Agenda – Y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon

Lleoliad:
Ystafell Bwyllgora 2 – y Senedd
Dyddiad: Dydd Iau, 19 Ionawr 2017
Amser: 09.15

I gael rhagor o wybodaeth cysylltwch a:
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Cyfarfod anffurfiol cyn y prif gyfarfod (09.15 – 09.30)

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

2 Bil Iechyd y Cyhoedd (Cymru) – Cyfnod 1, sesiwn dystiolaeth 10 – Crohn's and Colitis UK

(09.30 – 10.00) (Tudalennau 1 – 38)

Andy McGuinness, Swyddog Polisi Cymdeithasol a Materion Cyhoeddus, Crohn's and Colitis UK

Egwyl (10.00 – 10.05)

3 Bil Iechyd y Cyhoedd (Cymru) – Cyfnod 1, sesiwn dystiolaeth 11 – Comisiynydd Pobl Hŷn Cymru

(10.05 – 10.45) (Tudalennau 39 – 45)

Sarah Rochira, Comisiynydd Pobl Hŷn Cymru

Egwyl (10.45 – 10.50)

4 Bil Iechyd y Cyhoedd (Cymru) - Cyfnod 1, sesiwn dystiolaeth 12 - Cymdeithas Siopau Cyfleustra a Ffederasiwn Cenedlaethol Manwerthwyr Papurau Newydd

(10.50 - 11.20) (Tudalennau 46 - 58)

Edward Woodall, Pennaeth Polisi a Materion Cyhoeddus, Cymdeithas Siopau Cyfleustra
Ray Monelle, Llywydd Cenedlaethol, Ffederasiwn Cenedlaethol Manwerthwyr Papurau Newydd
John Parkinson, Aelod o'r Pwyllgor Gweithredol Cenedlaethol, Ffederasiwn Cenedlaethol Manwerthwyr Papurau Newydd

Egwyl (11.20 - 11.25)

5 Bil Iechyd y Cyhoedd (Cymru) – Cyfnod 1, sesiwn dystiolaeth 13 – Sefydliad Siartredig Iechyd yr Amgylchedd

(11.25 - 12.15) (Tudalennau 59 - 74)

Julie Barratt, Sefydliad Siartredig Iechyd yr Amgylchedd

6 Papurau i'w nodi

Llythyr gan Gomisiynydd Pobl Hŷn Cymru i Ysgrifennydd y Cabinet dros Iechyd, Llesiant a Chwaraeon ynglŷn â Dementia

(Tudalennau 75 - 77)

Llythyr gan Gomisiynydd Pobl Hŷn Cymru i'r Gweinidog Iechyd y Cyhoedd a Gwasanaethau Cymdeithasol ynglŷn â'r adroddiad 'Lle i'w Alw'n Gartref?'

(Tudalennau 78 - 81)

Llythyr gan Weinidog Iechyd y Cyhoedd a Gwasanaethau Cymdeithasol at Gadeirydd Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol ynglŷn â Bil Iechyd y Cyhoedd (Cymru)

(Tudalennau 82 - 84)

7 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o weddill y cyfarfod

8 Bil Iechyd y Cyhoedd (Cymru) – Cyfnod 1, sesiwn dystiolaeth 10, 11, 12 a 13 – ystyried y dystiolaeth

(12.15 - 12.30)

9 Bil Iechyd y Cyhoedd (Cymru) - Cyfnod 1 - ystyried y materion allweddol

(12.30 - 13.30) (Tudalennau 85 - 88)

Mae cyfyngiadau ar y ddogfen hon

PHB 38
Bil Iechyd y Cyhoedd (Cymru)
Public Health (Wales) Bill
Ymateb gan: Crohn's and Colitis UK
Response from: Crohn's and Colitis UK

Crohn's and Colitis UK
Submission to Health, Social Care and Sport Committee
Public Health (Wales) Bill 16-17

CONTACT:
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CROHN'S AND COLITIS UK

Crohn's and Colitis UK is a national charity leading the battle against Crohn's Disease and Ulcerative Colitis. We provide high quality information and services, support life-changing research and campaign to raise awareness and improve care and support for anyone affected by Inflammatory Bowel Disease (IBD).

INFLAMMATORY BOWEL DISEASE

At least 300,000 people or 1 in 210 people in the UK have Crohn's Disease or Ulcerative Colitis, collectively known as Inflammatory Bowel Disease (IBD). This means that there are over 15,000 people in Wales diagnosed with IBD and the prevalence is increasing. This equates to around 375 people per Assembly constituency. IBD is a lifelong condition that most commonly first presents in the teens and early twenties (mean age of diagnosis is 29.5 years) but can present at any age.

Key facts about IBD:

- It's an invisible condition causing inflammation and ulceration of the bowel.
- It's a lifelong, incurable condition.
- It affects people of all ages, but commonly presents in the teens and twenties
- It fluctuates – people experience unpredictable flare-ups and remission during their life.
- It can have a devastating effect on quality of life, impacting work, education & social activity.
- Access to toilets is imperative due to urgent and frequent diarrhoea.
- Prevalence is twice as high as that for Parkinson's and Multiple Sclerosis, with lifetime medical costs comparable to other major diseases such as diabetes and cancer (estimated at £900m per annum UK wide).
- There is low awareness of IBD and it is both under-recognised and under-prioritised.

IBD AND ACCESS TO TOILETS

1. For those with Inflammatory Bowel Disease (IBD), debilitating symptoms like urgent diarrhoea can occur instantly and unpredictably so quick access to suitable toilet facilities is absolutely crucial either to prevent or take action should an accident occur. Understandably, these incapacitating symptoms are accompanied by a continuous anxiety about suddenly needing the toilet and having very little time to find one. Experiencing an episode of incontinence in public is profoundly embarrassing. For many individuals, the result is a devastating impact on their ability to engage in regular activities away from home such as going to work, shopping or socialising.

2. A person living with IBD said - *"I suffer from Crohn's disease and need access to public toilets in order to carry out my everyday life."*

SUMMARY OF RECOMMENDATIONS FROM CROHN'S AND COLITIS UK

- *Due to increasing budget restrictions across local authorities, the provision of toilets needs to be set on a statutory footing.*
- *We recommend the Committee take a closer look at the Government's figures on the costs of a statutory duty to provide toilets, as they do not take account of the cost benefits of utilising the current supply of toilets in an area.*
- *We urge the introduction of a monitoring and overview system by the Government to ensure compliance with the legislation by local authorities to reduce the identified gaps in toilet provision.*
- *To help tackle the current under-provision of local toilets, more funding needs to be made available to ensure that toilet strategies are implemented and this funding should be ring fenced.*
- *Crohn's and Colitis UK do not support charging for public toilets and are concerned that introducing charging will affect those living with IBD and other long term conditions, who may need frequent and immediate access to toilets.*
- *We ask the Committee to look into the accountability deficit within the Bill which does not currently include any duties or place obligations on third party organisations that receive public funds to comply with the new legislation ensuring that the public can access toilets in their buildings.*
- *We recommend that the Welsh Government assist in the creation of a toilet website and app for Wales.*

CREATION OF LOCAL TOILETS STRATEGIES

3. Crohn's and Colitis UK are very supportive of the proposals within the Bill which will create a duty for each local authority in Wales to prepare and publish a local toilets strategy for its area and set out a statement about how they propose to meet identified gaps in toilet provision in their area.

4. Through feedback from people with IBD, Crohn's and Colitis UK is aware that the provision of toilet facilities across Wales can be variable and we welcome any provisions which will encourage the greater availability of clean and accessible public toilets. Crohn's and Colitis UK welcomes the duty to assess, plan and then review a toilets strategy for ensuring suitable provision of toilets in an area. 96% of respondents to a survey conducted by Crohn's and Colitis UK last year on the Health and Social Care Committee's consultation on the Public Health (Wales) Bill, stated that they agreed with proposals in the Bill that each local authority in Wales should have a duty to create and publish a local toilets strategy. Of these:

- 40% said they supported this due to their need for urgent and frequent access to toilets
- 38% cited the significant health benefits and peace of mind that would come from better access to toilets
- 16% felt it was necessary due to the increasing incidence of local public toilets being closed.

6. Crohn's and Colitis UK welcomes the four year time limit set for the life of the toilets strategies and believe that the introduction of a two year progress statement will be an important tool in scrutinising the implementation of the local strategy. Crohn's and Colitis UK believe that location is an important aspect of public toilet provision and would like to see an increase in provision across all areas, rather than restricted to tourist hotspots, so that an individual in need is never far from a toilet.

A STATUTORY DUTY TO ENSURE ACCESS TO TOILETS

7. In response to our survey, 77% of respondents stated that they thought preparing a local toilet strategy would lead to improved provision of public toilets. Of these respondents almost half stated that this was their view because it creates an obligation on a local authority to become active on the issue of access to toilets, whilst 31% thought that creating a toilet strategy would raise awareness and thereby lead to a higher provision of toilets in their local area.

8. However, 88% of those who did not think a toilet strategy would lead to improved provision of public toilets felt this was the case because of issues with local authority funding and budget cuts. Crohn's and Colitis UK share this view, and whilst we believe that creating a local toilet strategy may lead to a higher provision of public toilets, we are very concerned that with increasing calls on local authority budgets, coupled with future budget cuts, proposals to meet assessed local need, as identified through the toilets strategy, will not be prioritised unless there is a statutory duty to do so.

9. It is welcome that Article 110(5) of the Bill includes a duty for local authorities to publish a statement of the steps they have taken over the four years of the strategy to meet any gaps in assessed need as well as publishing an interim statement of progress made at the half way stage, after 2 years. However, the Bill does not state that local authorities need to ultimately meet 100% of the assessed need in their area but just set out steps that the local authority *proposes* to take to meet this toilet provision gap. We acknowledge that the publication of progress statements on the implementation of strategies may itself add some level of impetus to meet some of the assessed need.

10. Nevertheless, without making this duty explicit and ensuring Government oversight and scrutiny, implementation of this duty relies on the strength of local political will, volunteers and third sector organisations and therefore may be sporadic and inconsistent. There will be no statutory organisations with teeth overseeing the implementation of this process. 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, which recognises access to public toilets as a public health issue for the first time.

11. Without either a statutory duty or statutory oversight, it is our contention that local authorities will see the provision of toilets as cost prohibitive. As the Government themselves state "*The provision and maintenance of public toilets in Wales is a considerable cost to local authorities and, as a consequence, provision is declining and toilets are under threat of closure across Wales*"[1].

12. 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. It is noteworthy that in the Government's own explanatory memorandum to the Bill, it states that, "*It is anticipated that a conservative assessment of need could identify the need to increase provision by 50%*"[2] and "*A higher estimate could identify the need to double toilet provision across Wales*"[3].

13. Given the extent of need for toilets, Crohn's and Colitis UK would urge the Health, Social Care and Sport Committee to be bold with its recommendations and propose to the Government that the Bill should be strengthened to ensure that the recommendations within a toilets strategy are actually acted upon and that there is a monitoring system to ensure compliance with the legislation. This view is shared by Age Cymru, the British Toilet Association, the Paediatric Continence Forum and the Commissioner for Older People.

14. An overwhelming majority, 99% of people that responded to our Public Health (Wales) Bill survey stated that there should be a statutory duty on local authorities to provide access to public toilets. 55% of these respondents considered this would bring significant health benefits for those living with IBD, while a further 32% said that statutory provision was indispensable to tackling the current under provision of public toilets in their local area.

15. Crohn's and Colitis UK fully support this view and believe that only the creation of a statutory duty for local authorities to meet the assessed need contained within the toilets strategies, will ensure an increase in provision of toilets accessible to the public. We urge the Health, Social Care and Sport Committee to consider this issue carefully when reporting on the Public Health (Wales) Bill.

[1] Public Health (Wales) Bill, Explanatory Memorandum, Incorporating the Regulatory Impact Assessment and Explanatory Notes, November 2016, p55.
[2] Ibid, p246
[3] Ibid.

COSTS OF STATUTORY PROVISION

16. The Government's main argument against recommending a statutory duty on local authorities to ensure access to toilets, is the prohibitive costs of doing so, as set out in Option Four of the Bill's Explanatory Memorandum. The Government gives probable costing options of increasing public toilet access by 50% to be £25.5m, 75% to be £38.2m and 100% to be £51m[4].

17. However, in doing so the Government this costing does not take into account that access to toilets will be increased by utilising and opening up the current toilet supply in an area. This is one of the main benefits of the Bill where Section 110(8)(a)(iv) clearly states that the Government will issue guidance on ensuring access to toilets by the public in premises that receive public funding. This would relate to public buildings such as libraries and museums but also to any private businesses receiving monies through the Public Facilities Grant scheme or any local community toilet scheme.

18. The overall figure of 950 public toilets in Wales currently equates roughly to 43 public toilets in each local authority (not taking into account population variances). Based on the 50% figure used by the Government as a conservative estimate of the need to increase toilet provision in Wales, each area would need to provide 22 extra toilets to fill the gap in local toilet provision. Under the proposals to include public facing toilets in every building receiving public funds, the local toilet gap would be significantly reduced as, many of these buildings are located in high footfall areas.

19. This demonstrates that opening up current toilet provision in an area will significantly reduce the financial burden on local authorities when seeking to reduce the toilet provision gap. However, the Government's costings do not take this into account and the true cost of strengthening the Bill, by introducing a statutory duty to ensure greater access to toilets, may not be overly cost prohibitive to local authorities. Crohn's and Colitis UK therefore recommend that the Health, Social Care and Sport Committee gives consideration to this important issue in its deliberations.

STATUTORY OVERSIGHT

20. Crohn's and Colitis UK believe that the Health, Social Care and Sport Committee should consider recommending to the Government that provisions are added to the Bill to introduce statutory oversight of the implementation of local toilet strategies. Such a measure would be necessary if a statutory duty was put in place but it could also act as a substitute for such a duty.

