. These will include conditions relating to verification of age, infection control practices, standards of hygiene, first aid, pre and post-procedure consultations and record keeping. The conditions will also prohibit a licence holder from performing a special procedure on an individual who is, or appears to be, intoxicated from drink, drugs, or any other means.¹⁰⁰

122. Section 63 of the Bill provides discretion to a local authority to grant or refuse an application for a special procedure licence if the applicant has been convicted of a relevant offence and that offence is not spent for the purposes of the Rehabilitation of Offenders Act 1974. Section 63(5) enables the Welsh Ministers to make regulations to amend the list of relevant offences in Section 63(3) by adding, varying or removing a description of an offence.

123. A number of respondents raised concerns regarding the offences listed in Section 63(3). Of particular concern was that a person convicted of a sexual offence “would not be precluded from having a practitioner's licence and would be free to carry out intimate piercings”.¹⁰¹ Both the DPPW and Wales Heads of Environmental Health Group were of the view that:

“(...) a ‘fit and proper person criteria’ is a necessary safeguard. We feel that the list of ‘relevant offences’ is too narrow and we are surprised that the list does not include, for example, sexual offences or assault.”¹⁰²

⁹⁷ Explanatory Memorandum, paragraph 124

⁹⁸ Explanatory Memorandum, paragraph 128

⁹⁹ RoP, 11 January 2017, paragraph 86

¹⁰⁰ Explanatory Memorandum, paragraph 129

¹⁰¹ Written evidence, PHB 05

¹⁰² Written evidence, PHB 07 and PHB 20

124. The Welsh NHS Confederation suggested that the Bill should require those registering to undertake special procedures to undergo checks to ensure they have no criminal background that would make them unsuitable (for example Child Protection and CRB checks).¹⁰³

125. This suggestion was supported by the Association of Directors of Public Health.¹⁰⁴

126. We raised this concern with the Minister on 11 January 2017. In response, the Minister’s legal adviser told us:

“We’re satisfied that section 63 offers adequate protection to those undergoing special procedures, but we are aware that it’s an area of concern for the committee. It’s important to remember that this is a public health Bill, and the purpose of Part 3 is to minimise the chance of injury or illness caused by the performance of a special procedure in an unhygienic manner.”¹⁰⁵

“It’s not a safeguarding Bill as such. So, the offences that are currently listed on the face of the Bill are those that we are satisfied are proportionate and can lawfully and legitimately be taken into account when a licensing committee will be determining whether or not to grant a special procedure licence.”¹⁰⁶

“Any potential changes would need to be considered carefully in terms of human rights, EU law and policy implications because, as I say, we do have to be very careful that we are balancing the rights of individuals to practice a profession with the need to ensure that the procedures are performed in a safe and hygienic manner. If we go too far in taking into account offences that don’t provide for procedures to be carried out in a safe manner, we could tip the balance too far and we could be subject to legal challenge.”¹⁰⁷

127. However, the CIEH told us:

“Intimate piercings by their nature are very invasive and we know that children under 16—16-year-olds, certainly, but Operation Seren tells us that children under 16 were having intimate piercings. If you go to a doctor for an intimate examination, you’re entitled to have a chaperone there, and the doctor, or whoever is involved, will have had a criminal record check at some point. We have practitioners who have had no checks at all around sexual offences that they may have carried out, or assaults that they may have carried out. But people are putting themselves, and children are putting themselves, in an extremely vulnerable position. Whilst I accept that the offences that are in the regulations are important, they are about breaches of technical legislation, if you like—the need to register and so on. We need to make sure that the people who are carrying out these procedures are actually fit to be carrying them out, and don’t pose a risk to individuals in doing so. So, we think that we should be having a data-barring check to ensure that people who are doing intimate

¹⁰³ Written evidence, PHB 03

¹⁰⁴ Written evidence, PHB 37

¹⁰⁵ RoP, 11 January 2017, paragraph 92

¹⁰⁶ RoP, 11 January 2017, paragraph 96

¹⁰⁷ RoP, 11 January 2017, paragraph 98

piercing have been checked to make sure they have no relevant convictions of the type that I've alluded to.”¹⁰⁸

128. It went on to say:

“Safeguarding is very much part of public health protection. We don't just say that intimate piercing is about the infections you might get from it. We talk about the decision to have an intimate piercing made by someone who is competent to make that decision, and who can ask themselves the right sort of questions and can be relied upon to deliver the right sort of aftercare when they've had that sort of piercing, and that it should be done properly, by someone who is capable of doing it properly. To my mind, if you are talking about someone who has a conviction of the sort that we've talked about—assault or a sexual offence—that sort of person may not be doing it for decorative, aesthetic reasons. They may be doing it for all sorts of other less, what can I say, desirable reasons? You know, for reasons that are nothing to do with what we're here for. Therefore, I think that it is very much a public health issue that those sorts of individuals with those sorts of convictions should not be involved in this sort of procedure.”¹⁰⁹

129. While Dr Olwen Williams of the Royal College of Physicians (RCP) stated:

“I was concerned about that because there have to be some safeguards, even more so with what we've been hearing with people in a position of power and authority in all sorts of areas. I think they need to be realistic. We're very aware that, in Wales, we do have issues around coercion and exploitation and where this leads to. I think, possibly, we could be short-sighted in not taking safeguarding on board here.”¹¹⁰

Offences and enforcement

130. Section 79 sets out the offences which apply in relation to this Part. Amongst others, offences will be committed if a person fails to comply with the licensing or approval conditions, or fails to comply with enforcement action ordered by a local authority such as a stop notice or a remedial action notice, without reasonable cause. There is also an offence for making a false or misleading statement (including if the person knows or is reckless as to whether it is false or misleading) when applying for a licence or approval of a premises or vehicle.

131. Upon conviction, a person found guilty of an offence under this section is liable for an unlimited fine.¹¹¹

132. The Bill provides that local authorities are to be responsible for enforcing the licensing requirements, and for keeping a register of special procedures licences issued by them that have not

¹⁰⁸ RoP, 19 January 2017, paragraph 218

¹⁰⁹ RoP, 19 January 2017, paragraph 222

¹¹⁰ RoP, 11 January 2017, paragraph 285

¹¹¹ Explanatory Memorandum, Annex 1, paragraphs 158-159

ceased to have effect and premises/vehicles that they have approved. A local authority must make the information on the register open to the public.¹¹²

133. Section 73 provides a local authority with the ability to charge a fee to the holder of a special procedures licence or a premises or vehicle approval. The fee may be applied either periodically or otherwise for as long as the licence/approval has effect. Regulations may make provision about the way in which a local authority is to determine the amount of the fee charged, having regard to the costs incurred or expected to be incurred by the authority.¹¹³

134. The Minister told us:

“In terms of enforcing (...) the (...) provisions in the Bill (...), we’re really keen to make sure that we’re only asking local authorities to do what they’re able to do within the resources that they have. Parts of the Bill will allow local authorities to have an income stream, in terms of licensing and so on, where they’re able to charge for the application in order to cover those costs and also to charge people who are licensed as well, and that will give a further income stream to help them enforce as well. So we’re really keen not to create a Bill that is overly burdensome on local authorities and would be a barrier to effective enforcement of it.”¹¹⁴

135. Overall, there was support for the proposed licensing system because it will “enable local authorities to carry out their public protection duties more effectively”.¹¹⁵ A number of respondents supported the provision for local authorities to recoup their costs, with DPPW and the Wales Heads of Environmental Health Group saying “the establishment of a fee system enabling local authorities to recover their costs will ensure that finance is available to deliver and is absolutely necessary in the current financial climate”.¹¹⁶

136. The CIEH told us:

“We’ve done a lot of work with the chief environmental health adviser looking at the structure of the Bill. From what we can see, the licensing conditions that are in this are entirely consistent with the Hemming judgement, which means that local authorities will be able to get enough resource through the process of licensing to allow them to do enforcement, which also means I think that this Bill will not be subject to challenge around the issue of resources and that’s extremely important. So, we are content that as it stands this Bill will generate enough income for local authorities to deliver the functions that are in it.”¹¹⁷

137. While WLGA representatives said:

“In terms of the general nature of the way that the Bill has been framed, the licensing elements all come with a cost-recovery fee-setting basis, which should, if properly worked through, enable local authorities to recover the costs

¹¹² Explanatory Memorandum, paragraph 131

¹¹³ Explanatory Memorandum, Annex 1, paragraph 141

¹¹⁴ RoP, 1 December 2016, paragraph 158

¹¹⁵ Written evidence, PHB 04

¹¹⁶ Written evidence, PHB 07, PHB 20

¹¹⁷ RoP, 19 January 2017, paragraph 170

of that licensing process and also of any enforcement of the new proposed systems as well. So, I think as long as the framing of the legislation is designed to fully cover the costs of that administrative and enforcement work within the function of that local government structure, we'd be quite happy with that."¹¹⁸

