

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



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA-L/RE/0144/17

Dr. Dai Lloyd AM  
Chair of the Health, Social Care and Sport Committee  
National Assembly for Wales  
Ty Hywel,  
Cardiff Bay  
Cardiff  
CF99 1NA

10 March 2017

Dear Dai,

### **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 19 recommendations. I trust the information enclosed demonstrates the careful consideration which has been given to each of them.

I hope that this letter helps to inform the Committee's work as the Bill progresses, and I look forward to further discussions with the Committee later in Stage 2.

Kind regards,

A handwritten signature in black ink that reads "Rebecca".

### **Rebecca Evans AC / AM**

Y Gweinidog Iechyd y Cyhoedd a Gwasanaethau Cymdeithasol  
Minister for Social Services and Public Health

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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

[Correspondence.Rebecca.Evans@gov.wales](mailto:Correspondence.Rebecca.Evans@gov.wales)  
[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)

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

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

## **Response to the Health, Social Care and Sport Committee Stage 1 report into the Public Health (Wales) Bill**

I thank the Health, Social Care and Sport Committee for its detailed consideration of the Public Health (Wales) Bill. I am pleased that the Committee's report welcomed and acknowledged the importance of the proposals within the Bill, as illustrated by **Recommendation 1** that the Assembly approve the Bill's general principles. I am pleased that this important milestone was reached on 28 February.

The response below sets out my position in relation to the remainder of the Committee's recommendations.

I have consistently stated that we cannot tackle every public health issue in one piece of legislation, and that the Public Health (Wales) Bill should instead be seen as one part of a much broader agenda alongside a range of other forms of action. Nevertheless, it is entirely correct that, in scrutinising the Bill's general principles, the Committee has given consideration to other priority public health issues. I am therefore grateful to the Committee for its suggestions in **Recommendation 2** and am content to **accept the principle** of the recommendation in so far as considering using existing powers and other legislative avenues. I can confirm that work is already progressing on the issue of nutritional standards in early years and care home settings, and I am also content to explore the issue of added sugar in drinks in school settings further with the Cabinet Secretary for Education.

However, I am unable to take forward one element of the recommendation, namely that relating to the local well-being plans of Public Service Boards (PSBs). While these plans will be an important mechanism for tackling the type of issues identified by the Committee, I do not believe placing specific requirements on PSBs in this Bill would be appropriate. I believe such an approach would be out of step with the overall approach to the role of PSBs under the Well-being of Future Generations (Wales) Act 2015, and it would be incongruent to emphasise specific health issues over others. In line with the intention of the Act, I believe PSBs are best placed to decide their local objectives, based on their own local assessments. I am encouraged to hear that the types of issues raised by the Committee already appear to be being picked up in local assessments.

In addition, I would also emphasise that the provisions in the Bill about health impact assessments will provide another important mechanism for issues such as obesity, physical activity and loneliness and isolation to be addressed locally.

### **Tobacco and nicotine products**

**Recommendations 3 and 4** both relate to extending the smoke-free requirements in the Bill to additional open spaces. I have followed the Committee's deliberations on this issue with interest. I fully recognise the intention behind these recommendations and am content to **accept the principle** of the recommendations. As I outlined when I gave evidence to the Committee in January, placing restrictions on smoking in public places is highly complex. Any provisions have to be sufficiently certain and clear to allow a member of the public to ascertain whether they can smoke in an area or not, and to allow enforcement officers to enforce any restrictions. Full assessments of human rights considerations also need to be carried out. I would emphasise that the Bill already breaks significant new ground by extending the smoke-free requirements in Wales for the very first time to three open air settings.

In considering further potential restrictions my general view remains that the regulation-making power in the Bill provides the most appropriate approach, and I note the Committee's priorities for potential future action. However, in view of the evidence received

by the Committee I have also asked my officials to explore the issues with the intention of bringing forward amendments to the Bill on smoking restrictions in a fourth setting, namely early years childcare settings. As I outlined in Plenary on 28 February, due to the detailed nature of the work involved, I envisage that I will be in a position to bring forward these amendments at Stage 3.

Consideration of the issues around extending the Bill's restrictions on smoking in school grounds and public playgrounds to areas such as school gates and the perimeter of playgrounds, would need to be undertaken once the provisions currently on the face of the Bill have come into force. Similarly, consideration of the issues relating to the specific settings mentioned in **Recommendation 4** could be undertaken in due course, as each will involve distinct and detailed considerations, and will require full consultation.

I am content to **accept Recommendation 5** in relation to promoting smoking cessation support and advice in healthcare settings. I can confirm that my officials are currently working with Public Health Wales, health boards, ASH Wales and other partners to develop a new brand and common contact point for NHS smoking cessation in Wales. It is anticipated that the brand will be launched shortly and will be extensively promoted, including in healthcare settings.

