

Health & Social Care Committee

Public Health Bill

06th July 2015



WLGA • CLILC

INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities and the three fire and rescue authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. WLGA welcomes the opportunity to provide evidence on proposed changes to public health. Responses to the specific consultation questions are provided separately (see below); we also draw on a previous paper to Welsh Government, calling for the responsibility for public health to be returned to local government.

Improving Public Health

4. Improving public health is one of the main priorities of the Welsh Government and rightly so, if the quality of life of our residents is to be improved. The WLGA welcomes the proposals in the Public Health bill aimed at **better regulating** matters that impact on our resident's health, but the Welsh Government are missing an opportunity to re-think how public health services are delivered.
5. In the forward to the white paper Mark Drakeford AM, the Minister for Health and Social Services recognises that the causes, (and we would argue many of the solutions) lie outside the health service.... *"...We know that the elimination and prevention of health inequalities can only be achieved when linked to the underlying inequalities of income, wealth and power across society. The fundamental causes of poor health, and its unequal distribution across different parts of Wales, lie outside the health service itself...."*
6. What the Bill does not go on to do is learn and apply the lessons from England, where the responsibility for public health was returned to local government in April 2013.
7. We are however deeply concerned to note the £200m budget cut to Public Health funding in England which was recently announced. Prevention measures do not reap instant benefits. They are generational and gradual. If government is truly convinced that the prevention of ill health will save money in the long term, and help alleviate the crisis that looms over treatment costs as the population ages; then short term politics must be put aside by all parties and long term faith in prevention must be funded for the long term.

8. WLGA believe that integrated planning and service provision within local government and our partners, to promote healthy choices, protect health, prevent sickness and intervene early will help to minimise the need for costly hospital treatment. This is supported by the Directors of Public Protection in Wales who are of the view that local government is well placed, if not best placed, to influence the wider determinants of health; tackle the growing inequalities in health experienced by our communities and to provide the leadership for public health required in Wales.
9. This paper outlines what the WLGA sees as the rationale for transferring responsibility and has also started to consider what the lessons from England have been and how they might apply to Wales.
10. The ring fenced budget provided to local authorities in England was based on an average of £51 per head a population. In Wales this may amount to around £157 million / year for local government to administer. The criteria for allocating the budget to areas of Wales most in need, will require careful consideration and not necessarily use the same criteria as England did.
11. The WLGA are calling for new money to support the proposed Public Health bill and local government can use its democratic mandate to reconsider how all available resources can be assembled to make the most impact on public health outcomes.

The rationale for re-integration

12. In 2010, Professor Sir Michael Marmot published his influential report 'Fair Society Healthy Lives'. The conclusions in this report was highly influential in the decision of the UK government to place the responsibility for public health back with local government. They also recognised that re-integration offered the following benefits:
 - It was the best way to implement the new Public Health Outcomes Framework for England, 2013-2016
 - Local Government provided a strong democratic, accountable and joined up approach to improving public health in local communities
 - Local government already had responsibilities for many of the services that could help to improve Public Health; ***'the determinants of health'*** such as leisure, public protection, housing and social care.
 - Local government already knew their local communities and their needs well.
 - Local government had a track record of reshaping services, doing more with less, and a culture that understood that sometimes you need to invest to save.

Health in all policies

13. The 'health in all policies' approach to be proposed in the Welsh 'Wellbeing of Future Generations bill' will support a council-wide approach to achieving better health outcomes. It will be important that there is alignment between the Public Health Bill and the Future Generations Bill. The latter will set high level national goals with the aim of protecting the well-being of future generations. The goals will be designed to counter/respond to long terms trends such as rising levels of obesity, ageing population, climate change. The sorts of activities in the PH Bill are preventative in nature and therefore in line with such objectives but it will be important that efforts are joined up.