Exemption from requirement to be licensed

138. Section 57 sets out the circumstances in which an individual is exempt from the requirement to obtain a special procedure licence in order to perform the special procedure. Section 57(2) provides that an individual who is a member of a profession mentioned in paragraphs (a) to (ga) of section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 is exempt, unless regulations specify that a licence is required in relation to a specific special procedure. These professions include doctors, dentists and nurses. A power is also available for the Welsh Ministers to exempt members of other specified professions via regulations, subject to the affirmative procedure.¹¹⁹

139. Some witnesses who responded to this section questioned whether all of the professions included within the scope of this definition would have the necessary competence by virtue of their professional registration to undertake these procedures.¹²⁰

140. Public Health Wales highlighted the need "to apply consistent standards to everyone, proportionate and appropriate, and not necessarily set by particular bodies".¹²¹

141. The RCP told us:

"I would never pierce or tattoo anyone. I wouldn't do that to their genitals even though I've been a practitioner in that field for nearly 30 years now. So, the fact that my title is 'doctor' doesn't mean that I'm competent."¹²²

142. The Chartered Society of Physiotherapy (CSP) also questioned why those professions regulated by the Health Care Professions Council (HCPC) should require a separate regulation under the Bill and could not be treated in exactly the same way as other professions that are regulated by, for example, the General Medical Council (GMC).¹²³

143. The Minister told us that:

"The Bill provides Ministers with regulation-making powers to enable individuals who are exempt on the face of the Bill to be brought back within the licensing regime as well. And it is intended that we will have some detailed consultation with the regulating bodies to determine whether each of the listed special procedures is within the scope of the professional competence of their members as well."¹²⁴

¹¹⁸ RoP, 15 December 2016, paragraph 17

¹¹⁹ Explanatory Memorandum, Annex 1, paragraphs 97-98

¹²⁰ Written evidence, PHB 04

¹²¹ RoP, 7 December 2016, paragraph 89

¹²² RoP, 11 January 2017, paragraph 263

¹²³ Written evidence, PHB 40

¹²⁴ RoP, 11 January 2017, paragraph 90

Approved premises and vehicles

144. Section 67 enables a local authority to issue an approval certification, thereby approving a premises or vehicle so that a special procedure (or special procedures) may be performed at the premises or vehicle. The approval of a premises or vehicle will last for either a maximum of seven days (if it relates to procedures carried out on a temporary basis (i.e. in the course of an entertainment, exhibition or other event)), or three years. The period for which the approval is valid must be specified on the approval certificate. The premises must be in the local authority's area and the vehicle must be considered to be driven, used or kept in the area of the local authority, in order for the local authority to approve it.¹²⁵

145. Generally, there was support for this section, although some respondents did suggest there was a need for an ongoing inspection regime.¹²⁶

Our view

146. We are content with the rationale for the inclusion of the four special procedures included on the face of the Bill, namely acupuncture; body piercing; electrolysis and tattooing. However, in light of the evidence we have received regarding the increasing demand for laser tattoo removal, we would wish to see the use of lasers/intense pulsed light (IPL) for aesthetic, non-surgical purposes, such as tattoo removal or hair removal, added to the procedures named on the face of the Bill. We would also ask the Minister to look at the definition of "tattooing" to ensure it covers "tashing" or similar procedures which may not involve the use of colouring materials.

147. We are concerned by the evidence we have received in relation to some of the more extreme body modification techniques (for example tongue splitting) not included on the face of the Bill. We note that the Minister has set up a working group to consider other potential additions to the list of procedures. We believe that the Minister should undertake urgent work to understand the scale at which body modification procedures are carried out in Wales and the risk this poses to public health, with a view to adding these to the legislation as soon as practically possible. We believe that the need to protect public health by ensuring practitioners are carrying out procedures competently and safely outweighs any concerns there might be that, by including these types of procedures in a licensing regime, they are likely to become more popular.

148. In light of the evidence we have received from medical practitioners regarding competence to undertake certain special procedures, we believe that no-one should be automatically exempt from the requirement to be licensed. We are not satisfied that there is sufficient evidence that all professionals who meet the current exemption criteria listed on the face of the Bill would be competent to carry out the special procedures set out on the face of the Bill. There should be no blanket exemption on the face of the Bill for any healthcare profession. Any healthcare profession, including doctors, dentists and nurses, should only become exempt from the licensing requirement via regulations and following consultation with the relevant professional bodies.

149. We are extremely concerned that the offences listed in Section 63(3) do not include sexual offences, which means there is nothing that would necessarily prevent someone on the sex offenders register, for example, from receiving a licence to undertake special procedures. This is, in our view, a significant and very relevant concern given that any of the procedures named in the Bill are capable of being performed on an intimate part of the body.

¹²⁵ Explanatory Memorandum, Annex 1, paragraph 124

¹²⁶ Written evidence, PHB 05

150. We do not accept the Minister’s legal adviser’s argument that this is a “public health Bill” and not a “safeguarding” Bill.¹²⁷ Indeed, the **Children’s Rights Impact Assessment** accompanying the Bill states “In addition to the risks to health, the intimate piercing of children and young people may also be considered a child protection issue.” The EM also says “The primary purpose of these provisions in the Bill is to protect children and young people from the potential health harms which can be caused by an intimate piercing, and to avoid circumstances where children and young people are placed in a potentially vulnerable situation”.¹²⁸ We are therefore firmly of the view that the list of offences must be amended to include “sexual offences”.

Recommendation 9. We recommend that the list of special procedures named on the face of the Bill is amended to include use of lasers/intense pulsed light (IPL) for aesthetic, non-surgical purposes, such as tattoo removal or hair removal.

Recommendation 10. We recommend that the Minister revisits the definition of “tattooing” to ensure the definition in the Bill covers “tashing” or similar procedures which may not involve the use of colouring materials.

Recommendation 11. We recommend that the Minister undertakes urgent work to understand the scale at which body modification procedures are carried out in Wales and assess what level of risk this poses to public health, with a view to adding these to the legislation as soon as practically possible.

Recommendation 12. We recommend that the Bill should be amended so that there is no provision for a blanket exemption on the face of the Bill for any healthcare profession. Any healthcare profession, including doctors, dentists and nurses, should only become exempt from the licensing requirement via regulations and following consultation with the relevant professional bodies.

Recommendation 13. We recommend that the offences listed in Section 63(3) of the Bill be amended to include “sexual offences”.

¹²⁷ RoP, 11 January 2017, paragraph 92

¹²⁸ Explanatory Memorandum, paragraph 152

09. Part 4: Intimate piercing

What is an intimate piercing?

151. Part 4 of the Bill contains provisions relating to intimate piercing. For the purpose of this Part, an intimate piercing is defined as a body piercing performed on any of the following: anus; breast (including the nipple and areola); buttock; natal cleft; penis (including the foreskin); perineum; pubic mound; scrotum; tongue; and vulva.

Offences and enforcement

152. The EM states that “in Wales there is currently no age restriction for any body piercing”¹²⁹. Section 92 makes it an offence for a person to perform an intimate piercing on a child in Wales. In this Part, a child is defined as any person under the age of 16. It also makes it an offence to make arrangements to perform an intimate piercing on a child in Wales. A person convicted of either offence is liable on summary conviction to an unlimited fine.¹³⁰

153. The EM states that by setting the prohibition on intimate piercing at the age of 16, the Bill’s provisions:

“... align with the age of consent for sexual activity. The Bill does not prevent the intimate piercing of persons aged 16 and 17 as this would be considered to be inconsistent with the types of decisions made more generally by people of these ages, such as being able to join the army or learning to drive.”¹³¹

154. While respondents were supportive of the introduction of an age restriction for intimate piercing, many felt that 18 would be more appropriate.¹³²

155. Many highlighted the need to protect young people from harm and being placed in a vulnerable position. The RCP pointed out that “a child in law is defined as someone under 18 years old, so this definition sits uneasily with child protection law”.¹³³

156. The CIEH felt that the age of consent for intimate piercings should be brought in line with that for tattooing. It did not consider 16 to be appropriate for the following reasons:

- “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 old 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

¹²⁹ Explanatory Memorandum, paragraph 145

¹³⁰ Explanatory Memorandum, Annex 1, paragraph 180

¹³¹ Explanatory Memorandum, paragraph 154

¹³² Written evidence, PHB 07,

¹³³ Written evidence, PHB 16, PHB 20, PHB 28, PHB 31

scarring or thickening. At 16 years an individual is still growing and therefore the risk of damage to skin is greater.”¹³⁴

157. The Minister’s official said that one of the reasons for not bringing piercing in line with tattooing was the permanency of a tattoo, as opposed to a piercing, which could be removed. He told us:

“In relation to young people having a piercing that they later regret, I think the good thing about piercings – if there is a good thing – is that they can be removed, and generally, they will heal. They might leave a small scar but they will generally heal quite effectively.”¹³⁵

158. Dr Olwen Williams of the RCP, however, disagreed with this statement:

“... piercing isn’t necessarily reversible, in the sense that it does leave a hole, and I have seen some significant damage being done as a result of the piercing and the connotations from the anatomy being changed.”