21. The Government acknowledges that "*The provision and maintenance of public toilets in Wales is at the discretion of local authorities, meaning provision in Wales varies according to local authority*"[5]. In essence, there is a postcode lottery of toilet provision because access is left to the devices of each local authority. The Government themselves acknowledge the reason that provision of toilets is poor across Wales because there is no oversight from Government. Yet their solution to solve this public toilet crisis is yet more localism, free of central Government oversight. This seems to be an illogical solution.

22. We would consider a key question to be whether the creation of 22 individual local toilet strategies, without any comprehensive oversight across Wales, would ensure that the significant under-provision of toilets does not continue into the future, with its corresponding effect on public health. It is our contention that the Government has a role to play in ensuring compliance with the provisions of the Bill. The Public Health (Wales) Bill is the first time that a Government has recognised access to toilets as a public health issue. This is a significant step in itself but, in our view, can only be effectively realised with central oversight and reporting which would enable the Government to properly assess the benefits of the legislation in improving public health.

[4] Public Health (Wales) Bill, Explanatory Memorandum, Incorporating the Regulatory Impact Assessment and Explanatory Notes, November 2016, p247.
[5] IBD, p55.

23. It would not be cost prohibitive for the Government to monitor the implementation of local toilets strategies and report on a cross-Wales basis using publicly held information. This would allow a strategic cross-Wales overview and add a degree of objectivity to ensuring that access to toilets is increased on an equal footing across the whole of Wales.

UTILISING TOILETS WITHIN PREMISES RECEIVING PUBLIC FUNDING

24. Crohn's and Colitis UK is very supportive of the provisions in Article 110(8)(a)(iv), stating that the Government will issue guidance to local authorities to include facilities that receive public funding in their assessment of local toilet supply. This would mean including the current number of public facing toilets in buildings such as libraries, museums or council buildings within the local toilets strategy in order to help meet assessed local need. A key requirement of this would be to ensure that facilities are suitable for usage by the public, with appropriate signage for the general public put in place.

25. While supportive of these provisions, we believe strongly that this must be in addition to traditional public toilets rather than as a replacement as such facilities will close after opening hours, limiting the availability of toilets into the evening and night time. 39% of respondents to our survey stated they supported including the provision of facilities that receive public funding in the strategies to increase the availability of toilets for the public, with a further 26% stating that toilets in public facilities were often nicer and better maintained than public toilets situated elsewhere.

26. A respondent told us:

- *"If a building receives public funding then its toilets should be easily available for everyone. This should include proper signage and no obstruction from staff on the premises."*

27. We also welcome the provisions in Article 110 of the Bill that covers access to toilets within key travel and public transport systems as well as significant historical, cultural and sporting locations. Access to toilets in these settings has been a substantial issue for people with IBD and this situation has deteriorated over the last number of years. However, we are concerned that the Bill does not include any duties on third party organisations that receive public funds to comply with the new legislation ensuring that the general public can access their toilets. In essence, there is an accountability deficit within the legislation.

28. It would be hoped that all such organisations would work constructively with their local authority partners. However, we believe that it is important to be mindful of the ever increasing strains on public finances which may reduce the likelihood that some organisations would cooperate and work constructively with their local government partners without some form of compulsion to do so.

29. Whilst it is clear that local authorities have a duty to assess the need for toilets in their area in order to increase access, there is no corresponding duty on other bodies. Crohn's and Colitis UK would like to see the Committee consider this issue in more depth with a review to recommending legislative amendments to the Government.

PUBLIC FACILITIES GRANT SCHEMES & COMMUNITY TOILET SCHEMES

30. An alternative means to ensuring the quality and accessibility of toilets for public use is to supplement those services provided by the local authority with access to facilities in commercial premises, for example, through the Public Facilities Grant Scheme. Crohn's and Colitis UK support schemes such as the Public Facilities Grant Scheme which encourage local authorities to establish schemes that utilise toilets in commercial premises if these are accessible, well-maintained and properly signposted for public use. Utilising an area's current toilet provision, whether from public or private sources will be a key tool in helping increase the provision of toilet facilities for local people whilst acknowledging the limitations on available local authority budgets.

31. Whilst this is an important measure open to local authorities, they should also be conscious of the limitations of the scheme. Local authorities need to be aware of some groups who might feel

uncomfortable going into certain premises such as pubs or restaurants to go to the toilet. For this reason, as recommended by the House of Commons Communities and Local Government Select Committee, it is important that any scheme covers a variety of outlets to ensure that toilet facilities are available for a wide range of users[6]. There is also a significant lack of information available on the current schemes and almost no on-street signage for the public which, if put in place, would help promote awareness and usage of the scheme.

32. The use of such schemes must be in addition to the availability of public toilets, as the provision of publically accessible toilets is required for all times of the day and night, and it is unlikely any scheme of this type will have the capacity to offer round-the-clock access due to restrictive business opening hours. As a result, access to facilities in commercial premises is only a partial solution and should be regarded as a supplementary measure rather than the basis for provision of toilets in a local area.

33. Due to pressures on budgets, Crohn's and Colitis UK fear that local authorities will see increasing access to toilets through a form of Community Toilet Scheme as a reason to close existing public toilets. This would go entirely against the spirit of the Bill, which seeks to improve public health. We would like the Committee to consider this issue and, if appropriate, make recommendations to the Government to secure the current provision of public toilets.

34. Crohn's and Colitis UK welcome the commitment by the Welsh Government to continuing the Public Facilities Grant Scheme which makes a total of £200,000 available each year to 22 local authorities in Wales. However, it should be noted that this only equates to just over £9,000 per year for each authority.

35. We are disappointed that the Welsh Government are not proposing to increase the monies available under this grant, given that all authorities will need to commit extra funding to adhere to the provisions of the Bill itself, before any work on increasing access to toilets actually takes place. As the Public Facilities Grant Scheme is not a ring-fenced scheme, but made available through the General Fund, and given the costs associated with creating a local toilets strategy, Crohn's and Colitis UK is concerned that local authorities will use funding previously allocated to businesses through the Public Facilities Grant Scheme to pay for the new toilets strategy. Therefore, Crohn's and Colitis UK calls for the funding to the Public Facilities Grant Scheme to once again become a specific ring-fenced grant.

COSTS

36. Crohn's and Colitis UK is very concerned that the Bill does not make any extra capital funds available for the provision of toilets. The Bill's Explanatory Memorandum on p246 suggests that it would cost £107,500 to build a new a block of four toilets[7].

37. As previously stated, it is estimated that there are around 950 public toilets currently across Wales. To meet the assessed need of public toilet provision using the ratios set out by the British Toilet Association, the Government's conservative estimate states that the number of public toilets would need to rise by 50%. This equates to 475 extra units which would lead to an capital costs for the initial build to local authorities of £25.5million[8].

38. Even if a large percentage of the access gap could be filled by opening up current toilet provision in an area through public and private buildings, there will still be a need for local authorities to build more public toilets. This is particularly true to ensure that local authorities adhere to the need to provide Changing Places toilets, which are larger and more expensive units. With ever increasing cuts to local government budgets and greater calls on their services, local authorities will need more funding if they are to fully implement the assessed local need through the toilets strategies.

[6] House of Commons, Communities and Local Government Select Committee, The Provision of Public Toilets, Twelfth Report of Session 2007-08, 22nd October 2008, p39.
[7] Public Health (Wales) Bill, Explanatory Memorandum, Incorporating the Regulatory Impact Assessment and Explanatory Notes, November 2016, p246.
[8] Ibid.p247.

ACCESS TO INFORMATION ON TOILETS

39. A crucial duty on local authorities as set down within Article 110(8)(b) of the Bill will be to promote public awareness of toilets in their area that are available for use by the public. This is incredibly important because the current information available on toilets, particularly if you need instant access to find a toilet, is extremely variable across Wales and is mostly of a poor standard, if available at all.

40. As with the unreliable data on the number of existing toilets in Wales, the reason why access to this information is variable is that it is is held and administered by local authorities themselves, rather than central Government. If the Government is truly committed to improving public health by increasing access to toilets, then they must play a key role in improving and standardising access to information on toilets. Whilst it is clear the Government can carry out some of this function through the issuing of the statutory guidance, they could have a much more significant role to play in ensuring consistent and easy access to information on toilets across the whole of Wales.

41. The use of websites and apps to access information when away from the home is a crucial function, especially for those with continence concerns. Whilst local authorities have a duty to promote local toilets, should someone be visiting the area, they may not easily be able to access this information, or be aware that it exists, particularly in a moment of need.

42. 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 fraction of the cost and provide a better service to tourists and local people alike. There is no comprehensive toilet map or information available at the present time either free or for a charge, so there is a huge gap in the market which could be filled by the Government. Therefore, Crohn's and Colitis UK propose that the Health, Social Care and Sport Committee consider this as a possible recommendation to the Government for inclusion within the Bill.

CHARGING FOR TOILET USAGE

43. 57% of people that responded to our survey stated that they would support charging for the use of public toilets. 52% of these supported a small charge if free access was maintained for disabled people or those with long term conditions such as IBD, whilst 47% supported charging to ensure that toilets are readily available, clean and accessible.

44. However, 43% of respondents did not think that charging for access to public toilets was appropriate, with 53% of these stating that they had concerns over the cost for those living with IBD that may have to use public toilets several times in any one outing. These people also had concerns with access to suitable change and lack of access to toilets. 47% of respondents who were opposed to charging, stated that public toilets should be funded through the council tax already charged on local people rather than face additional charges to access facilities that they need to avoid episodes of incontinence in public.

45. Whilst Crohn's and Colitis UK is sympathetic to the arguments for implementing a small charge for the use of public toilets to ensure that they are well maintained, we do have grave concerns about the impact these could have on accessibility for those living with IBD who already face numerous extra costs which result from their condition. We are aware of incidences in which charging has become a significant barrier to accessing toilets in moments of urgency. Therefore, Crohn's and Colitis UK cannot support the provisions under Article 113(5) of the Bill which would allow a local authority to charge for the use of public toilets.

PHB 33
Bil Iechyd y Cyhoedd (Cymru)
Public Health (Wales) Bill
Ymateb gan: Comisiynydd Pobl Hŷn Cymru
Response from: Older People's Commissioner for Wales

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16 Rhagfyr 2016

Annwyl Gadeirydd,

Diolch yn fawr am y cyfle i gyfrannu at eich ymchwiliad i egwyddorion cyffredinol Bil Iechyd y Cyhoedd (Cymru)[1]. Rwy'n falch o weld y Bil yn dychwelyd i'r Cynulliad ac rwy'n gobeithio gweld fersiwn derfynol yn dod yn ddeddf a fydd yn mynd i'r afael â'r problemau iechyd y cyhoedd sylweddol sy'n wynebu pobl Cymru.

Yn fy nhystiolaeth atodedig, rwyf wedi dewis canolbwyntio ar dri maes yn y Bil yn benodol. Mae'r ddau faes cyntaf, toiledau cyhoeddus ac asesiadau o'r effaith ar iechyd, yn bresennol eisoes yn y Bil ac rwy'n eu croesawu mewn egwyddor, ond mae gennyf welliannau manwl y gellid eu gwneud. Nid yw'r trydydd maes, unigrwydd ac arwahanrwydd, wedi'i gynnwys yn y Bil ar hyn o bryd ond, gan ei fod un o'r prif broblemau iechyd y cyhoedd sy'n effeithio ar bobl hŷn ac eraill mewn cymdeithas, credaf ei fod yn haeddu cael ei gynnwys yn y ddeddfwriaeth.

Gobeithio y bydd y sylwadau hyn yn ddefnyddiol i chi ac y byddwch yn eu hystyried wrth i chi fwrw ymlaen â'ch ymchwiliad. Cysylltwch â mi neu'r Arweinydd Cymunedau, Llywodraeth Leol a Lles, Iwan Williams ([redacted]), yn ddi-oed, os hoffech drafod y materion yn fanylach.

Cofion cynnes,

Sarah Rochira

Sarah Rochira
Comisiynydd Pobl Hŷn Cymru

[1] http://www.senedd.cynulliad.cymru/mgConsultationDisplay.aspx?id=234&RPID=1007994869&cp=yes

Ymgynghoriad y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon ar Egwyddorion Cyffredinol Bil Iechyd y Cyhoedd (Cymru)

Darparu toiledau cyhoeddus

1. Croesewir y cynnig bod Awdurdodau Lleol yn llunio ac yn cyhoeddi strategaeth toiledau lleol. Ond, nid yw'n mynd yn ddigon pell ac nid yw'n ei gwneud yn ofynnol i Awdurdodau Lleol sicrhau bod gan bobl fynediad i doiledau cyhoeddus. Anaml iawn y mae pobl hŷn yn galw am strategaethau a'r hyn y maent ei angen, yn hytrach, yw ymrwymiadau a chamau pendant i sicrhau y gallant barhau â'u bywydau beunyddiol a chael cysylltiad â'u cymunedau drwy ddarparu toiledau cyhoeddus a gwasanaethau anstatudol hanfodol eraill. Mae gan bobl hŷn yng Nghymru yr hawl i ddisgwyl cael toiledau cyhoeddus sydd ar agor, yn lân ac yn hawdd cael atynt. Er y bydd modd i Awdurdodau Lleol ddatblygu eu strategaethau eu hunain, mae'n rhaid i'r Bil sicrhau rhywfaint o gysondeb er mwyn cael dull unffurf o ddarparu toiledau cyhoeddus ledled Cymru.

2. Fel yr wyf wedi'i bwysleisio'n gyson a'i amlygu yn fy adroddiad 'Pwysigrwydd ac Effaith Gwasanaethau Cymunedol yng Nghymru'[2], mae toiledau cyhoeddus a gwasanaethau cymunedol eraill yn asedau hanfodol, ac yn hollbwysig o ran cynnal iechyd, annibyniaeth a llesiant pobl hŷn. Mae toiledau cyhoeddus hefyd yn cyfrannu at yr agenda atal, yn cadw pobl hŷn yn weithgar ac yn lleihau'r angen i ddefnyddio gwasanaethau iechyd a gofal cymdeithasol.

