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Llywodraeth Cymru
Welsh Government

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Simon Thomas AM
Chair of the Finance Committee
National Assembly for Wales
Ty Hywel,
Cardiff Bay
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10 March 2017

Dear Simon,

Public Health (Wales) Bill

Thank you once again for your Committee's consideration of the Public Health (Wales) Bill during Stage 1. I confirmed during the general principles debate on the Bill on 28 February that I would provide a specific response to the Committee's report and its eight recommendations. I hope the information enclosed demonstrates the careful consideration which has been given to each of them.

I am copying this letter to Dr. Dai Lloyd AM, Chair of the Health, Social Care and Sport Committee.

Kind regards,

Rebecca Evans AC / AM

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Response to the Finance Committee Stage 1 Report into the Public Health (Wales) Bill

I thank the Finance Committee for its detailed consideration of the Public Health (Wales) Bill. I have considered each of the Committee's recommendations and am responding accordingly.

Recommendations 1 and 2 relate to the additional costs to local authorities as a consequence of implementing the Bill. I have consistently recognised the key role of local government in implementing the legislation, particularly through existing enforcement responsibilities. Efforts have been made across the Bill to minimise the additional financial burden on local authorities, for example by introducing mechanisms for cost recovery through such arrangements as special procedure licence fees and fixed penalty notice receipts. I have also committed over the medium term to cover any shortfall between the costs of running the national register of retailers of tobacco and nicotine products, and the fees raised. Nevertheless, I **accept the principle** of these recommendations as I recognise that there may be a need to identify additional funding for local authorities to support implementation of the Bill, particularly during the initial period. Should there be agreement on any additional funding to be provided it is likely that it would be issued as a ring fenced grant to support local authorities in meeting costs during the initial transition period only, with longer term costs needing to be embedded into general local authority budget planning.

Recommendation 3 reiterates the recommendation of the previous Finance Committee to publish information setting out the costs of enforcement and the income from fixed penalty notices following implementation of the national register of retailers of tobacco and nicotine products. I am content to **accept the principle** of this recommendation. The primary purpose of the register is to reinforce the importance of protecting young people from the harms associated with tobacco and nicotine. It will provide local authorities with a definitive list of retailers who sell tobacco and nicotine products, and so support trading standards departments to enforce existing legislation. The creation of the register is not expected to generate a large number of fixed penalty notices; it is estimated in the Regulatory Impact assessment that seven fixed penalty notices would be generated per annum. However, I will ask my officials to discuss with local authorities the feasibility of tracking the level of income received from fixed penalty notices, alongside the enforcement costs specifically related to the register. Nevertheless, as it is envisaged that implementation of the register will be integrated with other provisions, it may be difficult to isolate the specific enforcement costs falling on local authorities as a result of the register.

I am content to **accept Recommendation 4** relating to guidance on health impact assessments. I have consistently emphasised that the Bill is intended to take a proportionate approach to health impact assessments and I share the Committee's wish to avoid unnecessary and costly duplication. It is intended that the requirements under the Bill will be aligned to the assessments already undertaken by public bodies. For example, health impact assessments will complement the requirements of the Well-being of Future Generations Act 2015 as they will provide an important method for demonstrating the contribution of public bodies towards their well-being objectives and the national goal of a healthier Wales. It is my intention that the guidance which will be produced to support the health impact assessment regulations will be set in the context of existing policies, assessments and legislative frameworks, and will provide practical information about how health impact assessments can be carried out in the most meaningful and efficient way.

I am also content to **accept Recommendation 5**, which sought clarification on the decision not to include monetised travel time benefits in the Regulatory Impact Assessment for the

Bill's provisions on pharmaceutical services. When the potential savings in travel time were monetised originally they were calculated using the methodology adopted for the 2010 Office of Fair Trading evaluation of changes to control of entry which took place in England in 2003. This remains the most robust methodology we have available. Whilst it is still envisaged that the changes will result in a more appropriate distribution of pharmacies and the wider availability of additional services, the decision was made to take a cautious approach by not monetising those benefits in the current Regulatory Impact Assessment. A primary consideration in this decision was the view of the previous Finance Committee when scrutinising the Bill in the previous Assembly, where it raised concerns that at the individual transaction level (i.e. each visit to the pharmacy), the benefits are likely to be small. In addition, I recognise there are limitations to the data regarding the actual number of pharmacy visits, meaning that monetising the benefits would rely on broad assumptions based on whether people travelled to the pharmacy from home or work and the number of home deliveries. In view of these factors, the decision was taken not to monetise these benefits in order to be consistent with the cautious approach taken across the Bill. This ensures that our overall estimates of benefits remain conservative.

Recommendation 6 relates to reviewing the effectiveness of the Bill's provisions on local toilet strategies. I am content to **accept** this recommendation. As a general principle it is my intention to keep under review the effectiveness of the Bill following implementation, and any work to review the provisions on local toilet strategies will form part of this wider work to monitor the impact of the legislation. In addition, there are review mechanisms built already into the Bill provisions. Local authorities will have a duty to review their local toilet strategies and as part of a review will be required to publish a statement of progress. This approach will provide transparency to council members and the electorate on the actions being taken to improve provision and access to toilets for public use across Wales.

Finally, **Recommendations 7 and 8** both relate to the subordinate legislation to be made under the Bill. I am aware that this is an issue that the Committee has also considered in the context of other Bills and I am content to **accept the principle** of these recommendations to the extent that they apply specifically to this Bill. My intention for this legislation, as is usual Welsh Government practice, is to publish separate Regulatory Impact Assessments for subordinate legislation as regulations are brought forward. This approach enables us to reflect the most accurate information at the time the regulations are needed. In addition, a recent review within the Welsh Government of legislation in the Fourth Assembly has led to a number of changes which will help deliver a consistent approach across Bills. For example, the relevant chapter of the Welsh Government's Legislation Handbook is being updated to emphasise that the Regulatory Impact Assessment for a Bill should set out a best estimate of the cost of the legislation as a whole, including any associated subordinate legislation.

I am content that the Regulatory Impact Assessment for this Bill accords with this approach as it includes estimates of costs resulting from the main activities involved in implementing the legislation, even where this will be given effect by regulations. Two specific examples of where this is done are where estimated costs of signage for new smoke-free open spaces have been included, even though the detailed requirements will be set out in regulations, and the inclusion of estimated costs to public bodies from producing additional health impact assessments, even though the precise circumstances when these will be required will be set out in regulations.

I will revise the Regulatory Impact Assessment following Stage 2, in line with normal procedure. In doing so I will consider any further details that become available on the costs of subordinate legislation. However, I would also emphasise that there are examples where it is not possible to estimate future implications at this stage. For example, if emerging evidence supports new procedures being added to the special procedures licensing system

by regulations in the future, the costs and benefits would depend on the specific procedure being considered at that time, and so estimates cannot currently be provided.