159. She also drew attention to the sexualised nature of intimate piercings and questioned what would drive someone aged 16 or 17 to want such a piercing:

“I am concerned that going for a piercing of the genitals specifically at that age suggests other things that are going on in life.”¹³⁶

160. The EM states:

“There are also issues around the sexualisation of young people: tongue piercings, for example, can be associated with sexual activity. Beyond this, the intimate piercing of children and young people may also be considered a child protection issue. By understanding the procedure, young people may be placed in a vulnerable position in which their ‘intimate’ areas are exposed to, touched and pierced by an adult who may be previously unknown to them.

It is therefore considered that there is a need to strengthen the legislative framework relating to the intimate piercing of children and young people. This is considered necessary to both protect them from potential health harms and threats to their well-being.”¹³⁷

161. The Minister explained her rationale for proposing the age of 16:

“We have put 16 as the age for intimate piercing because we feel that it strikes a balance, really, between the human rights of children and young people to decide what to do with their own bodies, but also the safeguarding of those children and young people as well. We feel that it fits as well with the kind of other decisions that people are able to make at the age of 16.”¹³⁸

¹³⁴ Written evidence, PHB 05

¹³⁵ RoP, 11 January 2017, paragraph 75

¹³⁶ RoP, 11 January 2017, paragraph 245

¹³⁷ Explanatory Memorandum, paragraphs 143-144

¹³⁸ RoP, 1 December 2016, paragraph 216

162. Following the evidence session on 11 January 2017, the RCP submitted further written evidence relating to intimate piercing. It stated that:

- genital piercing is considered in under 18 year olds to be type 4 female genital mutilation (FGM) **and therefore a criminally reportable event**. This came into place at the end of 2015.
- in many developed countries, including Australia, New Zealand and most US states, intimate piercing of minors (those under 18 years old) is considered a criminal offence.
- good practice in the piercing community will not carry out intimate piercing with those under 18 years old. Some even restrict it to those over 21, as they view it as a safeguarding issue.¹³⁹

163. The Minister’s legal adviser confirmed that the Bill would not impact on the ability of a practitioner to refuse to pierce an under 18 year old.

164. The Minister subsequently **wrote to us on 31 January 2017** advising that, in light of the evidence we had received, she had asked officials to re-examine the evidence. Due to the complex and detailed work involved, it was anticipated that this would take several weeks to complete. The Minister will therefore outline the Welsh Government’s position when the general principles of the Bill are debated by the National Assembly. We welcome the Minister’s commitment to re-examine the evidence.

Our view

165. We are absolutely convinced that the age of consent for an intimate piercing should be 18 not 16. We have listened to the Minister’s rationale for choosing 16 and the need to recognise a young person’s right to decide what to do with their own bodies alongside evidence from medical and environmental health professionals regarding the significant harm an intimate piercing can do to a still developing body. We also acknowledge that 16 is the age of consent for medical procedures. However, we regard that as a very different issue given that a qualified medical practitioner will be ensuring that the young person has access to the full independent facts prior to consent. In addition to the medical implications associated with an intimate piercing, we have serious concerns about the potential vulnerability of some 16 and 17 year olds and what may be happening in a young person’s life that prompts them to want an intimate piercing at age 16. We have heard that genital piercings are largely done for reasons of sexual pleasure and are very concerned about any potential links with child sexual exploitation.

166. The **Children’s Rights Impact Assessment** (CRIA) states “By undergoing the procedure, young people may be placed in a vulnerable position by being in situations in which their ‘intimate’ areas are exposed to, touched and pierced by an adult who may be previously unknown to them.” We therefore believe this is serious safeguarding issue.

167. The CRIA also sets out that the Welsh Government’s consultation on the Public Health White Paper in 2014 asked a question about the minimum age a young person should be allowed to have an intimate cosmetic piercing. Of those who responded, 140 suggested 18 years of age (61%), while 47 suggested 16 years of age (21%).

¹³⁹ Written evidence, PHB 16a

168. Additionally, we note that genital piercing may be considered to be a type of female genital mutilation (FGM) under the World Health Organisation’s definition. We are of the view that an age restriction of 18 would sit more comfortably with other statutory requirements such as the mandatory duty for health, social care and teaching professionals to report cases where girls under 18 have had a genital piercing, genital tattoo or genital surgery. We acknowledge that the EM differentiates between FGM and the intimate piercing provisions in the Bill which, the EM states, only apply where the piercing is done for the purposes of attaching jewellery or similar adornment. However, we strongly believe that for the avoidance of doubt, and to give a clear and consistent message, an age limit of 18 should apply.

Recommendation 14. We recommend that Section 92 of the Bill be amended to prohibit performing or making arrangements to perform an intimate piercing on a person who is under the age of 18.

10. Part 5: Health Impact Assessments

169. Part 5 of the Bill introduces provisions requiring public bodies to carry out Health Impact Assessments (HIAs) in certain circumstances. HIAs are a means by which health can be taken into account during any decision making or planning process.

170. The EM states that “a widely accepted definition for HIAs describes ‘a combination of procedures, methods and tools by which a policy, programme or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population’”.¹⁴⁰

171. It goes on to note that the World Health Organisation has already recognised a number of benefits of HIAs, including the improvement of health and reduction of inequalities.¹⁴¹

172. In some instances HIAs are already undertaken in Wales, and their use is supported by the Welsh Health Impact Support Unit (WHIASU) within Public Health Wales. They are not currently required by legislation in Wales across the board; however they are required where there is a request for an opencast coal operation, and form part of some Welsh Government guidance.

173. WHIASU promote and encourage the use of HIAs in Wales. The EM states that the exact number of HIAs conducted in Wales is unknown, however approximately 140 have been conducted with WHIASU support.¹⁴²

174. To “further strengthen” the position of HIAs in Wales, the Bill includes provisions which will “require Welsh Ministers to make regulations about the circumstances in which public bodies in Wales must carry out HIAs”.¹⁴³ The Welsh Government’s aim is that the assessments should be limited to “policies, plans and programmes which have outcomes of national or major significance, or which have a significant effect at the local level”.¹⁴⁴

175. The EM notes that, in addition to HIAs, the Welsh Government has other legislative mechanisms by which health can be considered within decision making processes, including the requirements of the Well-being of Future Generations (Wales) Act 2015 and the Planning (Wales) Act 2015.¹⁴⁵ The EM goes on to say that the Bill is intended to align with the Well-being of Future Generations (Wales) Act 2015 and, as such, all the public bodies covered by that Act will also be covered by the requirements to carry out HIAs.

Health Impact Assessments

176. In evidence the Minister acknowledged that the work of the Fourth Assembly’s Health and Social Care Committee and the public campaigning by organisations including the BMA Cymru Wales led to the adoption of this part of the Bill.¹⁴⁶

177. The Minister’s intention is that the Bill helps to realise the benefits of HIAs more widely in Wales.¹⁴⁷

¹⁴⁰ Explanatory Memorandum, paragraph 164

¹⁴¹ Explanatory Memorandum, paragraph 165

¹⁴² Explanatory Memorandum, paragraph 171

¹⁴³ Explanatory Memorandum, paragraphs 175 to 176

¹⁴⁴ Explanatory Memorandum, paragraph 176

¹⁴⁵ Explanatory Memorandum, paragraph 173

¹⁴⁶ RoP, 1 December 2016, paragraph 227

178. The evidence from stakeholders overwhelmingly supported the inclusion in the Bill of the provisions relating to HIAs.¹⁴⁸

179. In evidence to the Committee the BMA Cymru Wales said:

“...it’s fairly well known that we’re extremely supportive of health impact assessments being within the Bill as a central lever, and we think that, potentially, is the element that could make Wales quite a leader in the field”.