3. Mae darpariaeth dda o doiledau cyhoeddus yn anghenraid o ran iechyd y cyhoedd. Mae cau toiledau cyhoeddus yn effeithio ar iechyd corfforol (mae pobl hŷn yn fwy tebygol o ddioddef o anymataliaeth y bledren neu'r coluddyn), iechyd meddwl (mae'r ofn o fethu cael mynediad i doiledau yn gallu arwain at arwahanrwydd ac iselder), ac iechyd amgylcheddol (mae'r risg o haint yn sgil baeddu ar y stryd yn cynyddu wrth i gyfleusterau toiledau cyhoeddus gau). Mae cau neu leihau mynediad i doiledau

[2] http://www.olderpeoplewales.com/wl/news/news/14-02-25/The_Importance_and_Impact_of_Community_Services_within_Wales.aspx#.WFLE_fXXKUl

cyhoeddus yn niweidiol i iechyd y cyhoedd ac yn cael effaith andwyol ar yr economi, gan y bydd pobl hŷn, gan gynnwys trigolion lleol, ymwelwyr a thwristiaid yn llai tebygol o ymweld â llefydd.

4. Fel y mae'r Memorandwm Esboniadol yn ei gydnabod, mae tystiolaeth bod darpariaeth wael o doiledau cyhoeddus yn cael effeithiau negyddol ar bobl hŷn yn arbennig, a'r rheini'n effeithiau anghymesur yn aml. Ni fydd llawer o bobl hŷn yn gadael eu cartrefi heb y sicrwydd y bydd modd iddynt gael mynediad i doiled cyhoeddus yn eu pentref, eu tref neu eu dinas pan fydd yr angen yn codi[3]. Caewyd bron i 20% o'r toiledau cyhoeddus dan reolaeth Awdurdodau Lleol rhwng 2004 a 2013. Canlyniad hyn oedd bod pobl hŷn yn fwy agored i unigrwydd ac arwahanrwydd, a bod angen pecynnau iechyd a gofal cymdeithasol drud arnynt[4].

5. Croesewir y cynnig fod toiledau cyhoeddus yn cynnwys cyfleusterau newid babi a llefydd newid i bobl anabl, ond gellid gwneud mwy o lawer. Mae'n rhaid i doiledau cyhoeddus fod yn llefydd glân, diogel a hawdd cael atynt i bobl hŷn a phobl eraill, gyda chanllawiau, rampiau i gadeiriau olwyn a chymhorthion clywed a gweld i'r rheini â phroblemau symud neu sydd wedi colli un neu ragor o'r synhwyrau.

6. Mae'n rhaid cael adnoddau digonol yn gefn i'r gofyniad i Awdurdodau Lleol asesu'r angen lleol am doiledau cyhoeddus. Rwy'n llawn ymwybodol o'r heriau ariannol difrifol sy'n wynebu Awdurdodau Lleol, ac yn cefnogi pob ymdrech i roi iddynt yr adnoddau angenrheidiol i ddarparu toiledau cyhoeddus. Nid wyf yn gwbl siŵr fod y cynllun Grant Toiledau Cymunedol gynt, lle mae modd i'r cyhoedd ddefnyddio toiledau busnesau lleol, yn fodel a fydd yn gallu cymryd lle darpariaeth o doiledau cyhoeddus yn ddigonol.

7. Mae pobl hŷn wedi dweud wrthyf eu bod yn teimlo'n bryderus neu'n swil ynglŷn â defnyddio Cynlluniau Toiledau Cymunedol, ac yn dibynnu'n hytrach ar doiledau cyhoeddus dibynadwy a hawdd

[3] http://www.assembly.wales/laid%20documents/pri-ld10224-em/pri-ld10224-em-w.pdf
[4] http://www.itv.com/news/wales/2014-06-30/public-toilet-closures-in-wales-shortsighted/

cael atynt. At hynny, yn ôl ymgyrch 'P am Pobl' Senedd Pobl Hŷn Cymru, roedd 85% o'r ymatebwyr wedi dweud y byddent yn fodlon talu swm bach i ddefnyddio toiled cyhoeddus[5].

8. Fel rhan o'r Rhaglen Heneiddio'n Dda yng Nghymru[6], mae pob Awdurdod Lleol wedi llofnodi Datganiad Dulyn, sef ymrwymiad i sefydlu cymunedau cyfeillgar i oedran yn eu hardal. Mae darpariaeth ddigonol o doiledau cyhoeddus yn chwarae rôl allweddol mewn sefydlu cymunedau o'r fath, ac mae'n rhaid i'r Bil fynd ymhellach a sicrhau bod pobl hŷn a phobl eraill yn gallu cael mynediad i doiledau cyhoeddus ledled Cymru.

Asesiadau o'r Effaith ar Iechyd a Llesiant

9. Un o'r prif wahaniaethau rhwng y Bil diwygiedig a'i ragflaenydd yw cynnwys Asesiadau o'r Effaith ar Iechyd (Rhan 5)[7]. Croesewir y gofyniad i gyrff cyhoeddus gynnal asesiadau o'r effaith ar iechyd mewn amgylchiadau penodol, ac mae'n helpu i gryfhau'r Bil.

10. Bydd yr asesiadau hyn yn helpu cyrff cyhoeddus i gynnal a gwella iechyd eu poblogaeth, ond byddai cynnwys llesiant hefyd yn darparu dull mwy cyson ac ategol.

11. Rwy'n gobeithio y bydd yr asesiadau hyn yn gallu mynd i'r afael â rhai o'r materion yr amlygais yn flaenorol ynghylch absenoldeb gordewdra a gweithgarwch corfforol yn y Bil, ond mae'n rhaid i'r Bil hefyd sicrhau bod yr Asesiad yn ystyried yr elfen feddyliol o iechyd unigolion, yn ogystal â'r elfen gorfforol.

12. Mae'r Asesiadau o'r Effaith ar Iechyd (a Llesiant) yn gallu helpu i gynnal asedau cymunedol hanfodol, megis toiledau cyhoeddus a meinciau parc, er mwyn gwneud yn siŵr bod pobl hŷn yn gallu gadael y tŷ a byw bywyd gweithgar.

13. Mae'n rhaid i Asesiadau o'r Effaith fynd y tu hwnt i iechyd ac ystyried llesiant unigolion hefyd. Mae'n rhaid canolbwyntio ar ganlyniadau i bobl hŷn a phobl eraill, gan sicrhau bod cynigion ac ymyriadau cyrff cyhoeddus yn cyfrannu at eu hiechyd, eu

[5] http://www.welshsenateofolderpeople.com/Documents/P%20is%20for%20People%20Questionnaire.pdf
[6] http://www.ageingwellinwales.com/wl/home
[7] http://www.assembly.wales/laid%20documents/pri-ld10796/pri-ld10796-w.pdf

hannibyniaeth a'u gallu i gymryd rhan yn y gymuned a chyfrannu ati. Mae asesiadau o'r fath yn darparu dull mwy cyfannol o ddarparu gwasanaethau cyhoeddus, gan ddarparu dealltwriaeth fwy trylwyr a chraff o sut mae cynlluniau a gwasanaethau yn effeithio ar hyder a hapusrwydd pobl a'u gallu i fynd o gwmpas eu pethau a chymryd rhan. Mae bwrw ymlaen ag asesiadau o'r effaith ar iechyd a llesiant yn ategu fy model Ansawdd Bywyd i bobl hŷn[8], fy nangosyddion llesiant ar gyfer pobl hŷn[9], a hefyd yn cyd-fynd â'r dangosyddion cenedlaethol o dan Ddeddf Llesiant Cenedlaethau'r Dyfodol (Cymru)[10] a'r Fframwaith Canlyniadau Cenedlaethol sy'n cefnogi'r Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru)[11].

Unigrwydd ac Arwahanrwydd

13. Mae unigrwydd ac arwahanrwydd yn broblem iechyd y cyhoedd ddifrifol sy'n effeithio ar fwy a mwy o bobl hŷn ym mhob cwr o Gymru, ac sy'n cael ei gwaethygu gan gau gwasanaethau cymunedol 'cwbl hanfodol' megis bysiau cyhoeddus, toiledau cyhoeddus, llyfrgelloedd, canolfannau dydd, pryd ar glud a chynlluniau cyfeillio. Mae unigrwydd yn gallu cael effaith ddifrifol ar iechyd a llesiant corfforol a meddyliol unigolion, ac mae ei effaith ar farwolaeth yn debyg o ran ei maint i ysmygu 15 sigarét y dydd.

14. Amcangyfrifir bod dros 75% o fenywod a thraean o ddynion dros 65 oed yn byw ar eu pen eu hunain. Heb ffordd o adael eu cartrefi, neu gyda llai o ymweliadau gan weithwyr cymunedol a darparwyr gwasanaethau, bydd mwy a mwy o bobl hŷn yn teimlo'n unig ac ar wahân, a bydd hyn yn arwain at effeithiau niweidiol o ran eu hiechyd meddwl a thebygolrwydd uwch o gamddefnyddio alcohol. Mae angen mynd i'r afael â'r 'llofruddion tawel' hyn ar frys, ac oherwydd hynny mae

[8] http://www.olderpeoplewales.com/Libraries/Uploads/Fframwaith_Gweithredu.sflb.ashx
[9] http://www.olderpeoplewales.com/Libraries/Uploads/Wellbeing_Indicators_w.sflb.ashx
[10] http://gov.wales/topics/people-and-communities/people/future-generations-act/national-indicators/?skip=1&lang=cy
[11] http://gov.wales/topics/health/socialcare/well-being/?lang=cy

Unigrwydd ac Arwahanrwydd yn thema flaenoriaeth yn y Rhaglen Heneiddio'n Dda yng Nghymru[12].

15. Rwyf eisoes wedi galw am gynnwys Unigrwydd ac Arwahanrwydd ym Mil Iechyd y Cyhoedd (Cymru) gan fy mod yn credu ei fod ymhlith y prif broblemau iechyd y cyhoedd sy'n wynebu ein cenedl. Hoffwn weld dyletswydd yn cael ei rhoi ar Fyrddau Gwasanaethau Cyhoeddus, a sefydlwyd gan Ddeddf Llesiant Cenedlaethau'r Dyfodol 2015, i sicrhau eu bod yn ystyried unigrwydd ac arwahanrwydd yn eu cynlluniau llesiant lleol, a hynny mewn ffordd sy'n adlewyrchu bod pobl hŷn yn asedau posib, ac yn anelu i leihau nifer y bobl sy'n teimlo'n unig ac ar wahân yn eu cymuned. Rwyf hefyd yn gweld rôl i Iechyd Cyhoeddus Cymru, fel yr asiantaeth iechyd y cyhoedd cenedlaethol sy'n bodoli i warchod a gwella iechyd a llesiant, o ran mynd i'r afael ag unigrwydd ac arwahanrwydd ar y lefel genedlaethol.

16. Mae unigrwydd ac arwahanrwydd yn cael effaith ddinistriol ar iechyd, annibyniaeth a llesiant pobl hŷn, ac mae'n effeithio ar lawer o grwpiau eraill yn y gymdeithas hefyd. Mae ymchwil diweddar a gomisiynwyd gan y Groes Goch Brydeinig a Co-Op wedi nodi sawl pwynt sbarduno sy'n gallu achosi pobl i deimlo'n unig ac ar wahân. Mae'r rhain yn cynnwys dod yn fam am y tro cyntaf, cael diagnosis o salwch neu anabledd difrifol, ac ymddeol[13].

17. Er fy mod yn croesawu ymrwymiad Llywodraeth Cymru i lunio strategaeth genedlaethol i fynd i'r afael ag Unigrwydd ac Arwahanrwydd yn ei Rhaglen Lywodraethu[14], rwy'n teimlo bod hyn yn fater mor bwysig, sy'n effeithio ar y bobl fwyaf agored i niwed yn y gymdeithas, y dylid ei gynnwys ym Mil Iechyd y Cyhoedd (Cymru) hefyd.

[12] http://www.ageingwellinwales.com/wl/home
[13] http://www.coop.co.uk/Corporate/PDFs/Coop_Trapped_in_a_bubble_report.pdf
[14] http://gov.wales/docs/strategies/160920-taking-wales-forward-cy.pdf

Casgliad

18. Fel yr wyf wedi'i amlygu uchod, mae'n rhaid i'r ddyletswydd ynghylch toiledau cyhoeddus, er yn gam yn y cyfeiriad cywir, fynd ymhellach i sicrhau bod gan bobl hŷn fynediad i doiledau cyhoeddus yn eu cymuned, a chynnwys elfen o gysondeb ledled Cymru.

19. Bydd cynnwys Asesiadau o'r Effaith ar Iechyd yn y Bil ar ei ail wedd yn helpu i hybu iechyd pobl, ond er mwyn iddynt fod yn effeithiol a chyd-fynd â blaenoriaethau eraill, rwy'n credu y dylent gynnwys llesiant eu poblogaeth yn ogystal â'i hiechyd.

20. Er fy mod yn croesawu'r elfennau hyn o'r Bil, rwy'n teimlo bod cyfle sylweddol yn cael ei golli drwy hepgor unigrwydd ac arwahanrwydd, un o'r prif broblemau iechyd y cyhoedd sy'n effeithio ar bobl hŷn a phobl eraill ar draws y gymuned. Hoffwn weld dyletswydd yn cael ei rhoi ar Fyrddau Gwasanaethau Cyhoeddus i ystyried unigrwydd ac arwahanrwydd yn eu cynlluniau llesiant lleol ac anelu i leihau nifer y bobl sy'n teimlo'n unig ac ar wahân yn eu cymuned.

Y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon
Health, Social Care and Sport Committee
HSCS(5)-02-17 Papur 3 / Paper 3

PHB 30

Bil Iechyd y Cyhoedd (Cymru)

Public Health (Wales) Bill

Ymateb gan: Cymdeithas Siopau Cyfleustra

Response from: Association of Convenience Stores

ACS Submission: Public Health (Wales) Bill

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the National Assembly for Wales Health and Social Care Committee's call for evidence on the general principles of the Public Health (Wales) Bill. ACS is a trade association, representing the 50,095 convenience stores trading at the heart of the communities across the UK, which employ 390,000 people (see annex A for more details). Our members include the Co-Op, One Stop, Costcutter, Spar UK and thousands of independent retailers. In Wales, there are 3,096 stores, employing over 24,010 staff[1].