Local Government Capacity

14. Many of the provisions of the White Paper will fall, quite rightly, to local authorities in Wales to implement and enforce. These proposals will strengthen existing tools available to local authorities in Wales to tackle key health issues and should be welcomed.
15. Full consideration should be given to the capacity within local government to deliver these proposals successfully at a time when service cuts and reductions in service standards are all too apparent. Local government, in partnership with other organisations such as Public Health Wales has the expertise and experience to support these new powers and measures. However, many of these provisions will have an impact on resources and therefore the following should be considered:
 - A full regulatory risk and impact assessment should be undertaken to understand the consequences of the proposed legislation on enforcing authorities and on those subject to regulation,
 - Full cost recovery options should be considered or in the absence of a cost recovery mechanism (typically fees & charges) additional resource should be made available to local authorities specifically for the purpose of this legislation,
 - In allocating enforcement responsibility Welsh Government should allow local authorities the discretion to allocate the responsibility to suitably qualified or competent enforcement officers.

Response to the consultation questions

16. The WLGA has been in close dialogue with the Directors of Public Protection Wales (DPPW), and has had the benefit of reading their evidence. We

consider the views expressed by them in relation to the specific public health measures proposed in the Bill to be sound.

17. The arguments for strengthening enforcement provisions, legal defences, the clarification of potentially ambiguous terms, and future proofing are particularly relevant if the legislation is to be successful.
18. For that reason, we do not propose to wholly reiterate those views. However we do endorse their comments via the main points below.

Part 2: Tobacco and Nicotine Products Part 2 of the Bill includes provisions relating to tobacco and nicotine products, these include placing restrictions to bring the use of nicotine inhaling devices (NIDs) such as electronic cigarettes (e-cigarettes) in line with existing restrictions on smoking; creating a national register of retailers of tobacco and nicotine products; and prohibiting the handing over of tobacco or nicotine products to a person under the age of 18.

Do you agree that the use of e-cigarettes should be banned in enclosed public and work places in Wales, as is currently the case for smoking tobacco?

Yes.

The use of e-cigarettes, in particular those that have the appearance of traditional cigarettes, undermines enforcement of smoke-free legislation, not only by local authorities but also those that manage smoke-free places. Many business owners have banned them for that reason.

We believe that the use of e-cigarettes in public places can help “normalise” smoking.

There is uncertainty over the potential adverse health implications associated with e-cigarettes and despite recent studies suggesting some benefit to those quitting smoking the efficacy of e-cigarettes as an aid to smoking cessation is not entirely clear.

It is therefore appropriate to take a precautionary approach to the risks associated with e-cigarettes. Currently people in Wales can breathe clean air in offices, shops, pubs and other public places and work environments. We don't want to see a backwards step towards potentially polluted air.

What are your views on extending restrictions on smoking and e-cigarettes to some non-enclosed spaces (examples might include hospital grounds and children's playgrounds)?

We are of the opinion that smoking should be discouraged in all public places, in particular those locations where there are children or vulnerable people. These include:

Playgrounds; school grounds & their immediate vicinity; Hospital & medical facility grounds; places promoted to children (e.g. "petting farms", fairgrounds and family centred leisure parks).

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

Yes.

Our key concerns are the potential for e-cigarettes to undermine the enforcement of smoke free legislation; intentionally or inadvertently promote or normalise smoking; and the potential impact upon impact upon smoke free environments.

We are concerned that there is a real potential for e-cigarettes to intentionally or inadvertently promote smoking amongst those who currently do not smoke. In particular we feel there is a need to make every effort to deter young people from becoming smokers.

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

Yes. We take the view that anything that has the appearance of smoking helps "normalise" smoking and therefore promotes smoking behaviour and culture.

Workplaces have worked hard to implement the smoke free premises legislation and the use of e-cigarettes undermines this work.

We are concerned that e-cigarettes encourage young people to think that smoking is acceptable and therefore has the potential to act as a gateway to both e-cigarettes and tobacco based products.

Data relating to smoking behaviour in Wales leads us to conclude that we cannot afford to step back from promoting smoke free behaviour and the health and societal benefits associated with that approach.

Do you have any views on whether e-cigarettes are particularly appealing to young people and could lead to a greater uptake of their use among this age group, and which may ultimately lead *to smoking tobacco products?*

Yes we feel they are. We feel every effort must be made to prevent young people developing nicotine addiction or smoking behaviours.