(...) by placing [HIAs] on a statutory footing, it commits Wales to looking at the big picture: what is potentially going to negatively impact on health, and can that be mitigated before the negative effects happen.”¹⁴⁹

180. Public Health Wales told us that HIAs could help to contribute to reducing health inequalities in Wales¹⁵⁰; a view shared by Local Health Boards’ Directors of Public Health.¹⁵¹ Public Health Wales suggested that the Bill would enable a “consistent approach and a clear approach to where health impact assessments can add value”¹⁵², and said:

“...we see our role as very much supporting other organisations in trying to undertake high-quality health impact assessments.”¹⁵³

181. The CIEH stated the provisions relating to HIAs are aligned to the Well-being of Future Generations (Wales) Act 2015, will afford protection to vulnerable people, and will make an important contribution to sustainable development in Wales.¹⁵⁴

182. The RCGP suggested that the inclusion of HIAs could address some other issues which affect Wales’s population which “we haven’t managed to get into the Bill”.¹⁵⁵

183. The Minister told us that the sections of the Bill relating to HIAs put “health at the heart of all policy” and seek to benefit the more deprived communities in Wales where “gradients in health inequalities are most well observed”.¹⁵⁶ In evidence the Minister added:

“...health impact assessments can provide high-quality evidence to policy makers in terms of helping policy makers take good decisions (...)”¹⁵⁷

184. With regards to the definition of a HIA, the Minister said the reference to physical and mental health gave parity to both, and sent a strong message in terms of their joint importance.¹⁵⁸

¹⁴⁷ Explanatory Memorandum, paragraph 181

¹⁴⁸ Written evidence PHB 01, PHB 03-08, PHB 10, PHB 16, PHB 20, PHB 22, PHB 23, PHB 26-28, PHB3 1, PHB 33, PHB 36-37, PHB 39

¹⁴⁹ RoP, 15 December 2016, paragraphs 152 and 239

¹⁵⁰ RoP, 7 December 2016, paragraph 29

¹⁵¹ RoP, 7 December 2016, paragraph 159

¹⁵² RoP, 7 December 2016, paragraphs 29 and 101

¹⁵³ RoP, 7 December 2016, paragraph 101

¹⁵⁴ Written evidence, PHB 05

¹⁵⁵ RoP, 15 December 2016, paragraph 238

¹⁵⁶ RoP, 1 December 2016, paragraphs 142 and 144

¹⁵⁷ RoP, 1 December 2016, paragraph 227

¹⁵⁸ RoP, 11 January 2017, paragraphs 118 to 119

185. Whilst supportive of the provisions, the RCP suggested that legislating for HIAs is “only one part of the toolkit for improving public health” and that “a greater emphasis on joint working across bodies will be vital to the success” of the Bill.¹⁵⁹

186. The Older People’s Commissioner for Wales told us:

“These assessments will help public bodies in maintaining and improving the health of their populations, but would provide a more consistent and complimentary approach if they were to also include well-being.”¹⁶⁰

187. The Commissioner went on to say:

“Our narrative has changed radically in Wales in a really short period of time. (...) Health and well-being go intrinsically hand in hand. (...) We have the national indicators for Wales. If we had a health and well-being impact assessment we could, in every decision we make – the little and the big – be assessing our progress towards those.”¹⁶¹

188. In commenting on the suggestion by the Older People’s Commissioner for Wales, the CIEH told us the concept of ‘health’ includes physical health, mental health and well-being and, as such, “all the determinants of health would be included in a health impact assessment”.¹⁶² The CIEH added:

“...if you wanted to call them ‘health and well-being [impact] assessments you could do that without actually having to change anything. (...) There’s no reason not to do it, but it wouldn’t fundamentally change the process.

If it helps people who may not be acquainted with the full determinants of health, to realise that what they’ve got is a document that goes beyond health and also deals with well-being, then all well and good, there is some benefit to doing it.”¹⁶³

189. A number of witnesses highlighted the need for HIAs to be treated as more than a “tick-box exercise”. The WLGA said:

“...it’s important that (...) health impact assessments (...) aren’t just a tick-box exercise, that they will identify the issues to be addressed and, most importantly, how we then mitigate or address some of those effects that could be found.”¹⁶⁴

190. Recognising that local authorities already undertake a range of impact assessments, the WLGA acknowledged the need for discussions as to how those impact assessments could be joined up in order to form a holistic approach.¹⁶⁵

¹⁵⁹ Written evidence, PHB 16

¹⁶⁰ Written evidence, PHB 33

¹⁶¹ RoP, 19 January 2017, paragraph 77

¹⁶² RoP, 19 January 2017, paragraph 241

¹⁶³ RoP, 19 January 2017, paragraphs 241 and 247

¹⁶⁴ RoP, 15 December 2016, paragraph 97

¹⁶⁵ RoP, 15 December 2016, paragraph 97

191. CCA were supportive of HIAs and their inclusion in the Bill and stated that HIAs will be a positive step towards the aims of the Well-being of Future Generations (Wales) Act 2015. However, CCA told us that they would welcome clarification as to whether HIAs would have a bearing on services delivered by community pharmacy, and whether HIAs could be used by local health boards when considering the commissioning or de-commissioning of services provided by community pharmacy providers.¹⁶⁶

192. Diabetes UK Cymru, in commenting on obesity prevention, suggested that the impact on a person's weight should fall under the category of physical health and should therefore be considered in all HIAs.¹⁶⁷ The Royal College of Paediatrics and Child Health (RCPCH) suggested that this part of the Bill:

“...could help to prevent children and young people from becoming unwell if (...) local authority planning decisions included a public health impact assessment to consider the health impact of planning decisions on physical activity and obesity.”¹⁶⁸

193. The Minister's official told us that Welsh Government guidance on HIAs would be “critical to the success of how this legislation is carried forward” and would include points and issues that the Committee and stakeholders have raised.¹⁶⁹ The Minister went on to say that the content and scope of future guidance and regulations, and whether provision would be made to address issues such as air pollution, would be determined following consultation.¹⁷⁰

194. In relation to the financial implications of this part of the Bill and the potential value-for-money element of placing HIAs on a legislative footing, the Minister stated that a legislative approach “is a cost-effective way in which to take this [policy] forward (...) and will achieve benefits without incurring significant additional costs.”¹⁷¹

Training and capacity

195. In terms of training and capacity, Public Health Wales noted that, while training has been provided for a number of years, there would still be an ongoing need for training and capacity building.¹⁷² The Local Health Boards' Directors of Public Health also commented on the implications of the Bill in terms of capacity, skills and resources, and suggested there are questions which need to be “posed and answered”.¹⁷³ The DPPW stated it was “appropriate to highlight concerns” about capacity, and suggested having sufficient resources to enable HIAs to be undertaken “could be a challenge”.¹⁷⁴

196. The CIEH told us that Wales has 46 Environmental Health Practitioners who hold the Certificate of Competence in Rapid HIAs and six practitioners who are competent to quality assess HIAs.¹⁷⁵

¹⁶⁶ Written evidence, PHB 23

¹⁶⁷ Written evidence, PHB 18

¹⁶⁸ Written evidence, PHB 27

¹⁶⁹ RoP, 11 January 2017, paragraph 127

¹⁷⁰ RoP, 11 January 2017, paragraph 129

¹⁷¹ RoP, 1 December 2016, paragraph 231

¹⁷² RoP, 7 December 2016, paragraph 103

¹⁷³ RoP, 7 December 2016, paragraphs 159, and 225 to 227

¹⁷⁴ RoP, 15 December 2016, paragraph 95

¹⁷⁵ Written evidence, PHB 05, and RoP, 19 January 2017, paragraph 235

Our view

197. We support the principle of Part 5 of the Bill which places a duty on the Welsh Ministers to make regulations which require public bodies to carry out health impact assessments in specified circumstances. We acknowledge and agree with the Minister's view that HIAs offer a systematic means of taking health into account as part of decision making and planning processes.

198. We note and welcome that the regulations setting out the circumstances and manner in which public bodies must carry out HIAs will be developed through consultation, and agree with the Minister's approach that these regulations should be subject to approval by the Assembly under the affirmative procedure.

199. We note the Minister's evidence regarding Welsh Government guidance on HIAs and agree that it will be critical to the success of the legislation. Furthermore, we welcome the Minister's commitment that the guidance will include the matters which we, and stakeholders, have raised.

200. To ensure alignment with other legislation, this Bill will require all public bodies listed in the Well-being of Future Generations (Wales) Act 2015 to carry out HIAs. With this in mind, and acknowledging the evidence from stakeholders regarding the need for a consistent message, we wish to emphasise that HIAs should take into account the broadest interpretation of "health". We were persuaded by the strength of evidence provided by the Older People's Commissioner for Wales in relation to the need for HIAs to include reference to "well-being".