ACS' primary concern regarding the Public Health (Wales) Bill is the proposal to introduce a tobacco retailers' register in Wales. While we believe that the illicit trade does need to be tackled - based on our experience of existing registration systems in the UK, we believe that a new registration system would have limited (if any) impact on the illicit tobacco market. We believe that a registration scheme would only refocus enforcement activity on legitimate retailers, rather than those that participate in the illicit tobacco trade.

Tobacco is an important product category for convenience retailers, representing an average of 15.4% of sales in the UK convenience market[2]. Retailers work hard to ensure they retail these products responsibly through enforcing age restrictions using policies, such as Challenge 25. Convenience stores selling tobacco are already

[1] ACS Local Shop Report 2016
[2] ACS Local Shop Report 2016

burdened by a number of restrictive tobacco legislation, most notably the tobacco display ban, the Tobacco Products Directive and the standardised packaging of tobacco to be introduced next year. A tobacco retailer register will only exacerbate these burdens and add further complexities to tobacco legislation.

HM Revenue and Customs launched a consultation on the introduction of a tobacco licensing scheme for England earlier this year. In our response to the consultation (which can be found here), we outlined our opposition to a tobacco licensing scheme, and instead called on the Government to introduce more targeted measures to reduce the illicit tobacco trade. We call on the Committee to consider these recommendations to tackle the illicit tobacco trade in Wales.

Our recommendations include:

- More effective sanctions available to trading standards officers, including the revocation of alcohol licences for selling illicit tobacco.
- Additional powers to trading standards officers to sanction retailers by using the Customs & Excise Management Act 1979 (CEMA).
- Extension of the Restricted Premise Order to include illicit tobacco as an offence, creating a three strikes and you're out system for illicit tobacco.

Please see below for ACS' views on the general principles of the Public Health (Wales) Bill.

Chapter 2: Tobacco and Nicotine Products

Retailers of Tobacco and Nicotine Products

ACS does not support the introduction of a tobacco register for retailers in Wales. We believe that a register would not only impose financial and administrative burdens on convenience retailers; but it would also pose a significant risk of enforcement activity being refocused on legitimate retailers, rather than those that participate in the illicit tobacco trade.
Registration systems have also proven to be largely ineffective in reducing instances of the illicit trade or reducing compliance costs for enforcement agencies.

Financial Cost

The Bill stipulates that the regulations may make provision to require payment of a fee to accompany an application for a retailer to register. The Explanatory Notes of the Bill propose that this fee would be set at £30 for the first premise and £10 for each additional premise. Based on the number of convenience stores in Wales, this could cost the convenience sector over £90,000.

If introduced, a tobacco register should not be funded by retailers, but operated on a similar model that is already in place in Scotland and Northern Ireland where registration is free. As highlighted in the consultation document, the benefits of the registration scheme would fall primarily to trading standards and local authorities, yet retailers would be expected to fund this scheme. Therefore, we do not believe the potential benefits of a tobacco register for retailers is proportionate to the burdens that would be imposed on them. Any proposed tobacco retailer register should reflect the register already in place in Scotland. Not only would this provide consistency to retailers who operate nationwide, but would not be as burdensome on retailers.

Advice

The Welsh Government justifies the registration fee on the basis that "by having access to a comprehensive list of all retailers who sell tobacco and/or nicotine products, trading standards officers and health authorities would be able to target advice, guidance and campaigns relevant to these industries more effectively, ensuring that all registered retailers receive this information." ACS believe that retailers are unlikely to look to trading standards officers for advice on regulatory compliance. Often local authorities do not have dedicated resources to develop and communicate with the trade effectively.

ACS asked 1,200 retailers about the levels of engagement they have with their local trading standards officers in terms of receiving advice, guidance, and support. Retailers' answers varied considerably, 38% of convenience retailers responded that they had no engagement with any trading standards officer in any capacity in the last year, while 24% of retailers responded that a trading standards officer regularly visits their store to discuss regulatory compliance and the challenges facing their business[3]. The creation of a tobacco registration scheme will do nothing to enhance these relationships, in fact it is likely to divert resources away from providing advice and engagement with retailers.

[3] ACS Voice of Local Shops Survey February 2016

During the introduction of the tobacco display ban for small stores in England and Wales in 2015, trading standards teams, the Department for Health and the Welsh Government had no bespoke guidance for small retailers. They also did not have any dedicated communication resources to communicate the changes to small retailers. All of the parties relied upon trade associations such as ACS and others to promote the change in regulation[4]. Guidance was then developed in collaboration with retailers to achieve high levels of awareness. This approach resulted in 90% of retailers[5] across England and Wales having no concerns about display ban compliance issues.

Failure to Address Illicit Trade

The cost of the illicit tobacco trade to the Exchequer was £2.4 billion in 2015-16[6], as such, it poses a significant threat to the Welsh Government's public health objectives and undermines the legitimate retail trade. However, a tobacco register would have a limited impact on reducing the illicit trade. The introduction of a tobacco retailers' register risks focusing enforcement activity on legitimate, registered retailers rather than addressing individuals participating in the illicit trade. The tobacco register neglects to consider that illicit tobacco retailers will not sign up and will risk enforcement action because the punishment for non-compliance as great as the benefits to them of evading duty.

One of the most common sales avenues for illicit tobacco are 'tab houses', selling from private houses, which accounts for 34% of illicit tobacco sales[7]. There is an increase in the proportion of 14-15 year old illicit tobacco buyers who have bought from 'fag houses' from 15% in 2009 to 34% in 2011[8]. Illicit tobacco makes tobacco accessible to children and young people. Tackling this must form a central part of any tobacco control or public health policy.

Experience of Existing Tobacco Retailer Registers

There are two tobacco retailer registers already in operation in the UK, these include the Northern Ireland Tobacco Retailer Register and the Scottish Tobacco Retailer Register. The schemes have yet to be reviewed but there is little evidence of their

[4] Business Companion: Tobacco & nicotine inhaling products
[5] ACS Release: Retailers Report Successful Compliance with Tobacco Display Ban Regulations
[6] HMRC: Tobacco Tax Gap Estimates for 2015-16
[7] APPG on Smoking and Health - Inquiry Into the Illicit Trade in Tobacco Products 2013
[8] APPG on Smoking and Health - Inquiry Into the Illicit Trade in Tobacco Products 2013

effectiveness in meeting their original objectives of tackling the illicit trade or increasing compliance with tobacco legislation.

Northern Ireland have only recently launched their tobacco retailer register in April 2016. This system requires tobacco to register their business online or by post which can be completed via head office for businesses with multiple sites, or individually for independent retailers. There is no registration fee or other costs associated when retailers sign up to the scheme, but like the register in Scotland, there is a requirement for retailers to keep their information and details up to date. Since the register has only just launched, its effectiveness cannot be evaluated or be used to support the introduction of a tobacco register in Wales.

While the Scottish tobacco retailer register has been in effect since 2011. This system requires retailers of tobacco products to sign up to the tobacco register online, which can be completed via head office for businesses with multiple sites, or individually for independent retailers. There is no cost associated when retailers sign up to the scheme but there is a requirement for retailers to keep their information and details up to date. In the development of the registration scheme in Scotland, the Scottish Government estimated that this would cost £413,500[9], as well as ongoing annual staffing costs and database management costs.

There is very limited evidence, across all types of tobacco related offences, that the Scottish Tobacco Register has been effective despite being free for retailers to register. Within five years of the introduction of the register, only five retailers have been issued with tobacco banning orders. One retailer had been issued with a tobacco banning order for selling tobacco unregistered[10], one banning order had been issued to a retailer who had persistently sold illicit tobacco, and three banning orders were issued to retailers who had sold tobacco to persons under 18 years old. This highlights that a registration does not mean rogue operators will be removed from selling illicit products. If you take into account the amount that the Scottish Government estimated that the register would cost (£419,500), this equates to £83,900 being spent for each retailer to be removed from the register. These funds could be used better elsewhere to tackle the illicit trade.

The Scottish Government Tobacco Control Strategy includes a commitment to review their registration scheme by 2015[11] but this has yet to be delivered.

[9] Scottish Government: Tobacco Provisions to be contained in the Health (Scotland) Bill
[10] Scottish Parliament: Written Answers (Question s5W-01258)
[11] Scottish Government: Creating A Tobacco Free Generation: A Tobacco Control Strategy for Scotland

Registration schemes must have an independent and wide reaching impact assessment in order to ensure that their purpose is justified.

Recommendations

HMRC have an extensive range of sanctions at their disposal already to tackle the illicit tobacco trade but HMRC's enforcement activity is limited to the disruption of large scale tobacco smuggling at UK borders. In comparison, trading standards teams are responsible for tackling inland illicit tobacco activity, but have extremely limited powers and sanctions to deal with illicit tobacco. This is most evident that despite 94% of all trading standards teams in councils are undertaking work in relation to illicit tobacco products,[12] the most common action was verbal or written warnings (56%).

We believe that it would be more effective use of HMRC's time and resources to invest in the use of existing sanctions and the disruption of the inland illicit tobacco market instead of the creation of a new registration system. This could be achieved by reviewing the appropriateness of existing sanctions available to enforcement agencies and dedicating more resources to tackling the inland illicit tobacco market.

ACS urges the Committee to consider the following proposals instead of the introduction of a tobacco registration system.

1. More effective sanctions available to trading standards officers, including the revocation of alcohol licences for selling illicit tobacco.

According to the most recent HMRC Tobacco Output (July 2016), only 62%[13] of individuals prosecuted for tobacco duty-fraud offences were convicted. It is often difficult and time consuming to prosecute an individual. ACS believes that it may be more effective and efficient if efforts moved towards revoking the alcohol licence of the premise involved. Removing a retailer's alcohol licence is more of an effective deterrent for a retailer than any other sanction, as the loss of the ability to trade alcohol would have a detrimental impact on their ability to trade.

[12] CTSI: Tobacco Control Survey, England 2014/15
[13] HMRC: Quarter 3 and 4 outputs: October 2015 to March 2016

Removing alcohol licences for selling illicit tobacco and illicit alcohol is an underused sanction by all enforcement bodies. The reasons that enforcement bodies underuse this sanction are multi-faceted; it is not communicated that this sanction is available, the process to revoke a licence is viewed as complex and requires working across a number of local council departments. ACS strongly advocates greater use of the removal of alcohol licences from retailers for any engagement in the illicit market.

2. Additional powers to trading standards officers to sanction retailers by using the Customs & Excise Management Act 1979 (CEMA).

ACS believes that there needs to be a significant up-lift in inland enforcement activity by HMRC to reduce the illicit trade and additional powers should be given to trading standards officers in order to enforce more effectively. We recommend that trading standards be given the authority to sanction retailers participating in the sale of illicit tobacco using the Excise and Customs Management Act 1979.

This Act specifically addresses the sale of non-duty paid tobacco as an offence. Sanctions can be placed on retailers who "knowingly acquire non-duty paid excise goods with the intention of evading payment of duty" and retailers who have taken "preparatory steps for evasion of excise duty". This Act would mean trading standards officers could sanction retailers with an unlimited fine and/or 7-years imprisonment if convicted on indictment.

3. Extension of the Restricted Premise Order to include illicit tobacco as an offence, creating a three strikes and you're out system for illicit tobacco.

Trading standards officers already have powers available to them to make provision for Restricted Premises Orders (RPO) where there have been a total of three underage sales offences at a premises in a two-year period. This prohibits a retail premises from selling tobacco products for a period of up to 12 months. However, trading standards officers do not have the power to use RPOs to sanction retailers involved in the sale of non-duty paid tobacco products.

We recommend that the scope of the use of Restricted Premises Orders (RPO) and Restricted Sales Orders (RS) be extended to include illicit tobacco offences. The offence for breaching a RPO or RSO is far greater than the current powers available to trading standards officers.

Chapter 3: Prohibition on Sale of Tobacco and Nicotine Products

Restricted Premises Orders: Tobacco or Nicotine Offences

We welcome the provision to provide Welsh Ministers with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales. As detailed above and in our submission to the HM Revenue and Customs consultation on the introduction of a tobacco licensing system, we recommended that the scope of the use of RPOs and Restricted Sales Orders (RSO) be extended to include illicit tobacco offences. As the offence for breaching a RPO or RSO is far greater than the current powers available to trading standards officers.

We believe that the extended scope of RPOs and RSOs to illicit tobacco would remove the need for the Welsh Government to introduce a tobacco retailer register in Wales as it would mirror the existing sanctions for the Scottish tobacco registration scheme but without the additional burdens of a registration scheme being placed on retailers.

Handing Over Tobacco Etc. to Persons Under 18

We believe that retailers need to ensure that they have a robust age verification policy for remote sales, both at point of sale and point of delivery.

For more information on this submission, please contact Julie Byers, Public Affairs Executive, at [redacted] or by calling [redacted]

ANNEX A

ABOUT ACS

The Association of Convenience Stores lobbies on behalf of over 50,000 convenience stores across mainland UK on public policy issues that affect their businesses. ACS' membership is comprised of a diverse group of retailers, from small independent family businesses running a single store to large multiple convenience retailers running thousands of stores.

Convenience stores trade in a wide variety of locations, meeting the needs of customers from all backgrounds. These locations range from city centres and high streets, suburban areas such as estates and secondary parades, rural villages and isolated areas, as well as on petrol forecourts and at travel points such as airports and train stations.

ACS | the voice of local shops

WHO WE REPRESENT

INDEPENDENT RETAILERS

ACS represents 22,870 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to Government policy discussions. These stores are not affiliated to any group, and are often family businesses with low staff and property costs. Independent forecourt operators are included in this category.