Worryingly, our members have witnessed e-cigarettes being displayed for sale with sweets, at child height, at the checkout in large stores.

Some e-cigarettes utilise scented or flavoured refills that may be attractive to younger users, which is a particular concern if combined with the highly addictive properties of nicotine. Some of these are branded in ways that may be particularly attractive to younger users, such as "Gummy Bear, Cherry Cola and Bubble Gum".

Do you have any views on whether restricting the use of e-cigarettes in current smoke-free areas will aid managers of premises to enforce the current non-smoking regime?

Yes. A number of licensed premises have independently introduced bans on the use of e-cigarettes within their premises in recognition of the difficulty they cause their staff in applying the smoking ban within their premises.

The proposed legislation in smoke-free places should apply equally to tobacco based products and all forms of e-cigarettes.

Do you have any views on the level of fines to be imposed on a person guilty of offences listed under this Part?

The power to issue Fixed Penalty Notices and other enforcement provisions need to be consistent with other smoking legislation and the fines need to be set at such a level as to be a deterrent to (re)offending

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

Yes. The WLGA supports the proposal.

WLGA and DPPW support the view that these provisions would best be enforced by Local Government in Wales. Public Protection Services have considerable experience and expertise in the operation and enforcement of registers and licensing

Given the significant financial pressures being faced by Local Government in Wales, there will need to be careful consideration of how the implementation of a tobacco retail register and its enforcement are resourced.

In addition, we would encourage WG to not be prescriptive in allocating enforcement responsibilities to a particular functional area such as Trading Standards Officers or Environmental Health Officers but allow Local Authorities the discretion to determine how best these provisions may be implemented by their suitably qualified or competent enforcement officers. This will afford Local Government the opportunity and the flexibility to deploy their resources in the most effective manner to suit local circumstances.

Do you believe the establishment of a register will help protect under 18s from accessing tobacco and nicotine products?

The introduction of a register will provide an additional control on the availability of tobacco; a register would contain detailed information on those people and premises from which tobacco can be sold legitimately. Furthermore it would restrict access to the trade to those people and premises where tobacco should not be sold. It will be easier for enforcement officers to identify those premises where tobacco is permitted to be sold, which will in turn assist with the enforcement of underage sales and the display ban.

An offence should be created where tobacco products can only be sold, distributed, etc. to those registered.

Further, we would suggest that provisions could permit placing limitations on the sale of tobacco products (including e-cigarettes) within a designated distance from schools and colleges for example.

We would also highlight the need to recognise the resource implications for Local Authorities enforcing the provisions.

Do you believe a strengthened Restricted Premises Order regime, with a national register, will aid local authorities in enforcing tobacco and nicotine offences?

Yes. The proposed link to restricted sales orders (RSOs) and restricted premises orders (RPOs) under the Children & Young Persons Act are welcome. However, we see it as 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.

However, our experience of "Registers" introduced under other legal provisions suggest that their efficacy can be limited if they are not also accompanied by robust enforcement powers. Some registers are merely administrative or informative.

We welcome the clarification that in addition to sellers of tobacco and nicotine products with a High Street presence, those supplying via online, telephone and mail order channels will be required to indicate this on the register.

The illicit supply and sale of tobacco has been identified as a growing concern by Trading Standards in Wales. A register must not inadvertently add to the problem of illicit trade in cigarettes. The penalties of failing to register therefore need to be robust.

What are your views on creating a new offence for knowingly handing over tobacco and nicotine products to a person under 18, which is the legal age of sale in Wales?

We support the proposals which would bring tobacco products into line with alcohol sales.

Do you believe the proposals relating to tobacco and nicotine products contained in the Bill will contribute to improving public health in Wales?

Yes.

Smoking remains the single greatest avoidable cause of death in Wales **(PHW, 2012)**. The introduction of the ban on smoking in enclosed public spaces in 2007 has been hugely successful in reducing exposure to environmental tobacco smoke and in strengthening public awareness and attitudes towards it. However, reducing the prevalence of smoking, remains a key health priority. Protecting young people from the effects of smoking and deterring young people from taking up the habit are particularly important.