Recommendation 15. We recommend that Health Impact Assessments (HIAs) be renamed as Health and Well-being Impact Assessments (HWIAs), to ensure an up-to-date understanding that is consistent with other legislation is delivered to the public and practitioners.

201. Furthermore, and to provide support to the environmental health practitioners performing the impact assessments, Welsh Government guidance must reflect the broadest interpretation of health and well-being.

11. Part 6: Pharmaceutical services

Pharmaceutical needs assessments

202. Part 6 of the Bill introduces changes to the way in which LHBs determine applications to provide NHS pharmaceutical services.

203. The EM explains the Welsh Government’s responsibility to establish the overall structure in which community pharmacies operate, and the LHBs’ responsibility for planning and providing pharmaceutical services.¹⁷⁶

204. The Welsh Ministers have “extensive powers and duties” to make regulations, which can include specifying the terms of service for NHS pharmacists and the application of the control of entry test (the test that “must be satisfied before LHBs may grant an application for entry on their pharmaceutical list”).¹⁷⁷

205. The EM states that the current regulatory regime, having been in place for more than 25 years, does not adequately reflect the changing role of pharmacies in Wales.¹⁷⁸ It goes on to note that, under the current arrangements for determining applications for entry onto a pharmaceutical list, LHBs only consider the pharmaceutical services defined under section 80 of the NHS (Wales) Act 2006 which in the main only relates to the dispensing of prescriptions. However, the EM acknowledges that “community pharmacies also increasingly provide additional services”.¹⁷⁹

206. In evidence the Minister accepted that, in recent years, significant progress has been made in terms of expanding the services provided by pharmacies, but the Bill “recognises that we can certainly do a lot more”.¹⁸⁰ In relation to the approach taken, the Minister added:

“...it’s looking at the wider services that pharmacies can provide, particularly in response to the pharmaceutical needs assessment that local health boards will be able to undertake. So, it is a step change in terms of the status of community pharmacies within the provision of health services in Wales, and also an opportunity... to realise the huge potential of community pharmacies.”¹⁸¹

207. The Minister believes that “the changes provided for in the Bill will allow for gradual improvement in the quality and consistency of NHS pharmaceutical services”.

208. The Bill seeks to change the way in which decisions about pharmaceutical services in Wales are made by LHBs, and to improve the planning and delivery of those services. The Bill requires LHBs to prepare and publish an assessment of the need for pharmaceutical services: a pharmaceutical needs assessment (PNA). It also changes the way in which applications for entry onto a pharmaceutical list are considered so that LHBs have regard to their most recent PNA and are satisfied that the granting of the application would meet a service need in the area.¹⁸²

¹⁷⁶ Explanatory Memorandum, paragraph 191

¹⁷⁷ Explanatory Memorandum, paragraph 193

¹⁷⁸ Explanatory Memorandum, paragraph 202

¹⁷⁹ Explanatory Memorandum, paragraphs 203 and 204

¹⁸⁰ RoP, 1 December 2016, paragraph 238

¹⁸¹ RoP, 1 December 2016, paragraph 239

¹⁸² Explanatory Memorandum, paragraphs 207 and 208

209. The EM notes that alongside the changes to introduce a system of needs-based entry on to a pharmaceutical list, an exit regime will also be introduced to enable graduated actions to be taken to deal with providers who are failing to meet the terms of service obligations.¹⁸³

210. The evidence we received from stakeholders supported the Bill's intention to change the planning and delivery of pharmaceutical services.¹⁸⁴

211. CCA noted its support for the "fundamental change to the way in which decisions about pharmaceutical services in Wales are made by local health boards".¹⁸⁵

212. The Welsh NHS Confederation said it was pleased the Bill recognised the important role that pharmacists can play in improving the health of the public, and offered a view that there was "considerable public health benefit to be gained by ensuring that Local Health Boards have a stronger role in planning pharmaceutical services in their areas".¹⁸⁶ It added:

"The pharmaceutical needs assessments need to be tightly integrated into the Health Board Integrated Medium Term Plan (IMTP) cycle, driving planning and delivery of services.

The Bill provides an opportunity to ensure that the public are aware of the services that they can receive and access locally to remain in good health."¹⁸⁷

213. The Local Health Boards' Directors of Public Health confirmed they were content that the Bill would deliver the changes needed to ensure communities had "the pharmacy provision that we all want".¹⁸⁸

214. The General Pharmaceutical Council (GPC) proposed that the Bill will "provide the Welsh Government with useful levers to ensure pharmacies are able to provide services that are both responsive to, and meet the needs of, the people in their area."¹⁸⁹

215. Public Health Wales suggested that, by looking at population need, PNAs would be a "key element of addressing health inequalities".¹⁹⁰ CPW shared this view.¹⁹¹

216. While acknowledging that a positive relationship already exists between deprivation and the number of pharmacies in Wales,¹⁹² the Minister told us that "improving the planning of pharmaceutical services will (...) enable us to take a more responsive approach to the needs of particularly disadvantaged communities".¹⁹³

¹⁸³ Explanatory Memorandum, paragraph 214

¹⁸⁴ Written evidence, PHB 01, PHB 03-04, PHB 10-12, PHB 14-15, PHB 23, PHB 34, PHB 36-37

¹⁸⁵ Written evidence, PHB 23

¹⁸⁶ Written evidence, PHB 03

¹⁸⁷ Written evidence, PHB 03

¹⁸⁸ RoP, 7 December 2016, paragraphs 229 to 231

¹⁸⁹ Written evidence, PHB 11

¹⁹⁰ RoP, 7 December 2016, paragraph 30

¹⁹¹ Written evidence, PHB 12

¹⁹² Explanatory Memorandum, paragraph 185

¹⁹³ RoP, 1 December 2016, paragraph 144

217. The Welsh Language Commissioner expressed concerns that Part 5 of the Bill did not explain the relationship between the new provisions for pharmaceutical services and the measures that were in place for the improvement of Welsh language services in health and care.¹⁹⁴

218. On this matter, the Minister said:

“...meeting the pharmaceutical needs of the population is (...) about all of the population, and meeting them through the Welsh language will be part of that.”¹⁹⁵

219. In relation to the potential impact of the Bill on the pharmacy workforce, the Minister suggested that the Bill would lead to increased opportunities for the workforce as the services pharmacies provide would be widened. She added that the Bill would lead to increased training opportunities and opportunities for pharmacists to work in the spirit of prudent healthcare, “working at the top end of the talents and skills and knowledge that they have”.¹⁹⁶

220. The Minister has also stated that the changes brought about by the Bill would provide pharmacy contractors with increased certainty, which would reduce business risk and allow investment in the delivery of wider services.¹⁹⁷

Definition of pharmacy services

221. CCA suggested that the definition of pharmaceutical services should be “redefined to reflect the service led visions that PNAs look to embrace”.¹⁹⁸ This view was echoed by the RPS who said:

“A wider definition of pharmaceutical services should encompass the essential and advanced services of the pharmacy contract and potential developments for further public health services.”¹⁹⁹

222. The British Lung Foundation Cymru Wales raised the issue of non-geographically-based providers of pharmaceutical services, such as Wales-wide oxygen service provision, and asked that the impact of the Bill on these measures was considered.²⁰⁰

Consistency and avoiding duplication

223. The RPS said a consistent approach must be developed for all local health boards, utilising a national PNA template, in order to ensure the reduction in health inequalities and robust planning of services.²⁰¹ CPW asked that the Bill sets out national standards and guidelines in relation to the creation and publication of PNAs. It went on to say:

“If the regulations are not well developed there is a risk of significant variation in development and implementation of PNAs and, in extreme circumstances, the risk of legal challenge.”²⁰²

¹⁹⁴ Written evidence, PHB 41

¹⁹⁵ RoP, 11 January 2017, paragraph 134

¹⁹⁶ RoP, 1 December 2016, paragraph 243

¹⁹⁷ Explanatory Memorandum, paragraph 217

¹⁹⁸ Written evidence, PHB 23

¹⁹⁹ Written evidence, PHB 34

²⁰⁰ Written evidence, PHB 39

²⁰¹ Written evidence, PHB 34

²⁰² Written evidence, PHB 12

224. The Minister confirmed that the Welsh Government would be providing a standard suggested template for PNAs in guidance in order to ensure a more consistent approach to the assessments across Wales.²⁰³