SYMBOL GROUPS AND FRANCHISES

ACS represents 15,060 retailers affiliated with symbol groups. Symbol groups like SPAR, Nisa, Costcutter, Londis, Premier and others provide independent retailers with stock agreements, wholesale deliveries, logistical support and marketing benefits. Symbol group forecourt operators and franchise providers like One Stop are also included in this category.

MULTIPLE AND CO-OPERATIVE BUSINESSES

ACS represents 12,165 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, McColls, Conviviality Retail and others. Unlike symbol group stores, these stores are owned and run centrally by the business. Forecourt multiples and commission operated stores are included in this category.

THE CONVENIENCE SECTOR

In 2016, the total value of sales in the convenience sector was £37.5bn. The average spend in a typical convenience store transaction is £6.13.

There are 50,095 convenience stores in mainland UK. 74% of stores are operated by independent retailers, either unaffiliated or as part of a symbol group.

The convenience sector provides flexible employment for around 390,000 people. 21% of independent/symbol stores employ family members only.

24% of shop owners work more than 70 hours per week, while 22% take no holiday throughout the year. 74% of business owners are first time investors in the sector.

Convenience stores and Post Offices poll as the two services that have the most positive impact on their local area according to consumers and local councillors. 84% of independent/symbol retailers have engaged in some form of community activity over the last year.

Between August 2015 and May 2016, the convenience sector invested over £600m in stores. The most popular form of investment in stores is refrigeration.

OUR RESEARCH

ACS polls the views and experiences of the convenience sector regularly to provide up-to-date, robust information on the pressures being faced by retailers of all sizes and ownership types. Our research includes the following regular surveys:

ACS VOICE OF LOCAL SHOPS SURVEY

Regular quarterly survey of over 1200 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of tracker questions and a number of questions that differ each time to help inform ACS' policy work.

ACS INVESTMENT TRACKER

Regular quarterly survey of over 1200 independent and symbol retailers which is combined with responses from multiple businesses representing 3,970 stores.

ACS LOCAL SHOP REPORT

Annual survey of over 2200 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 5,765 stores. The Local Shop Report also draws on data from him! research and consulting, IGD, Nielsen and William Reed Business Media.

BESPOKE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.

For more information and data sources, visit www.acs.org.uk

PHB 32
Bil Iechyd y Cyhoedd (Cymru)
Public Health (Wales) Bill
Ymateb gan: Ffederasiwn Cenedlaethol Manwerthwyr Papurau Newydd
Response from: National Federation of Retail Newsagents

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

NFRN submission to the Health, Social Care and Sport Committee consultation on the Public Health (Wales) Bill

Introduction

The NFRN would like to thank the National Assembly for Wales' Health, Social Care and Sport Committee for the opportunity to present the views of its members on the Public Health (Wales) Bill, in particular on the issues of tobacco and nicotine.

The NFRN is one of Europe's largest employers' associations, representing over 15,000 independent retailers across the United Kingdom and the Republic of Ireland. We are a membership led organisation that assists independent retailers to compete more effectively in today's highly competitive market as well as representing members interests at Government and Parliamentary levels.

As a whole, the NFRN promotes responsible retailing and is a member of the Citizen Card Board.

Response

As there is a cost to apply to the register, which the explanatory notes of the Bill propose that this fee would be set at £30.00 for the first premises and £10.00 for each additional premises. NFRN members feel that the cost to apply to the register equates to a tax on responsible retailers. The NFRN believes that responsible retailers should not have to apply to join a register stating that they are selling tobacco and related products responsibly. We believe that Trading Standards departments should be aware of retailers in their respective areas who sell tobacco illegitimately or irresponsibly, and a centralised list will do little to tackle these problems.

The Welsh Government justifies the registration fee of £30.00 on the basis that *"by having access to a comprehensive list of all retailers who sell tobacco and/or nicotine products, trading standards officers and health authorities would be able to target advice, guidance and campaigns relevant to these industries more effectively, ensuring that all registered retailers receive this information"* as stated in paragraph 460. The NFRN believe that retailers are unlikely to look to trading standards

officers for advice on regulatory compliance, as many charge, and often local authorities do not have dedicated resources to help develop and communicate effectively with independent retailers.

Registration Fee

Our members have provided examples of how the cost of the tobacco register will affect them. Below highlights the cost of a pack of cigarettes and their after tax profit on each pack:

Financial	Cost
Cost of a 20 Pack of Cigarettes	£7.99
Flat rate of tax paid to Government	£4.79
16.5% of sale price in tax paid to Government	£1.15
VAT at 20% paid to Government	£1.39
Total Tax Paid	£6.34
Retailer is left with (before VAT)	34p
Retailer profit (after VAT)	27p

To afford the £30 charge to register, a retailer would have to sell 111 packs of cigarettes, or take £886.89 in cigarette sales.

It is clear from these figures that whilst £30 may not seem like a significant sum, to an independent retailer it involves a great deal of hard work and eats into their already small profit margins. The charge to register could see many independent retailers close their shop, particularly when taking into account additional cost of doing business burdens, such as the Living Wage, Auto-Enrolment, Business Rates, etc; this will have an additional impact on their business.

The illicit market

The NFRN would like to see more effort focused on tackling the illicit tobacco market which adversely affects our members' businesses as well as proven to be a main source of underage sales of tobacco. NFRN members already work with their local authorities to report suspicious activity, in addition the NFRN will be launching a 'Suspect it, Report it' campaign in 2017, urging members of the public and retailers to report illicit tobacco.

Earlier in 2016, HM Revenue and Customs launched a consultation on the *'Tobacco Illicit Trade Protocol – licensing of equipment and the supply chain'*; in our response, the NFRN outlined opposition to a tobacco licensing scheme and instead called on the Government to introduce targeted measures to reduce the illicit tobacco trade, with tougher sanctions for those who are selling counterfeit and illicit tobacco.

NFRN urges the Committee to consider more effective sanctions available to trading standards officers, including the revocation of alcohol licences for those selling illicit tobacco. The NFRN feel that not enough is done to penalise those caught selling illicit tobacco and there is not an effective deterrent.

HMRC's Tobacco Tax Gap for 2015-16 estimated that the illicit tobacco market cost the Exchequer excess of £2.4bn in lost revenue. The illicit tobacco trade poses a significant threat to the Welsh Government's public health objectives as well as a serious loss of revenue to legitimate tobacco retailers in Wales.

The All Party Parliamentary Group on Smoking Health's inquiry into the illicit trade in tobacco products stated that there is a serious problem with illicit tobacco perception from the general public. The findings from the Regional illicit Tobacco surveys indicated that 15% of respondents in the North of England in April 2011 stated that they were comfortable with illicit tobacco, and that 28% of adults are comfortable with illicit tobacco. In comparison, an average of 80% stated that they agreed that illicit tobacco is a danger to children because they can buy it easily and cheaply – the likelihood is that Wales has a similar response percentage.

The report stated that the most common routes through which illicit tobacco was purchased by end users were sales in private homes, street sales, sales in pubs and social clubs and the same through shops were the least common category. Generally, the great majority of retailers are legitimate retailers, and the NFRN promotes responsible retailing. For many convenience retailers, tobacco is an important product for their business. Retailers work hard to ensure they retail these tobacco and nicotine products responsibly and enforce age restrictions using policies such as challenge 21 and challenge 25. Retailers are already burdened with strict tobacco legislation, including the tobacco display ban, the Tobacco Products Directive and plain packaging being standard from 2017. A tobacco and nicotine register will only exacerbate these burdens and add further complexity to tobacco legislation and

The NFRN has long campaigned for more to be done to educate consumers and children regarding the dangers of illicit tobacco, not only is it extremely harmful to health but it fuels other illegal activity.

Experience of existing tobacco retailer registers

Currently, there are two tobacco retail registers in operation in the United Kingdom; Northern Ireland and Scotland. These schemes have yet to be reviewed as there is little or no evidence of their effectiveness to date in meeting their original objectives of tackling the illicit tobacco market or through better compliance of tobacco legislation.

Northern Ireland has only recently launched their tobacco retailer register in April 2016. This system requires tobacco to register their business online or by post. Following the NFRN's submission, registration for the Northern Ireland tobacco retailers register is free which is why we strongly believe any form of register which does come into force in Wales regarding tobacco and nicotine retailers must also be free to be consistent.

The Scottish Government Tobacco Control Strategy included a commitment to review their tobacco registration scheme by 2015; however this has yet to be delivered. Registration schemes must have an independent and wide reaching impact assessment in order to ensure authenticity and their purpose justified.

Restricted Premises Order

Whilst a strengthened restricted premises order regime will allow local authorities the opportunity to enforce offences relating to tobacco and nicotine products and could work in conjunction with a national tobacco retailers' register, we fail to understand why this register is required for this and why a restricted premise order regime could not function on its own to tackle offenders.

Handing over tobacco and nicotine products

The NFRN supports the creation of a new offence for retailers that knowingly sell tobacco and nicotine products to a person under the age of 18 years old and would encourage the Welsh Government to do more to tackle these offenders.

Thank you for the opportunity in responding to this consultation. If you require any further information please contact William Pryce, Public Affairs Manager, by emailing [redacted] or call [redacted].

Yours sincerely,

Paul Baxter
Chief Executive

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Y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon
Health, Social Care and Sport Committee
HSCS(5)-02-17 Papur 5 / Paper 5

PHB 05
Bil Iechyd y Cyhoedd (Cymru)
Public Health (Wales) Bill
Ymateb gan: Sefydliad Siartredig Iechyd yr Amgylchedd
Response from: Chartered Institute of Environmental Health

Response to the Health, Social Care and Sport Committee of the National Assembly for Wales

November 2016

Sefydliad Siartredig Iechyd yr Amgylchedd
Fel corff proffesiynol, rydym yn gosod safonau ac yn achredu cyrsiau a chymwysterau ar gyfer addysg ein haelodau proffesiynol ac ymarferwyr iechyd yr amgylchedd eraill.
Fel canolfan wybodaeth, rydym yn darparu gwybodaeth, tystiolaeth a chyngor ar bolisïau i lywodraethau lleol a chenedlaethol, ymarferwyr iechyd yr amgylchedd ac iechyd y cyhoedd, diwydiant a rhanddeiliaid eraill. Rydym yn cyhoeddi llyfrau a chylchgronau, yn cynnal digwyddiadau addysgol ac yn comisiynu ymchwil.
Fel corff dyfarnu, rydym yn darparu cymwysterau, digwyddiadau a deunyddiau cefnogol i hyfforddwyr ac ymgeiswyr am bynciau sy'n berthnasol i iechyd, lles a diogelwch er mwyn datblygu arfer gorau a sgiliau yn y gweithle ar gyfer gwirfoddolwyr, gweithwyr, rheolwyr busnesau a pherchnogion busnesau.
Fel mudiad ymgyrchu, rydym yn gweithio i wthio iechyd yr amgylchedd yn uwch ar yr agenda cyhoeddus a hyrwyddo gwelliannau mewn polisi iechyd yr amgylchedd ac iechyd y cyhoedd.
Rydym yn elusen gofrestredig gyda dros 9,000 o aelodau ledled Cymru, Lloegr a Gogledd Iwerddon.

The Chartered Institute of Environmental Health
As a professional body, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.
As a knowledge centre, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.
As an awarding body, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a campaigning organisation, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.
We are a registered charity with over 9,000 members across England, Wales and Northern Ireland.

The Chartered Institute of Environmental Health (CIEH) is pleased that a Public Health (Wales) Bill has been introduced again following the unfortunate demise of the Bill introduced in 2015. We see the Bill as a mechanism for regulating and controlling discrete areas of activity that have the potential to have an adverse impact on individuals and on public health in Wales.
Our response addresses the consultation question in the order of raising. Where a question in the Consultation questions is not reproduced we have no comment to make.
Comment. The CIEH wishes to preface our response to Part 2 of the Consultation with the following comments.
There is clear and incontrovertible evidence that tobacco damages the health of those who use them and also those who inhale the smoke from them. There has been considerable research into the health effects of passive smoking and the detrimental long-term consequences of this, with 32% of non-smokers regularly exposed to second hand smoke in 2010.

Part 2: Tobacco and Nicotine Products

- **What are your views on re-stating restrictions on smoking in enclosed and substantially enclosed public and work places, and give Welsh Ministers a regulation-making power to extend the restrictions on smoking to additional premises or vehicles?**

The CIEH strongly supports the ban in smoking tobacco in enclosed and substantially enclosed public and work places, our support being predicated on the recognised detrimental health effects on inhaling tobacco smoke and the harmful effect of passive exposure to it.
The CIEH recognises that passive smoking is harmful, and its consequences are exacerbated in children, young adults and those with existing respiratory illnesses, and any ban or regulation-making power which can extend restrictions, in particular to areas where these groups are present are welcomed.
The addition of regulation-making powers to Welsh Ministers in regards to additional premises and vehicles is essential in sustained successful implementation, ensuring prompt reactions to new evidence to further reduce smoking in Wales and is also in-line with the aspirations of the Well-being of Future

Generations (Wales) Act 2015 in helping to create a healthier Wales

- **What are your views placing restrictions on smoking in school grounds, hospital grounds and public playgrounds?**

The CIEH believes that smoking should be discouraged in all public places, particularly those where children are present, and in hospital grounds where health and the promotion of health should be a primary driver. Wales should move progressively towards a position where smoking is not the norm, and to environments where children and vulnerable individuals are not exposed to tobacco smoke.
In our view the ban on smoking in enclosed public places should be extended to cover sites such as play grounds and play areas, school grounds (including preschool playgroups) and their immediate vicinity and the grounds of hospitals and medical facilities such as clinics.
The CIEH considers that the definition of play areas should be expanded to include open spaces used for recreation such as football and rugby pitches, which in many cases are just goal posts and pitch markings. It seems to the CIEH to be an anomaly to ban smoking in children's playgrounds but allow a situation where adult spectators at a junior football or similar type of game can smoke on the touchline.