Part 3: Special Procedures Part 3 of the Bill includes provision to create a compulsory, national licensing system for practitioners of specified special procedures in Wales, these procedures are acupuncture, body piercing, electrolysis and tattooing.

What are your views on creating a compulsory, national licensing system for practitioners of specified special procedures in Wales, and that the premises or vehicle from which the practitioners operate must be approved?

We support WG proposals to regulate for special procedures including the creation of a direct offence of failing to register, a full set of enforcement powers including powers of entry, seizure, prohibition, etc. to enable the effective regulation of illegal operators.

We agree with DPPW and is of the view that current legislation does not adequately protect the public. Environmental Health Officers are relying on legislation that is not made specifically for the purpose of tackling illegal operators.

We agree with the concerns of the Chartered Institute of Environmental Health (CIEH) that many procedures are being done by people with little if any knowledge of anatomy, infection control or healing processes **(CIEH, 2014)**.

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

Yes. We support the proposals to include Acupuncture, Tattooing, Body Piercing and Electrolysis. These share a theme of preventing blood borne viruses.

However, we strongly support the view that legislation should enable other body modification procedures to be addressed, some of which present significant risks such as a growing range of procedures including Botox, Dermal Fillers, Sculpting, Microdermabrasion, Dermal Rolling and Dermal Implants. We also recognise that new and novel procedures are continually being developed and Welsh Government should ensure that the register and any associated enforcement powers will be applicable to the widest range of circumstances and developing trends.

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

We support that and also welcome the anticipated opportunity to be consulted upon and to work with Welsh Government officials in framing any proposals.

The Bill includes a list of specific professions that are exempt from needing a licence to practice special procedures. Do you have any views on the list?

We are content with these because these professions should have the necessary understanding of good hygiene and infection control. However, we support the proposed provision that individual professions could be required to have a licence in relation to certain procedures that their regulating body feels do not fall within the scope of their competence.

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

We feel that the proposed licensing system would enable local authorities to undertake public protection duties more effectively and more readily. The establishment of a licensing scheme enabling local authorities to recover their costs will ensure that finance is available to deliver.

The proposals would give enhanced enforcement powers and greater flexibility to deal with public health risks in relation to both those that operate legitimately and those that chose not to.

Do you believe the proposals relating to special procedures contained in the Bill will contribute to improving public health in Wales?

Yes.

See <http://www.wales.nhs.uk/sitesplus/888/news/37472> (The recent Newport case)

Proposals contained in the Bill such as requiring a standard of competency will make a significant contribution to protecting health from risks associated with such procedures.

Part 4: Intimate Piercing Part 4 of the Bill includes provision to prohibit the intimate piercing of anyone under the age of 16 in Wales.

Do you believe an age restriction is required for intimate body piercing? What are your views on prohibiting the intimate piercing of anyone under the age of 16 in Wales?

Yes. Local authority officers are aware that such procedures are taking place and it is our view that such intimate procedures should be illegal on those who are under 16 years of age to protect this susceptible group from potential risks.

Do you agree with the list of intimate body parts defined in the Bill?

Yes. However we also feel there is a case to add the tongue. In addition to other risks, we are aware that there are sexual connotations with piercing of the tongue and for that reason consider there is a case to include in the list.

Do you have any views on the proposals to place a duty on local authorities to enforce the provisions, and to provide local authorities with the power to enter premises, as set out in the Bill?

We support such proposals including the proposal to make it an offence "to enter into arrangements". This would support enforcement of the provisions including "test purchasing" by local authorities.

We recognise the need for police support, particularly when gathering evidence, given the intimate nature of such offences and the safeguarding issues needed to be considered in such circumstances.

Any duties placed upon local authorities need to be supported by adequate funding.

Do you believe the proposals relating to intimate piercing contained in the Bill will contribute to improving public health in Wales?

Yes, see above

Public Health in Wales – Local Government stands ready to deliver

19. For the Committee's consideration, the WLGA has developed a further paper, expanding on the information provided in this document "Public Health in

Wales – Local Government stands ready to deliver”. A copy of the paper is available [here](#).

20. The WLGA would encourage and welcome further discussion regarding transferring public health responsibilities to local government in Wales.

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