225. The Royal College of Nursing (RCN) Cymru Wales told us that PNAs should assess the broader well-being needs of local populations in addition to the adequacy of dispensing needs.²⁰⁴ However, Healthcare Inspectorate Wales (HIW) suggested that PNAs and HIAs shouldn't duplicate other streams of work but should "complement" local wellbeing and population needs assessments which health boards must produce under the Well-being of Future Generations (Wales) Act 2015 and the Social Services and Well-being (Wales) Act 2014.²⁰⁵

226. CCA expressed similar views about PNAs forming part of a wider suite of assessments. It added it was important to acknowledge that patients do not adhere to geographical boundaries when accessing healthcare and, as such, neighbouring LHBs' PNAs should form part of an LHB's assessment.²⁰⁶

227. The Minister's intention is for the first PNAs to be produced in accordance with a timetable set out in regulation, and subsequent PNAs will coincide with the frequency of other needs assessments, including the local well-being assessments required by the Well-being of Future Generations (Wales) Act 2015.²⁰⁷

Impact on dispensing GP practices

228. While supportive of the provisions in the main and suggesting PNAs were "reasonable and a good idea", BMA Cymru Wales qualified its support for the provisions²⁰⁸ and advocated the need for PNAs to take into account the role and services provided by dispensing practices, particularly in a rural setting. It said:

"In the English legislation and regulation, that was overlooked, and the result was that, (...) when an assessment was done of a rural area, it was decided to be underserved by pharmaceuticals. (...) [That] led to it being a priority to open a chemist. The trouble is that that undermined the rural general practice (...) And we've seen, in very rural areas of England, general practices closing as a result (...)"²⁰⁹

229. In response to this, the RCGPs suggested that the potential problems for dispensing practices would not be limited to rural areas.²¹⁰ It added:

"...we do see an opportunity (...) for a more synergistic working of the GMS GP contract and the pharmacy contract, so that practices and pharmacies aren't competing in the way they are now (...)"²¹¹

²⁰³ RoP, 1 December 2016, paragraph 241

²⁰⁴ Written evidence, PHB 14

²⁰⁵ Written evidence, PHB 15

²⁰⁶ Written evidence, PHB 23

²⁰⁷ Explanatory Memorandum, paragraph 211

²⁰⁸ RoP, 15 December 2016, paragraphs 243 to 249, and Written evidence, PHB 08

²⁰⁹ RoP, 15 December 2016, paragraph 244

²¹⁰ RoP, 15 December 2016, paragraph 255, and Written evidence, PHB 06

²¹¹ RoP, 15 December 2016, paragraph 250

230. In response to the concerns raised by the BMA Cymru Wales in relation to dispensing practices, the Minister told us that she had written to the BMA “confirming that pharmaceutical needs assessments would reflect the consideration and contribution of all providers addressing the local health needs (...) [That] clearly includes dispensing doctors (...)”²¹²

Our view

231. We support the provisions in the Bill requiring Health Boards to prepare and publish Pharmaceutical Needs Assessments (PNAs) for their areas. We note the Minister’s statement that the proposed changes will allow for gradual improvement in the quality and consistency of NHS pharmaceutical services and, as such, look forward to better provision of pharmacy services across Wales as a result of the Bill.

232. However, we believe that uptake of the improved pharmacy services will not increase as a result of the introduction of PNAs alone. As our predecessor Committee in the Fourth Assembly concluded,²¹³ the Welsh Government should pursue other methods in order to increase awareness of the breadth of services available in pharmacies.

233. We note that details regarding the timescales, the circumstances in which a local health board should review and revise its PNA, and the way in which assessments should be published, will be set out in regulations. Although content with these proposals, we welcome the Minister’s commitment to provide in guidance a standard suggested template for PNAs in order to ensure a consistent approach to the assessments across Wales.

234. We acknowledge the concerns raised by some witnesses about the impact the provisions in this part of the Bill may have on dispensing GP practices, particularly in rural and semi-rural areas. We agree with those witnesses that there is a need for PNAs to take into account the role and services provided by dispensing practices. We note that the Minister has written to BMA Cymru Wales confirming that PNAs would reflect the contribution of all providers addressing the local health needs, including dispensing doctors; we welcome the assurances provided by the Minister on this matter.

235. We note that the Bill amends the current control of entry test so that decisions on applications to join a local health board’s pharmaceutical list will be based on whether the application meets the need(s) identified in the local PNA. We support this principle. We also note and welcome that, where a local health board does not receive applications, it will be able to invite applications for inclusion on its pharmaceutical list. Furthermore, we believe enabling local health boards to remove pharmacists from their lists following serious and/or persistent breaches of terms and conditions of service is a beneficial inclusion in the Bill.

²¹² RoP, 11 January 2017, paragraph 132

²¹³ Fourth Assembly Health and Social Care Committee Report ‘[Contribution of community pharmacy to health services in Wales](#)’ (May 2012)

12. Part 7: Provision of toilets

236. Part 7 of the Bill places requirements on local authorities to prepare local toilets strategies. The strategies will include an assessment of the community’s need for toilets, and set out how the local authority proposes to meet that need.

237. The EM recognises that public toilet provision varies between local authorities.²¹⁴ It goes on to say:

“The current legal position in relation to toilet facilities is set out in various pieces of primary and subordinate legislation.

Whilst the current legislative framework enables local authorities to make provision for toilets, there are no legislative requirements on them to do so.”²¹⁵

238. The EM states that the current system governing the provision and access to public toilets poses a number of challenges, including poor planning around making the best use of toilets already accessible to the public within public buildings.²¹⁶

Local toilets strategies

239. The stated aim of the Bill’s provisions is to “improve planning of provision of toilets available for use by the public by ensuring each local authority in Wales assesses the needs of its community in relation to toilets”.²¹⁷

240. The EM notes that the duty to prepare a local toilets strategy will not in itself require local authorities to provide and maintain public toilets, however it will require local authorities to “take a strategic view across their area on how these facilities can be provided and accessed by their local population”.²¹⁸

241. The Minister told us the Bill “seeks to improve toilet provision for everybody”.²¹⁹

242. The evidence we received from stakeholders was generally supportive of the Bill’s provisions relating to the provision of toilets.²²⁰

243. One Voice Wales said:

“...the principle of requiring a well thought through strategy, towards which members of local communities have been encouraged to contribute, is a sound and positive philosophy.”²²¹

244. Public Health Wales stated that the provision of toilets for public use is an important public health issue and the preparation of strategies would provide clarity about provision at a local level.²²²

²¹⁴ Explanatory Memorandum, paragraph 229

²¹⁵ Explanatory Memorandum, paragraph 230 and 233

²¹⁶ Explanatory Memorandum, paragraph 234

²¹⁷ Explanatory Memorandum, paragraph 235

²¹⁸ Explanatory Memorandum, paragraph 238

²¹⁹ RoP, 11 January 2017, paragraph 138

²²⁰ Written evidence, PHB 01, PHB 03, PHB 05, PHB 08, PHB 10, PHB 14, PHB 17, PHB 26, PHB 33, PHB 34, PHB 35, PHB 36, PHB 38

²²¹ Written evidence, PHB 17

245. Crohn’s and Colitis UK told us it welcomed any provisions that would “encourage the greater availability of clean and accessible public toilets” and welcomed “the duty to assess, plan and then review a toilets strategy for ensuring suitable provision of toilets”.²²³

246. Pembrokeshire County Council did not believe a duty should be placed on local authorities to develop strategies for the provision of and access to toilets for public use and said it aimed to provide public toilet facilities “based on tourism trends, for the benefit of public health, and their contribution to the local economy within realistic budgets”.²²⁴

247. The Minister said the Bill would place a duty on local authorities to have regard to guidance issued by the Welsh Ministers and that the guidance “will set out that local authorities should engage users to ensure the assessment of need accurately reflects the needs of the local and the visiting population”.²²⁵

Accessible facilities for everyone

248. In recognition of the importance of ensuring that the needs of varied groups within communities are considered through the local toilet strategies, the EM explains that the Bill “explicitly provides that the term ‘toilets’ includes changing facilities for babies and changing place facilities for disabled persons”.²²⁶

249. Local Health Boards’ Directors of Public Health told us that the Bill could go further in relation to the provision of toilet facilities for disabled clients.²²⁷ The Older People’s Commissioner for Wales offered the same view.²²⁸

250. The RPS suggested that the provision of toilets for disabled people and baby changing facilities should be “explicit in each LHB’s strategy”.²²⁹

251. However, One Voice Wales told us that including changing facilities for disabled people and babies within the definition of “toilets” would be “sufficient to ensure that the needs of all groups are taken into account”.²³⁰

252. The WLGA, while acknowledging that the provision of and access to toilets was a “real concern” for disabled people, noted that this Bill should not be looked at in isolation as local authorities have duties placed on them by other legislation, including the Equality Act 2010.²³¹

253. The WLGA explained further:

“[One] of the things that we’ll need to make sure is (...) that there is very good engagement with disabled people across the piece, so that we can identify their needs, but also seek their views on options for actually meeting their needs (...)