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

The CIEH supports the proposal to create a tobacco retailers register for Wales. Smoking remains the single greatest avoidable cause of death in Wales. The CIEH supports the introduction of measures that will reduce access to or prevalence of smoking. We are of the view that the creation of the register proposed would allow enforcement agencies to identify those premises from which tobacco and /or nicotine products are sold lawfully, and to target for enforcement purposes those that are not included on the register.
Access to tobacco and tobacco products remains an issue particular in respect of sales to young people. The CIEH believes that it is important for effective enforcement of the legislation around sales to young persons that enforcement officers be able to identify those premises from which tobacco is lawfully sold. We further believe that the requirement for retailers to be on such a register would ensure that sales of tobacco and tobacco products within the trade, i.e. from wholesalers to retailers will remain visible within the legitimate trade.
A further way to strengthen this provision would be to include a "Fit and Proper Person" provision [As is used by the Housing Act 2004 s64(3)(b)(i)] where an

applicant is screened for offences relating to tobacco and alcohol sales, before acceptance on to the register.
The CIEH particularly welcomes s28(2)(e) and the need for on-line and telesales to be noted on the register, however the wording in s27(1) does not implicitly express the need for on-line retailers not based in Wales to be registered where they sell tobacco and tobacco products in Wales, which has the potential to reduce the efficacy of preventing under-18s to access tobacco and nicotine products.

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

Yes. The CIEH strongly supports strengthening the provision of Restricted Premises Order through regulation-making powers to add to the offences. This will run in tandem with the National Register, enabling quicker access to information to inform applications for a Restricted Premises Order.

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

This is a useful additional tool in preventing the uptake of smoking/addiction to nicotine in young people. Internet sales of tobacco have the potential to circumvent the age of sale restrictions currently in place and any steps that assist in controlling them are welcomed.

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

Yes. Any actions that have the effect of reducing smoking or reducing addiction to nicotine will contribute to improving public health.

Part 3: Special Procedures

- **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?**

The CIEH strongly supports the proposal to create a compulsory national licensing system for practitioners of specified procedures in Wales. A mandatory licensing scheme, requiring Local Authorities to register practitioners would aid the

identification of legitimate practitioners along with those whose license has been revoked; a recommendation developed from previous outbreak investigations.
By their natures special procedures are invasive and have the potential to transmit life threatening and life changing infections between the parties to the procedure. Procedures carried out improperly or unhygenically can have an adverse impact on an individual's physical and mental health in the short and the long term. Blood-borne viruses can be spread when there is cross contamination after tattooing and body piercing equipment used on a person with a blood-borne virus comes into contact with another person; common types are Hepatitis B & C and the Human Immunodeficiency Virus. Poor hygiene provisions can constitute the spread of Pseudomonas Aeruginosa on the hands of those undertaking procedures such as body piercing or on equipment which has not been adequately cleaned. In the event that a special procedure carried out improperly causes infection, the implications for those individuals connected to the practitioner and the public health bodies investigating the incident are significant. The 2015 outbreak associated with a body piercer in Newport is an example of the number of individuals involved and the cost to the investigation and enforcement teams.
The CIEH considers that a compulsory national licensing system would be beneficial. The proposed licence could contain a number of requirements that would compel the practitioner to demonstrate that they are competent to practice and have the necessary skills to practice safely, without posing a risk to their clients or themselves. It would also give potential clients confidence as they would know that the practitioner they propose to use satisfied the requirements to be a licenced practitioner.
The mandatory licensing conditions, imposing requirements in connection with proof of age of an individual on whom a special procedure is to be performed, infection control, standards of hygiene, first aid, consultation before and after a special procedure is performed and record keeping, are sufficient (if enforced correctly and rigorously) to reduce the occurrence of the above risks, associated with special procedures. Lack of record keeping by practitioners has been strongly associated with difficulties in effectively investigating suspected outbreaks/incidences relating to special procedures. The report of the Outbreak Control Team relating to a blood-borne virus outbreak associated with a body piercer in Newport outlines the fundamental requirements that practitioners conducting special procedures must keep detailed client lists and consent forms (including addresses and contact numbers), to allow ease of case identification and cause analysis. We support the licensing conditions specified in regulations, which prevent a license holder from performing a special procedure on an individual who is, or appears to be intoxicated by virtue of drink, drugs or any other means, as it poses additional health risks; for example, excessing consumption of alcohol is known to thin the blood, leading to an increased amount of bleeding.

The CIEH considers that a mandatory licensing scheme would be beneficial. The requirements within s59(2) requiring applicants to demonstrate knowledge of infection control and first aid in the context of the relevant special procedure and of the duties imposed on them as a person authorised to perform a special procedure, are sufficient to ensuring that practitioners are demonstrating competence to practice and possess the necessary skills to practice safely, without posing a risk to their clients or themselves. We therefore support our previous view that the inclusion of key licensing criteria gives potential clients confidence as they would know that the practitioner they propose to use satisfies the requirements to be a licenced practitioner.
We are further of the view that any premises or vehicle from which a licensed practitioners proposes to practice should be approved prior to use and should be subject to an ongoing inspection regime. It is essential that any premises or vehicle from which special procedure are practised is hygienic and capable of being maintained in a safe and hygienic condition. Even the most capable and competent practitioner cannot practise safely from an unhygienic premises or vehicle and it is the combination of safe and competent practitioners practising from safe and hygienic premises that will protect the health of individuals and wider public health.

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

The special procedures in s54 (a)-(d) of the Bill are those procedures currently registered by local authorities in Wales. We consider it appropriate that they should be controlled as suggested as each has the potential to cause life changing or life limiting infection if carried out in an unsafe or unhygienic manner.
We however believe that there are procedures that are similarly invasive with the same potential consequences that should be controlled in the same manner. Examples of such procedures are dermarolling, microblading, the injection of dermal fillers and plumpers and cosmetic skin peeling.
Through our members we are aware that lasers and Intense Pulsed Light treatments are increasingly being used in tattoo premises for the removal of tattoos and in beauty salons for the removal of skin blemishes. In our view it is likely that use of lasers for tattoo removal will be an increasing trend as people who regret having tattoos, are dissatisfied with tattoos seek to have their tattoos removed or those who wish to add further tattoos seek to make space for new ones. Lasers are readily available and can be purchased off the internet in the same way as tattooing equipment can be sourced. It is a concern that such equipment can used by untrained individuals as lasers, when improperly used can cause significant burning and scarring. Class 3B/4 lasers and Intense Pulsed Light sources are currently registered by Healthcare Inspectorate Wales. It is our view that this function should pragmatically be delivered by local authorities are they have a footfall into tattoo

and body piercing premises and beauty salons and that the use of such equipment for the reasons specified should be defined as a special procedure and included within the Bill. This would be pragmatic and better use of public sector resources, as well as being in the interests of public health and safety.
We are satisfied that those procedures outlined in s54(a)-(d) should properly be controlled as proposed, but that consideration should be given to the addition of other procedures, as detailed above.

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

Following on from our response to the question above we consider that this provision is essential. The Aesthetic Body Modification industry moves very quickly as new procedures and practises are introduced and become popular. It is critical that Minsters have the power and the ability to respond swiftly to address risks that may be posed to public health by new and emerging practises in this field.

- **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 consider that the list is appropriate. Practitioners being subject to control by a specified regulatory body are independently assessed as having a suitable and sufficient degree of knowledge and competence.

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

At present local authorities are required to use legislative provision which were not designed to deal with risks posed by special procedure, being the Health and Safety at Work etc. Act 1974 and the Public Health (Control of Disease) Act 1984 as am. By the Health Protection (Part 2A Orders)(Wales) Regulations 2010. Neither piece of legislation was intended to control special procedures, in consequence they are of limited effectiveness, requiring evidential leaps of faith to be made and failing to prevent those individuals against whom action has been taken from continuing to practise should they chose to do so. Neither prevent those who trade other than in the course of a business from doing so, meaning that action to control 'hobby' practitioners is impossible.
The proposed enforcement regime takes a precautionary approach, permitting as it does action to be taken where there is evidence of risk of infection, it addresses practitioners who are operating other than in the course of a business and gives local authorities powers to stop activities immediately. We consider that the

provisions of s74-78 inc. allied with the requirement for licensing of practitioners and approval of premises and vehicles are a significant step forward in controlling the way in special procedures are carried out.
The regime proposed, whilst welcomed is an additional burden for local authorities and finance must follow this function to ensure that Local Authority environmental health departments have adequate resources to deliver it; this justifies our support for the fee requirements introduced within s73, where Local Authorities may charge the license holder a fee for so long as the license continues to have effect, recognising that this will allow local authorities to deliver this additional function within a financial regime that is consistent with the judgement in R (Hemming (t/a Simply Pleasure Ltd)) v Westminster City Council [2015] UKSC 25.

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

The CIEH believes that the proposals will make a contribution to improving public health in Wales. As noted we believe that there are omissions from the list of special procedures, the inclusion of which would be beneficial, however we believe that the power to amend the list of special procedures to include procedures currently not on the list and new and emerging procedures will address this concern.
We further believe that the new enforcement powers given to local authorities will ensure that any risks to public health identified from Aesthetic Body Modification practitioners can be addressed quickly and effectively thereby reducing or eliminating risk to public health.
Finally, we believe that the mandatory licensing conditions and key licensing criteria, along with the addition of our recommendations will ensure that the licensing authority have the full capacity to identify whether the practitioner/business has the correct provisions in place to reduce the risks associated with special procedures, along with evaluating the applicants, ensuring they satisfy the requirements to be a licensed practitioner, reducing the risks to public health.

Delegated powers

- **In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?**

The CIEH believes that an appropriate balance has been achieved.

Finance questions

We believe the estimates of costs and benefits identified are accurate, and endorse the selection of option 3A as being the most appropriate at the present time. The

potential cost of treating mental health issues arising from special procedures that have been improperly carried out or from illnesses or scaring resulting therefrom have not been quantified. We accept that these costs will not arise in all cases, but that where they do they may be considerable. It is hard to quantify such costs, however they should not be wholly disregarded.

Other comments

The CIEH wishes to make a number of specific comments regarding the proposed provisions, which are raised in the order they arise.

Sec 59(2)(b) specifies that licensing criteria may require the applicant to demonstrate knowledge of –

(b) duties imposed under, or by virtue of this Part on a person authorised by a special procedure licence to perform the special procedure to which the application relates.

The CIEH considers that it is not enough that the applicant should have detailed knowledge of only Part 3, being Special Procedures, we consider that it is necessary that the applicant should also have detailed knowledge of the requirements of Part 4, Intimate Piercing, since it is possible that a person who is authorised to carry out special procedures would also carry out intimate piercing. We believe the knowledge set for both Parts of the Bill are the same and there is such a degree of cross over as to make demonstration of knowledge of both parts a pre-requisite before a local authority can be satisfied that a licence should be issued.

Sec 63(3) – Offences are listed that may lead to refusal of a practitioners licence. The listed offences do not include offences under the Offences Against the Person Act 1861 (OATPA 1861). These offences include assault and assault occasioning actual bodily harm. We believe that these offences should be included in the prescribed list, as they directly relate to the manner in which an individual has responded to another when under pressure, s may be the case in the carrying out of a special procedure. The CIEH recommends that unexpired convictions under the OATPA 1861 be included.

We are specifically concerned that a person who may have convictions for sexual offences would not be precluded from having a practitioners license and would be free to carry out intimate piercings.

Sec77 (1) definition of ‘tattooing’ – the definition is the insertion of any colouring material into punctures in the skin. We are away of a process known as ‘Tashing’, in which the ashes of a person or animal are used in the tattoo process, effectively becoming incorporated into the tattoo. The ashes are colouring materials and have no pigmentation effect, only achieving coloured effect if mixed with ink as a carrier substance. We know that ‘Tashing’ is carried out widely in Wales and whilst we have reservations about the practise 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. This is not a practice the lawfulness of which should be determined in a magistrate's court.
We are further aware that some materials are used in tattooing that are not colouring materials as defined, in that they do not colour skin, but rather fluoresce when exposed to UV lights, allowing individuals to have tattoos which are only visible in certain situations e.g. in nightclubs, but are not likely to a have an impact on their day to day life, in the way that 'job stopping' tattoos may do. 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.

Part 4: Intimate Piercing

- **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?**

The CIEH strongly agrees that there should be an age restriction on intimate body piercings. Intimate body piercing is a non-essential invasive procedure with potential health consequences, and should not in our view be available to those who are not capable of making a fully informed choice as to whether or not to accept the risks inherent in the procedure. We consider that an age restriction is the most appropriate way of restricting the decision to engage in the procedure to those most able and capable of making that decision.
Intimate body piercing is analogous to tattooing, as it is an aesthetic body modification. We are cognisant with the argument that a piercing can be removed whilst a tattoo is intended to be permanent, however we do not accept this as a justification for a lower age restriction for intimate piercings. We do not consider 16 to be the appropriate age because:

- 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 may not be capable of fully committing.
- Whilst the jewellery inserted into an intimate body piercing may be removed any scarring or damage inflected 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 scarring or thickening. At

16 years an individual is still growing and therefore the risk of damage to skin is greater.

The CIEH also notes that there is considerable potential for confusion to arise if there is a different age restriction for body piercing and for tattooing. We consider that it would be easier for practitioners, enforcement agencies and individuals if the age restriction for both was to be the same. We further consider that an age restriction of 16 years for intimate body piercing is likely to give rise to call for the age restriction for tattooing to be reduced to 16 years.
The CIEH believes that the age restriction for intimate piercing should be 18 years.

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

Yes. The addition of the tongue is fully supported, due to the serious associated risk of harm such as partial or whole obstruction of the airway due to swelling, the potential of damage to blood vessels within the tongue and risk of infection.

- **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?**

The CIEH considers that the enforcement powers proposed are appropriate and proportionate. We note however that enforcement of this provision is an additional burden for local authorities and that finance must follow this new function to ensure that local authority environmental health departments have adequate resources to deliver it

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

Yes. We accept that there is little evidence of which we are aware to suggest that large numbers of individuals are being adversely affected by the consequences of intimate piercing we are of the view that all of the vulnerable population should be afforded protection and that these legislative provisions achieve that protection. We are also aware that new techniques and practises in body modification and body art develop quickly and are not generally subject to any form of testing or control. This is a precautionary and preventative measure in addition to being a protective measure.

Part 5: Health Impact Assessment

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

The CIEH believes that the proposals will make a contribution to improving public health in Wales. The CIEH considers that heath impact assessments (HIAs) provide a systematic yet flexible and practical framework that can be used to weigh up the wider effects of local and national policies and how they, in turn, may impact people's health and wellbeing. We are further of the view that HIAs can provide a way of addressing the inequalities in health that continue in Wales.

By their nature, HIAs collect and assess a range of evidence, and this is used to develop measures which increase opportunities for health, reduce any risks and support the decision making process. We agree that the provisions about HIAs aim to complement the Well-being of Future Generations (Wales) Act 2015, by ensuring key decisions in Wales are taken following a specific assessment of the likely impact on physical and mental health and wellbeing. We consider the provisions are aligned to the Well-being of Future Generations (Wales) Act 2015 and support the Bill's provisions that health impact assessments must be considered by public bodies, in accordance, with the sustainable development principle. We are of the view that all of the vulnerable population should be afforded protection and that these legislative provisions achieve that protection. The CIEH believes that the Bills HIAs provisions make an important contribution to sustainable development in Wales. We note that the proposals will require public bodies in Wales to undertake HIAs in certain circumstances to ensure the positive health impacts of key decisions are maximised and potential negative impacts are avoided or mitigated.

The CIEH is committed to HIA and working with the Wales Health Impact Assessment Support Unit has developed a three level training programme to ensure that there is a body of qualified practitioners who are competent to both prepare HIAs and the quality assess HIAs prepared as supporting documents for proposed developments.

The training is academically rigorous and requires participants to complete, submit, and defend HIAs presented for assessment before they can be awarded a Certificate of Competence. There are three courses, being

1 Health Impact Assessment Competency – Rapid HIAs

2. Health Impact Assessment Competency – Comprehensive HIAs

3. Health Impact Assessment Competency - Quality Assuring HIAs.

Only practitioners who have successfully completed the Rapid HIA competency training are allowed to progress to the Comprehensive HIA and Quality Assurance courses.

In order to raise the profile and promote understanding of the benefits of HIA delegates are allowed to undertake the first taught element of the HIA competence course, but only those delegates who submit and successfully defend a HIA are awarded a Certificate of Competency.

At the date of evidence preparation there are 40 Environmental Health Practitioners from Wales who hold the Certificate of Competence in Rapid HIAs and 6 who are

competent to Quality Assess HIAs. There is also a Comprehensive HIA Competence course and a Rapid HIA Competence course in progress. The Rapid HIA course has also been run for the Transport for London Office and in Northern Ireland as it is the only programme of courses of this kind in the UK and an example of Welsh best practice. As evidenced the CIEH strongly supports HIAs as a mechanism for protecting and improving health and wellbeing, however we note that their statutory inclusion in some developments will have cost implications for local authorities. It is important to ensure local authority environmental health departments have sufficient resources to deliver the required health impact assessments where these are generated by the local authority and to consider the merit of those submitted by developers in support of proposals and that there is funding available to ensure that staff who will be required to deliver or assess HIAs are trained to the appropriate level to allow them to do so.

Part 6: Pharmaceutical Services

This is not a core area of activity for the CIEH, we therefore make no comment.

Part 7: Provision of Toilets

Toilet provision is a basic public health need. The CIEH believes that the provision of readily accessible public toilets is essential to good public health in Wales. Specific groups of the population such as the elderly, pregnant women, those with young families and people with specific health conditions require access to toilets, and where provision is limited or absent these groups are disadvantaged and may be deterred from visiting.

It is also the case that lack of adequate toilet provision encourages antisocial behaviour and may potential spread of infectious disease.

The provisions of Part 7 are addressed to local authorities. CIEH had not part in the proposed delivery mechanism. We do however wish to record our support for the provisions are being essential to public health in Wales.

Part 8: Miscellaneous and General

- **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.**

Under the current Food Hygiene Rating (Wales) Act 2013, s22 as currently enacted, regulates the use of monies received by councils in Wales, and requires councils to pay monies received to the Welsh Ministers. The substitution of a new subsection (1) for the existing section of the act, will, instead, make possible for a council to

retain fixed penalty receipts, for the purpose of its functions, relating to the enforcement of the provisions of the 2013 Act and regulations made under it.
The CIEH considers that retention of fixed penalty notices is not intended to be revenue raising, but to offer an adequate deterrent and cover the cost of enforcement. The CIEH supports the proposed changes, which will see the revenue from fixed penalty notices retained by the local authority responsible for enforcement, and used for relevant enforcement purposes.
The CIEH recognises that the provisions for retaining fixed penalty notice receipts, will bring the arrangements for food hygiene, into line with arrangements, elsewhere, in the proposed Bill. This will ensure fixed penalty receipts retained by the enforcement authority, support the enforcement duties that the Bill creates. The CIEH notes that this provision will bring about consistency and clarity, in how the fixed penalty notices are dealt with in public health legislation.

Other comments

- **Are there other areas of public health which you believe require regulation to help improve the health of the people of Wales?**

The Public Health Wales report 'Alcohol and health in Wales 2014' demonstrates quite clearly the enormous impact that misuse of alcohol has on the health and wellbeing of individuals, on increasing pressure on the NHS and on the economy of Wales. The CIEH a proposed minimum unit price (MUP) for alcohol during the original consultation for the 2015 Bill and is disappointed that the proposal did not proceed. 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.
We would be happy to provide further expansion of or clarification of our comments should this be required.

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8 Tachwedd 2016

Annwyl Ysgrifennydd y Cabinet,

Fel y gwyddoch, pan gyhoeddais 'Dementia: mwy na dim ond colli'r cof', gofynnais i fyrddau partneriaeth ar draws Cymru ysgrifennu ataf gyda gwybodaeth ynglŷn â'r ffyrdd yr oeddent yn mynd i'r afael â materion sy'n cael eu codi gan bobl â dementia.

Yr wyf yn awr wedi gallu dadansoddi'r ymatebion hyn a chyn bo hir byddaf yn rhoi adborth manwl i'r holl fyrddau partneriaeth i'w cefnogi wrth iddynt barhau i wneud gwaith pellach. Byddaf hefyd yn darparu offeryn hunan-graffu ac enghreifftiau o arferion da iddynt.

Mae fy swyddfa hefyd wedi body n gweithio'n agos gyda'ch swyddfa chi trwy gydol y broses hon a byddaf yn rhannu'r adborth manwl hwn â nhw.

Yn y cyfamser, roeddwn i'n credu y byddai'n ddefnyddiol i mi rannu nifer o arsylwadau lefel uchel â chi:

- Ar hyn o bryd nid ydym yn llwyddo i wneud pethau sylfaenol i lawer o bobl a gall llywio trwy wasanaethau deimlo bron yn amhosibl iddynt. Mae angen llwybrau cenedlaethol clir a hyblyg sy'n dechrau cyn cael diagnosis ac sy'n defnyddio dull cwrs bywyd o weithredu.

- Ni ellir gorbwysleisio pa mor bwysig yw cael cefnogaeth gan unigolion sy'n deall beth yw byw gyda dementia. Mae hyn yn ymestyn o'r sgiliau sydd gan staff mewn ystod eang o wasanaethau

cyhoeddus, i staff sy'n rhoi cymorth penodol ar gyfer dementia, i weithwyr allweddol. Mae hyn yn llawer mwy na dim ond hyfforddiant ymwybyddiaeth o ddementia ac mae'n mynd at galon fframweithiau sgiliau a chymhwysedd ac at hyfforddiant sylfaenol ac ôl-sylfaenol.

- Mae gofal seibiant yn parhau i fod yn broblem fawr, gyda llawer o wasanaethau cyhoeddus yn methu gweld pwysigrwydd darparu dulliau personol o ofal seibiant wedi'u cysylltu'n uniongyrchol â'r heriau mae pobl a theuluoedd sy'n cael eu heffeithio gan ddementia yn eu hwynebu bob dydd. Wrth i ddementia waethygu, mae pawb mae hyn yn effeithio arnynt yn ymateb yn wahanol. Ni fydd un dull yn addas i bawb am na all hynny ddarparu'r cydnerthedd emosiynol, y gefnogaeth, a'r dilysiad o unigolion sydd ei angen i gryfhau perthnasoedd a gwella eu gallu i wynebu beth bynnag fydd yn digwydd yn y dyfodol.

- Mae'n amlwg hefyd bod diffyg cefnogaeth emosiynol a chefnogaeth iechyd meddwl/lles meddyliol ar gyfer pobl sy'n byw gyda dementia. Nid yw pob Bwrdd Iechyd yng Nghymru eto wedi deall pwysigrwydd gwaith gofalwyr sy'n helpu pobl â dementia i ymgyfarwyddo â'i amgylchoedd. Ni ddylid eithrio gofalwyr fel rhan o'r tîm gofal pan fydd pobl â dementia'n cael eu hanfon i'r ysbyty.

- Rhaid i'r Strategaeth Dementia newydd ystyried hyd a lled gofal dementia – mae hyn yn cynnwys comisiynu gwasanaethau neu ofal i bobl yn eu cartrefi eu hunain ac mewn cartrefi gofal. Mae diffyg cysondeb a ffocws ar ddeilliannau lles clir ar gyfer pobl â dementia i'w weld yn llawer o'r gwaith comisiynu.

- Mae'n rhaid i'r holl gyrff cyhoeddus gymryd rhan ragweithiol a gweithredol i newid canfyddiadau i'r cyhoedd yn ehangach ynglŷn â dementia ac edrych yn drwyadl i drefniannau partneriaeth newydd er mwyn ehangu cynhwysiant ar draws ein cymunedau.

Rwyf wedi siarad yn gyhoeddus droeon am y Fframwaith Canlyniadau Cenedlaethol ar gyfer Gwasanaethau Cymdeithasol, a pha mor dda ydyw. Fodd bynnag, mae'n rhaid iddo fod yn berthnasol ar gyfer pobl sy'n byw gyda dementia ac, yn fy marn i, mae rhoi hyn ar waith yn fan cychwyn allweddol ar gyfer y strategaeth newydd.

Hefyd, credaf ei bod yn bwysig i'r iaith a'r naratif sy'n cael ei defnyddio yn y strategaeth newydd gael eu datblygu mewn ffordd sy'n gwbl berthnasol i

bobl â dementia a'u gofalwyr. Rwyf wedi rhannu enghraifft o sut y gallai hyn edrych â'ch swyddogion.

Mae safbwyntiau pobl sy'n byw â dementia yn ganolbwynt amlwg i fy adroddiad diweddar ac i ddadansoddiadau dilynol o ymatebion byrddau partneriaeth. Rwyf felly'n disgwyl y bydd y strategaeth newydd yn ymateb yn uniongyrchol i'r materion hyn mewn ffordd ystyrlon a pherthnasol i bobl mae dementia yn effeithio arnynt ac edrychaf ymlaen at barhau i weithio gyda chi a'ch tîm i ddarparu'r hyn mae gan bobl â dementia yr hawl i'w ddisgwyl.

Yn gywir,

Sarah Rochira
Comisiynydd Pobl Hŷn Cymru

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29 Tachwedd 2016

Annwyl Weinidog,

Dyma ysgrifennu yn dilyn cyhoeddi fy Adolygiad o Gartrefi Gofal, 'Lle i'w Alw'n Gartref', sef fy adolygiad statudol o ansawdd bywyd a gofal pobl hŷn sy'n byw mewn cartrefi gofal preswyl yng Nghymru, a gyhoeddwyd ym mis Tachwedd 2014.

Fel y gwyddoch, dywedais y byddwn yn gwneud gwaith dilynol i asesu i ba raddau y mae'r camau gweithredu wedi sicrhau'r newid angenrheidiol. Dyma wybodaeth felly am y modd rwy'n bwriadu mynd ynglŷn â hyn.

Rwyf wedi ymwneud yn gyson â llawer o gyrff cyhoeddus ledled Cymru, felly rwy'n cydnabod bod hwn yn gyfnod o newid sylweddol i'r sector gofal cymdeithasol. Mae llawer o'r materion yr oeddwn eisiau eu gweld yn cael eu trin o ganlyniad i fy Adolygiad wedi cael, neu byddant yn cael, eu datblygu drwy Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 yn ogystal â Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 a'r rheoliadau cysylltiedig. Er hynny, mae ambell faes lle nad oedd angen deddfwriaeth i sicrhau newid. Ddwy flynedd yn ddiweddarach, rwyf o'r farn fod digon o amser wedi mynd heibio i weld tystiolaeth bendant o'r camau gweithredu, ac o'u heffaith, mewn amryw o'r meysydd yma.

Rwyf felly wedi penderfynu canolbwyntio fy adolygiad dilynol ar y meysydd a ganlyn; mae gan bob un o'r rhain gysylltiad uniongyrchol â'm Gofynion ar gyfer Gweithredu

- **I ba raddau y mae cymorth ymataliaeth arbenigol ar gael i gartrefi gofal**.