²²² Written evidence, PHB 04

²²³ Written evidence, PHB 38

²²⁴ Written evidence, PHB 28

²²⁵ RoP, 1 December 2016, paragraph 249

²²⁶ Explanatory Memorandum, paragraph 244

²²⁷ RoP, 7 December 2016, paragraph 237

²²⁸ Written evidence, PHB 33

²²⁹ Written evidence, PHB 35

²³⁰ Written evidence, PHB17

²³¹ RoP, 15 December 2016, paragraph 112

[There] will be a need for us to think innovatively and outside the box in terms of how we meet some of those needs.”²³²

254. Macmillan Cancer Support raised concerns that the views and needs of people affected by cancer would not be captured during the process of developing a local toilets strategy, and asked that further consideration be given to this point.²³³

255. BMA Cymru Wales highlighted the increase in homelessness and the wider societal implications of that as an example of why the provision of toilet facilities needed serious consideration.²³⁴ Similarly, Public Health Wales said that consultation on the development of local toilets strategies should include the needs of homeless people, as well as mobile workers and visitors to the area.²³⁵

256. In evidence the Minister said:

“Public authorities are already requested by the public sector disability equality duty to consider how they can improve and contribute to a fairer society through their day-to-day activities, including provision of public toilets as well and, if passed, the Bill will extend that to include those strategies within that as well.”²³⁶

Implementation of strategies and funding

257. The Welsh NHS Confederation voiced concerns about the resources available to local authorities - a view shared by Public Health Wales, the DPPW, and the Association of Directors of Public Health²³⁷ - and said:

“The writing of a strategy alone will not automatically improve provision because of the significant financial pressures already experienced by Local Authorities. The statutory duty to write a strategy will have little impact on actual provision, unless resources can be identified to put such a strategy in place.”²³⁸

258. Expressing similar views, One Voice Wales questioned the Minister’s decision to make provisions that only require local strategies and suggested the strategies wouldn’t “provide sufficient momentum to generate the improvements desired”.²³⁹

259. The Older People’s Commissioner for Wales stated that the Bill did not go far enough as it “falls short of obligating Local Authorities to ensure that people have access to public toilets”.²⁴⁰

260. The Commissioner went on to comment on how the provision of public toilets was “absolutely crucial” to the prevention agenda, and suggested the effect of cuts was potentially proving to be a

²³² RoP, 15 December 2016, paragraphs 113 and 126

²³³ Written evidence, PHB 26

²³⁴ RoP, 15 December 2016, paragraph 264

²³⁵ Written evidence, PHB 04

²³⁶ RoP, 11 January 2017, paragraph 138

²³⁷ Written evidence, PHB 04, PHB 07 and PHB 37

²³⁸ Written evidence, PHB 03

²³⁹ Written evidence, PHB 17

²⁴⁰ Written evidence, PHB 33

false economy for taxpayers; she said “We’re paying a price anyway (...) it’s [just] on a different budget line (...)”.²⁴¹

261. The CIEH noted its concern that local authorities would produce “marvellous” strategies which would have “no practical impact on the ground”.²⁴²

262. Crohn’s and Colitis UK, while acknowledging that the publication of statements on the implementation of the strategies “may itself add some level of impetus to meet some of the assessment need”, also voiced concerns that local need would not be prioritised unless there was a statutory duty to do so.²⁴³ It said:

“This is disappointing and a missed opportunity to introduce new and bold solutions to tackle the huge toilet deficit within this groundbreaking piece of legislation (...)

With only around 950 public toilets left across Wales, it is important that the legislative solutions are strong enough to reflect the needs of the populace and the huge task at hand.”²⁴⁴

263. Age Cymru added:

“...as there is no additional funding to underpin improvements in current provision, it is difficult to see how the development of a strategy will protect Wales’ network of public toilets.”²⁴⁵

264. Crohn’s and Colitis UK recommended that the Bill be amended “to introduce statutory oversight of the implementation of local toilet strategies”, and suggested this would act as a substitute for placing a statutory duty on local authorities to ensure access to toilets.²⁴⁶ It went on to say:

“It is our contention that the Government has a role to play in ensuring compliance with the provisions of the Bill.”²⁴⁷

265. In response to questioning regarding the extent of the provisions in the Bill, the Minister said there was a “need to give a Bill that’s realistic in terms of what local authorities are able to deliver and not to make something that’s so burdensome (...) or financially impossible for them to deliver”.²⁴⁸

266. However the Minister’s official suggested local government would have a significant role and said the legislation will:

“(...) rely on local authority scrutiny processes and the role of ward members within local authorities to represent their local populations to make sure provision is adequate for the needs of all the community.”²⁴⁹

²⁴¹ RoP, 19 January 2017, paragraphs 92 and 95

²⁴² RoP, 19 January 2017, paragraph 253

²⁴³ Written evidence, PHB 38

²⁴⁴ Written evidence, PHB 38

²⁴⁵ Written evidence, PHB 21

²⁴⁶ Written evidence, PHB 38

²⁴⁷ Written evidence, PHB 38

²⁴⁸ RoP, 1 December 2016, paragraph 258

'Toilets for public use'

267. It is envisaged that local authorities will consider a 'full range of options' for making facilities available to the public. The EM states "An illustration of this process is if a public toilet is not available at a park but a local authority identifies a need for one, then the local authority should consider different ways of ensuring that the need is met. This could be by the local authority directly providing the facility, but equally could be met in other ways, such as the local authority working with a private business within or near to the park to make their facilities available to the public".²⁵⁰

268. The WLGA commented on the need for local authorities to "take a broad strategic approach that looks at access to public toilets in the round". Recognising the decline in direct provision by local government, it noted that the EM indicates that the cost of providing just four additional toilet facilities to be £107,000 without maintenance and, as such, added that there would be a need for communicating with other organisations that may be willing to make their toilets available for public use.²⁵¹

269. The Minister stated:

"The statutory guidance will recommend local authorities consider whether there are opportunities to work with others: (...) working with other local authorities, working with public bodies, commercial and private entities, when assessing the need for, and the availability of, toilets in the local area. So, the toilets are deliberately referred to as 'toilets for public use' rather than 'public toilets.'"²⁵²

270. The Minister went on to say that, through guidance, she would be exploring what "onus" could be placed on local authorities themselves in terms of opening up the facilities on their own estates for more general public use.²⁵³ This standpoint was supported by the Older People's Commissioner for Wales and the CIEH.²⁵⁴

271. In oral evidence, Crohn's and Colitis UK suggested there should be a duty for third party organisations, which are in receipt of public funding, to cooperate with local authorities, and said "that would give some validation to the local authorities' calls (...) and to the success of the Bill as well".²⁵⁵

Grant schemes

272. A number of stakeholders offered non-legislative solutions to address the deficit in public toilet provision. The Welsh NHS Confederation said that, in addition to legislative changes, other schemes, such as the public access Community Toilet Grant Scheme, should be promoted more as the scheme was underused with large variation between Local Authorities.²⁵⁶ However, the Older People's Commissioner for Wales said that scheme could not "adequately replace public toilet provision".²⁵⁷

²⁴⁹ RoP, 11 January 2017, paragraph 153

²⁵⁰ Explanatory Memorandum, paragraph 238

²⁵¹ RoP, 15 December 2016, paragraphs 127, 140 and 142

²⁵² RoP, 1 December 2016, paragraph 251

²⁵³ RoP, 11 January 2017, paragraph 164

²⁵⁴ RoP, 19 January 2017, paragraphs 102 and 255

²⁵⁵ RoP, 19 January 2017, paragraph 32

²⁵⁶ Written evidence, PHB 03

²⁵⁷ Written evidence, PHB 33

273. One Voice Wales recommended that the former Public Facilities Grant scheme be reintroduced to help “tackle the lack of public conveniences in many areas of Wales”.²⁵⁸ While acknowledging the Scheme’s limitations and noting that its use “must be in addition to the availability of public toilets”, Crohn’s and Colitis UK also noted its support for the Public Facilities Grant Scheme and suggested that Welsh Government funding for the grant should revert to its former, hypothecated position.²⁵⁹ The Older People’s Commissioner for Wales supported this view.²⁶⁰

274. The Minister acknowledged that many people were uncomfortable about going into a café, for example, to use the toilet facilities without purchasing something and suggested that a “culture change” was needed so that the public understood “this is an okay thing to do and (...) it’s welcomed by the people who are offering that service”.²⁶¹

275. The WLGA suggested that a national communication campaign to accompany the Bill may be worthwhile so that the public were aware of the facilities available to them to use and so any “uncomfortable sense or embarrassment or whatever could be overcome”.²⁶²

Charging

276. The Bill enables a local authority to charge fees for the use of those toilets it provides.

277. Crohn’s and Colitis UK told us they had canvassed the opinion of stakeholders on the subject of charging for the use of public toilets ahead of the introduction of the previous iteration of the Bill in the Fourth Assembly. At that time, approximately 50 per cent said they would pay a small fee because those toilets are often cleaner and suffer less from the effects of anti-social behaviour. Despite this, Crohn’s and Colitis went on to say it “would never support charging because it’s a barrier”.²⁶³

278. The Older People’s Commissioner for Wales drew the Committee’s attention to the responses to the Welsh Senate of Older People’s ‘P is for People’ campaign which found that 85 per cent of respondents were prepared to pay a small amount in order to use a public toilet.²⁶⁴

Public information about toilets

279. The guidance required by the Bill must make provision about promoting public awareness of toilets available for use by the public.