Mae hyn yn cyfeirio at y camau yr oeddwn yn disgwyl i Lywodraeth Cymru eu cymryd mewn perthynas â chanllawiau cenedlaethol clir ar ddefnyddio cymhorthion ymataliaeth a sicrhau urddas i bobl hŷn. Byddaf hefyd yn gofyn i Fyrddau Iechyd ddarparu enghreifftiau o gamau gweithredu a gymerwyd ganddynt hwythau, naill ai yn unol â'r canllawiau yma neu yn unol â'u hymrwymiad eu hunain i arferion da. (Gofyniad ar gyfer Gweithredu 1.3)

- **I ba raddau y mae pobl hŷn yn gallu cael gafael ar wasanaethau arbenigol, a gofal amlddisgyblaethol pan fo hynny'n briodol, sy'n darparu cymorth adsefydlu yn dilyn cyfnod o afiechyd.**

Mae hyn yn cyfeirio at y camau yr oeddwn yn disgwyl i Fyrddau Iechyd ac Awdurdodau Lleol fod wedi eu cymryd mewn partneriaeth i sicrhau bod pobl hŷn yn cael cymorth llawn yn dilyn cyfnod sylweddol o afiechyd er mwyn eu galluogi i fod mor annibynnol â phosibl a chael cystal ansawdd bywyd â phosibl. (Gofyniad ar gyfer Gweithredu 2.2)

- **Atal a rheoli codymau, gan gynnwys dulliau monitro ac adrodd cenedlaethol mewn perthynas â chodymau mewn cartrefi gofal.**

Mae hyn yn cyfeirio at y camau yr oeddwn yn disgwyl i Lywodraeth Cymru eu cymryd mewn perthynas â rhaglen genedlaethol i atal codymau, a gweithredu'r rhaglen honno mewn cartrefi gofal, yn ogystal â'r graddau y mae lefel y codymau'n cael ei monitro a'i hadrodd ar lefel genedlaethol a lleol. (Gofyniad ar gyfer Gweithredu 2.3 a 6.8)

- **Yr hyfforddiant sydd ar gael ac yn cael ei dilyn gan holl staff a rheolwyr cartrefi gofal mewn perthynas â deall a gofalu am bobl â dementia, gan gynnwys i ba raddau y mae hyn yn rhan o oruchwyliaeth barhaus a'r gwaith o asesu sgiliau.**

Mae hyn yn cyfeirio at y camau yr oeddwn yn disgwyl i Awdurdodau Lleol, fel comisiynwyr gofal, fod wedi eu cymryd i sicrhau bod yr holl staff sy'n gweithio mewn cartrefi gofal yn deall anghenion corfforol ac emosiynol pobl sy'n byw â dementia. (Gofyniad ar gyfer Gweithredu 3.2)

- **Cynnal adolygiadau o feddyginiaethau a'r modd y defnyddir meddyginiaethau gwrth-seicotig mewn cartrefi gofal.**

Mae hyn yn cyfeirio at y camau yr oeddwn yn disgwyl i Fyrddau Iechyd fod wedi eu cymryd i sicrhau bod pobl hŷn yn cael y feddyginiaeth briodol, gan gynnwys sicrhau nad yw pobl hŷn yn cael cyffuriau gwrth-seicotig yn amhriodol neu yn lle cymorth anfferyllol. (Gofyniad ar gyfer Cam Gweithredu 3.5 a 4.4)

- **I ba raddau y mae comisiynwyr, Awdurdodau Lleol a Byrddau Iechyd, ac Arolygiaeth Gofal a Gwasanaethau Cymdeithasol Cymru yn deall ansawdd bywyd o ddydd i ddydd pobl hŷn sy'n byw mewn cartrefi gofal, a'r ffordd y defnyddir y ddealltwriaeth hon i hybu gwelliant parhaus.**

Mae hyn yn cyfeirio at y camau yr oeddwn yn eu disgwyl i sicrhau bod barn pobl hŷn am eu gofal o ddydd i ddydd ac ansawdd eu bywyd yn cael ei defnyddio i hybu gwelliant parhaus, yn ogystal ag i ba raddau y mae pobl hŷn yn teimlo bod ganddynt lais a rheolaeth dros eu bywydau. (Gofyniad ar gyfer Gweithredu 6.2)

- **I ba raddau y mae Llywodraeth Cymru wedi sicrhau bod dull integredig o archwilio cartrefi nyrsio rhwng Arolygiaeth Gofal a Gwasanaethau Cymdeithasol Cymru ac Arolygiaeth Gofal Iechyd Cymru, gyda ffocws penodol ar asesu ac adrodd ynghylch gofal clinigol mewn cartrefi gofal.**

Mae hyn yn cyfeirio at sicrhau bod pobl hŷn yn cael mynediad yn gyson at ansawdd bywyd da a gofal clinigol o ansawdd uchel. (Gofyniad ar gyfer Gweithredu 6.4, 6.5 a 6.6)

- **I ba raddau y mae Awdurdodau Lleol, fel comisiynwyr gofal, wedi cymryd camau i annog y defnydd o fentrau 'cyfeillio' mewn cartrefi gofal, gan gynnwys sicrhau bod pobl hŷn yn cael mynediad at gymorth sy'n ymwneud â ffydd ac at gymunedau diwylliannol penodol.**

Mae hyn yn cyfeirio at y graddau y mae pobl hŷn yn cael cefnogaeth i gynnal y cyfeillion sydd ganddynt ac yn cael cyswllt cymdeithasol ystyrlon y tu mewn i'r cartref gofal a'r tu allan, a'r graddau y mae cartrefi gofal yn rhan o'r gymuned yn ehangach. (Gofyniad ar gyfer Gweithredu 3.3)

- **I ba raddau y mae rhagolygon cadarn i gynllunio'r gweithlu wedi cael eu datblygu gan Lywodraeth Cymru mewn perthynas â'r gofynion o ran staff nyrsio yn y sector gofal preswyl a gofal nyrsio yn y dyfodol. Hefyd, i ba raddau y mae Llywodraeth Cymru a'r Byrddau Iechyd wedi gweithio gyda'r sector cartrefi gofal er mwyn ei ddatblygu fel rhan allweddol o lwybr gyrfa nyrsio.**

Mae hyn yn cyfeirio at yr angen i flaengynllunio'n glir, i recriwtio â chymhellion, ac i sicrhau cymorth gyrfaol er mwyn sicrhau bod niferoedd digonol o nyrsys arbenigol yn cael y cymorth angenrheidiol i ddarparu gofal nyrsio o ansawdd uchel. (Gofynion ar gyfer Gweithredu 7.2 a 7.3)

Byddaf yn ysgrifennu atoch eto yn Ionawr 2017 i ofyn am yr wybodaeth y bydd ei hangen arnaf i allu asesu'r cynnydd a wnaed gan eich sefydliad mewn perthynas â'm Gofynion ar gyfer Gweithredu. Rwy'n bwriadu defnyddio pro fforma i sicrhau dull cyson ac er mwyn bod mor glir â phosibl am yr ymatebion rwyf eu heisiau.

Fe allwn gymryd rhagor o dystiolaeth gan gyrff cyhoeddus lle rwyf o'r farn fod hynny'n briodol, ac yn dibynnu pa wybodaeth a ddarperir, gallwn ofyn am gael cwrdd â chi i drafod a deall yn well pa gamau gweithredu a gymerwyd gennych.

Rwy'n disgwyl y byddwch yn gallu rhoi tystiolaeth fod cynnydd sylweddol wedi digwydd mewn perthynas â'r camau gweithredu, ac yn gallu dangos pa wahaniaeth a wnaethoch i fywydau pobl hŷn sy'n byw mewn cartrefi gofal.

Rwy'n bwriadu cyhoeddi fy nghanfyddiadau fis Tachwedd 2017 fan bellaf. Mae croeso ichi gysylltu â mi yn uniongyrchol os oes gennych unrhyw ymholiadau am y mater hwn.

Yn gywir

Sarah Rochira

Sarah Rochira
Comisiynydd Pobl Hŷn Cymru

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

Llywodraeth Cymru
Welsh Government

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

Huw Irranca-Davies ac
Cadeirydd y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
Cynulliad Cenedlaethol Cymru
Tŷ Hywel,
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12 Ionawr 2017

Annwyl Huw Irranca-Davies,

Bil Iechyd y Cyhoedd (Cymru)

Hoffwn ddiolch i chi a'r Pwyllgor am y cyfle i drafod Bil Iechyd y Cyhoedd (Cymru) ar 21 Tachwedd 2016, ac am eich llythyr dilynol 13 Rhagfyr 2016.

Rwyf yn falch o roi rhagor o wybodaeth i'r Pwyllgor am y materion canlynol, a godwyd yn ystod y sesiwn:

a) Barn Llywodraeth Cymru ynghylch a fyddai unrhyw ddarpariaethau yn y Bil y tu allan i gymhwysedd deddfwriaethol y Cynulliad Cenedlaethol pe bai Bil Cymru ar waith yn awr;

b) Adran 15 o'r Bil; ac

c) Adran 90(5) o'r Bil.

Cyflwynir yr wybodaeth hon isod.

Bil Cymru

Fel y nodais i'r Pwyllgor wrth roi tystiolaeth lafar, ni fwriedir i Fil Cymru ddod i rym tan y flwyddyn nesaf. Ar hyn o bryd, rhagwelir y bydd y model cadw pwerau yn y Bil yn dod i rym

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ym mis Ebrill 2018. Bydd hyn wrth gwrs yn digwydd ar yr amod bod y Cynulliad yn rhoi cydsyniad i Fil Cymru yn ddiweddarach y mis hwn ac nad yw Llywodraeth y DU yn newid y dyddiad y disgwylir i'r Bil ddod i rym.

Mae Bil Iechyd y Cyhoedd (Cymru) yn cael ei symud ymlaen cyn symud at y model hwnnw, a chaf ar ddeall y bydd Bil Cynulliad sydd wedi cwblhau dadl egwyddorion cyffredinol Cyfnod 1 yn y Cyfarfod Llawn erbyn mis Ebrill 2018 yn symud ymlaen o dan y model rhoi pwerau o dan Ddeddf Llywodraeth Cymru 2006.

Ni fydd Bil Cymru yn cael effaith ar ein gallu i orfodi'r darpariaethau ym Mil Iechyd y Cyhoedd (Cymru) am fod Bil Iechyd y Cyhoedd (Cymru) yn cynnwys ei ddarpariaethau galluogi a gorfodi ei hun ar gyfer is-ddeddfwriaeth. Ni fydd y model cadw pwerau newydd ym Mil Cymru yn dileu neu'n diddymu pwerau galluogi a gorfodi a gynhwysir ym Mil Iechyd y Cyhoedd (Cymru).

Gan droi at gwestiwn y Pwyllgor ynghylch a fyddai unrhyw ddarpariaethau ym Mil Iechyd y Cyhoedd (Cymru) y tu allan i gymhwysedd deddfwriaethol y Cynulliad pe bai Bil Cymru wedi'i sefydlu erbyn hyn, rwyf yn fodlon na fyddai dim. Diben Bil Iechyd y Cyhoedd (Cymru) yw gwella a diogelu iechyd pobl Cymru. Ar hyn o bryd mater datganoledig yw iechyd o dan Ddeddf Llywodraeth Cymru 2006, ac mae hyn yn dal yn wir o dan Fil Cymru.

Pe bai Bil Cymru ar waith ar hyn o bryd, rwyf yn fodlon y byddai Bil Iechyd y Cyhoedd (Cymru) o fewn cymhwysedd deddfwriaethol y Cynulliad.

Adran 15 (Awdurdodau Gorfodi)

Nodaf argymhelliad y Pwyllgor a'ch rhagflaenodd y dylai adran 15 o'r Bil gael ei diwygio i egluro mai'r awdurdodau cyhoeddus fydd yr awdurdodau gorfodi. Nodaf hefyd, wrth dderbyn yr egwyddor y tu ôl i'r argymhelliad, i'r Gweinidog blaenorol â chyfrifoldeb dros y mater amlinellu'r canlynol: er ei bod yn fwriad gennym ddynodi'r awdurdodau lleol fel awdurdodau gorfodi ar gyfer y gofynion di-fwg mewn safleoedd cyhoeddus a gweithleoedd, efallai y bydd amgylchiadau yn codi mewn rhai achosion lle y bydd yn ddefnyddiol dynodi awdurdodau gorfodi ychwanegol. Wrth ystyried unrhyw welliannau i'r Bil, felly, mae angen imi fod yn fodlon na fyddai'r dull gweithredu hwn yn atal awdurdodau gorfodi priodol eraill rhag cael eu dynodi, yn ôl yr angen.

Fel y nodais i'r Pwyllgor wrth roi tystiolaeth lafar, rwyf wedi cyfarwyddo fy swyddogion i ymgymryd â gwaith pellach ar y mater hwn yn ystod Cyfnod 1, gyda'r bwriad o bosibl o gyflwyno gwelliannau yng Nghyfnod 2. Yng ngoleuni'r gwaith diweddar hwn rwyf bellach yn fodlon cadarnhau ei bod yn fwriad gennyf gyflwyno gwelliannau yng Nghyfnod 2 a fydd yn bodloni argymhelliad y Pwyllgor a'ch rhagflaenodd.

Adran 90 (pŵer i ychwanegu neu ddileu triniaethau arbennig)

Mae adran 90(1) yn galluogi Gweinidogion Cymru i wneud rheoliadau i ychwanegu neu i ddileu triniaethau arbennig o'r rhestr o driniaethau sy'n cael eu cwmpasu gan y system drwyddedu. Os gwneir newid i'r rhestr yn y dyfodol, efallai y bydd angen addasu darpariaethau yn Rhan 3 o'r Bil i sicrhau bod y Bil yn gweithio o ran y driniaeth newydd honno. Er enghraifft, pe bai triniaeth arbennig newydd yn cael ei hychwanegu at y rhestr, byddai angen inni ei diffinio a'r lle gorau i'r diffiniad hwnnw fyddai'r adran ddehongli. Mae adran 90(5) yn caniatáu i'r math hwn o welliant canlyniadol gael ei wneud i Ran 3 o'r Bil drwy gyfrwng rheoliadau, yn ddarostyngedig i'r weithdrefn gadarnhaol. Mae felly yn darparu pŵer cul iawn i wneud rheoliadau sy'n helpu i sicrhau bod y fframwaith cyfreithiol yn cael ei ddiogelu at y dyfodol ac yn gallu ymateb i ddiwydiant sy'n datblygu'n barhaus.

Gobeithio y bydd yr wybodaeth hon yn ddefnyddiol i'r Pwyllgor.

Rwyf yn anfon copi o'r ymateb hwn ar Dai Lloyd AC, Cadeirydd y Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon a Jane Hutt AC, Arweinydd y Tŷ a'r Prif Chwip.

Cofion gorau

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

Mae cyfyngiadau ar y ddogfen hon