280. Crohn’s and Colitis UK suggested the need for a national approach:

“If there was one central website or app, a toilet app for Wales, which everyone could go to find their nearest toilet, then this would not only increase awareness of available toilets across Wales, but could also help reduce the costs to local authorities in adhering to their new statutory duty. Furthermore, with the fixed costs associated with 22 individual local IT solutions, creating one large central repository of information on toilets would be completed at a

²⁵⁸ Written evidence, PHB 17

²⁵⁹ Written evidence, PHB 38, and RoP, 19 January 2017, paragraph 37

²⁶⁰ RoP, 19 January 2017, paragraph 93

²⁶¹ RoP, 1 December 2016, paragraph 251

²⁶² RoP, 15 December 2016, paragraph 143

²⁶³ RoP, 19 January 2017, paragraph 50

²⁶⁴ Written evidence, PHB 33

fraction of the cost and provide a better service to tourists and local people alike.”²⁶⁵

281. The CIEH also advocated the idea of a “toilet-finding app” and went on to suggest the need for an easily identifiable logo which shops and businesses could display, immediately notifying to members of the public that there was a toilet available for public use.²⁶⁶

282. The Minister’s official told us:

“We have, during the development of the Bill, looked at national data bases and toilet apps such as SatLav, the Great British Toilet Map. (...) It’s something we would encourage local authorities, through guidance, to engage with to make sure that those toilets that are being made available as a result of their strategies (...) are signposted to in as many accessible forms as possible.”²⁶⁷

Our view

283. We note the Bill aims to improve the planning of provision of toilets available for use by the public by ensuring local authorities assess the needs of their communities in relation to toilets, and we support the principle of requiring local authorities in Wales to prepare and publish a local toilets strategy for its area. We welcome the requirements which ensure local authorities must include an assessment of their community’s need for toilets, and how it proposes to meet this need.

284. Nonetheless, we recognise and agree with the views of many stakeholders that without additional financial investment the Bill has fundamental limitations which will do little to increase the overall provision of public toilets in Wales.

285. We note the genuine concerns raised by stakeholders about the lack of a specific duty on local authorities to implement the strategies; we believe these concerns are justified. However, whilst we see merit in placing a statutory duty on local authorities to implement the strategies and, going further, to provide public toilets, we acknowledge the financial and resource pressures facing local government at this time. With this in mind, we accept the Minister’s reasoning for seeking to ensure that the provisions are realistic and not financially impossible to deliver.

286. We note the Bill requires guidance to be issued to local authorities about the preparation, review and publication of local toilet strategies, which local authorities must have regard to. We believe this guidance will be important in ensuring a consistent approach across Wales, and we urge the Minister to ensure the guidance provides adequate direction to local authorities and also sets out the Welsh Government’s expectations.

287. We support the provisions in the Bill which require a local authority to consult interested parties on its draft local toilets strategy. We acknowledge the evidence received from stakeholders about the importance of ensuring that public toilet facilities address the needs of individuals who require changing facilities, additional space, and/or the aid of specific adaptations. We are content that the requirement for a local authority to consult on its draft strategy will ensure the needs of all parts of the community are identified.

²⁶⁵ Written evidence, PHB 38

²⁶⁶ RoP, 19 January 2017, paragraph 271

²⁶⁷ RoP, 1 December 2016, paragraph 262

288. We note that the Minister expects local authorities to consider a full range of options for making toilet facilities available to the public. We welcome the Minister’s commitment to explore what onus could be placed on local authorities in terms of opening up the toilet facilities on their own estates for general public use.

Recommendation 16. We recommend the Minister makes it explicit in the statutory guidance the expectation that toilet facilities in larger public buildings are made available for use by the public wherever practical and feasible.

289. We note the evidence from stakeholders regarding schemes such as the Public Facilities Grant Scheme. We believe the Minister should review the operation of such schemes, including their method of funding, and give consideration to other non-legislative tools, such as a national communication campaign, for promoting the use of toilet facilities in non-public settings.

290. In our view, providing the public with adequate, appropriate and accessible information regarding the location and type of toilet facilities available for use in a particular area is key to the success of this part of the Bill.

291. Whilst we recognise the responsibility for compiling the strategies should lie with local authorities, we believe the Welsh Government has an important role in facilitating and co-ordinating the information in order to ensure a consistent national approach. With this in mind, we support the suggestion from a number of stakeholders that the development of a national map identifying the location of toilet facilities throughout Wales should be pursued. Furthermore, we were also persuaded by the evidence we received of the benefits of an App²⁶⁸ which would also identify where to find local toilet facilities.

Recommendation 17. We recommend the Minister, working with appropriate partners, develops a national map, using the information provided by local authority local toilet strategies, which assists the public with locating toilet facilities for public use across Wales.

Recommendation 18. We recommend the Minister, working with appropriate partners, gives thorough consideration to the development of an App which assists the public with locating toilet facilities for public use across Wales.

292. In addition, we support and advocate the suggestion by the Chartered Institute of Environmental Health that there should be an easily identifiable logo which public buildings, shops and businesses could display to immediately notify members of the public that there was a toilet available for public use.

Recommendation 19. We recommend the Minister commissions the development of an easily recognisable logo that may be displayed at publicly accessible toilet facilities across Wales.

293. We note that the Bill makes provision for local authorities to charge fees for the use of those toilets it provides. We are aware of the financial constraints facing local authorities and recognise that these constraints may lead local authorities to consider imposing a charge for the use of some toilet facilities. We acknowledge the evidence received on this issue and believe that, should a local

²⁶⁸ A computer program or piece of software designed for a particular purpose that you can download onto a mobile phone or other mobile device.

authority determine that it needs to start charging for the use of its toilets facilities, the charge should be minimal and consultation with the community should be undertaken before a charging scheme is introduced.

13. Part 8: Miscellaneous and General

Fixed penalty receipts for food hygiene rating offences

294. The Food Hygiene Rating (Wales) Act 2013 requires food businesses in Wales to be rated on their food hygiene standards, and to display this rating where it can be easily seen by customers, such as at the entrance to their premises. The 2013 Act ensures customers have easy to understand information on the hygiene standards of a food business before they buy food, and has driven up the food hygiene standards of food businesses across Wales.

295. ‘Food authorities’ (primarily local authorities) are responsible for enforcing the food hygiene rating scheme in Wales. The 2013 Act allows food authorities to issue Fixed Penalty Notices (FPNs) to food businesses for non-compliance with the scheme.

296. Section 22(1) of the 2013 Act currently requires the receipts from FPNs issued for offences under the Act to be returned to the Welsh Consolidated Fund from which expenditure of the Welsh Government is allocated.

297. Section 116 of the Bill makes a minor change to the administration of FPN receipts under the Act, to alter the arrangements for the return of FPC receipts for food hygiene rating offences and their re-use. This is in response to views put forward by food authorities that their retention of FPN receipts will assist them to fund enforcement activity under the scheme.

298. Overall, there was support for this provision. Respondents who commented on this Section felt it would “assist local authorities in recovering the costs associated with addressing cases of non-compliance, thus helping to maintain the ongoing success of the scheme.”²⁶⁹

Our view

299. We are content with the provisions contained in this Section. We note the view of respondents that it will assist local authorities in recovering the costs associated with addressing cases of non-compliance and help maintain the ongoing success of the hygiene rating scheme in Wales.

²⁶⁹ Written evidence, PHB 07