I am also happy to provide the clarification requested by **Recommendation 6** in relation to the national register of retailers of tobacco and nicotine products, and therefore **accept** this recommendation. I can confirm that wholesalers will not need to register due to the controls already in place about who can purchase directly from these outlets. The primary policy aim of the register is to reinforce the importance of protecting under 18s from accessing tobacco and nicotine products. In order to purchase from wholesalers, a person requires a membership card. I am not aware of any wholesalers who offer membership to people under the age of 18. As such I consider there is insufficient justification to require wholesalers to register in view of the overall policy aim. I have asked my officials to review the explanatory material accompanying the Bill when this is updated following Stage 2 to ensure this position is clearly set out.

I am content to **accept the principle of Recommendations 7 and 8**, which concern work to tackle the illegal tobacco trade. I share the Committee's concern about the impact illegal tobacco has on the people of Wales, especially on young people. I therefore agree that offences on illegal tobacco need to be considered, alongside others, when considering whether to make additions to the Restricted Premises Order regime. While I consider this work to be a priority in terms of using the regulation-making power provided in the Bill, it will need to be taken forward in full consultation with stakeholders. Similarly, I can confirm my commitment for my officials and I to continue to work with the UK Government and HMRC in exploring options to tackle the difficult and complex issues around the illegal tobacco trade. However, I cannot commit that this will involve the specific actions suggested at **Recommendation 8**, as the precise actions required have not yet been determined. For example, discussions could conclude that trading standards officers do not need greater powers, and that other actions are more appropriate.

## **Special procedures**

I note the Committee's five recommendations relating to the special procedures part of the Bill. Firstly, **Recommendation 9** suggests adding lasers / intense pulsed light (IPL) services to the list of special procedures included on the face of the Bill. I have given careful consideration to this issue but am not in a position to make this change at this stage and therefore **reject** this recommendation. Laser and IPL use is already regulated by Healthcare Inspectorate Wales (HIW) and so adding these to the Bill at this stage would pose a real risk of regulatory duplication. My intention therefore is to explore whether it would be appropriate

in due course to add lasers and IPLs, for non-surgical purposes, to the list of special procedures after appropriate consultation with HIW, local authorities and the public. I would also add the role and functions of HIW is currently the subject of discussion following responses to the “Our Health, Our Health Service” Green Paper.

I **accept Recommendation 10**, which requested clarification about the definition of ‘tattooing’ in the Bill. My officials have revisited the definition and I am happy to confirm my view remains that the current definition is broad enough to cover similar procedures such as ‘tashing’. In the case of ‘tashing’ specifically, which is the use of cremated remains in the act of tattooing, we believe the ash would be classed as a ‘colouring material’ designed to leave a semi-permanent or permanent mark, and so would be captured by the current definition. Furthermore, when the ash is mixed with other pigments such as normal tattoo ink, then both the ash and the pigment would be considered colouring materials.

I agree with the Committee’s view that more evidence is needed to fully understand the range and scale of body modifications in Wales. I am therefore content to **accept the principle of Recommendation 11** and to reiterate the commitment made by the previous Minister for Health and Social Services to undertake early consultation on this issue, if the Bill is passed by the Assembly. During the development of the Bill my officials consulted with local authorities and practitioners who suggested that such procedures are infrequently performed in Wales. I also note that some could amount to criminal offences. In taking this work forward I would therefore emphasise that we do not wish to regulate procedures that are considered to be assaults in law. I am aware that in Wolverhampton police are currently prosecuting a man who was performing body modifications such as ear removal, nipple removal and tongue splitting. This individual has been charged with three counts of causing grievous bodily harm with intent, and three alternative counts of wounding without intent. My officials will continue to monitor the progress of this case. While it is my intention therefore to consult on the scale and risks of body modifications in Wales, further work would need to be carried out to understand the legal and ethical complexities before they could be brought within the special procedures licensing system by regulations in the future.

I am unable to amend the Bill in the way requested at **Recommendation 12** and therefore **reject** this recommendation. Currently section 57(1) of the Bill provides that a member of a profession that is regulated by a body listed in paragraphs (a) to (ga) of section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 is exempt from the requirement to hold a special procedures licence, unless the Welsh Ministers make regulations that bring them back within the licensing regime. These bodies comprise the core regulated medical professions such as doctors, dentists, nurses, midwives, chiropractors and pharmacists. The Bill has been drafted in this way to ensure the provision is within the competence of the National Assembly for Wales.

I would reassure the Committee that it is my intention to consult with these regulatory bodies to determine whether each of the special procedures listed in the Bill is within the scope of the professional practice of their members. For example, it may be that acupuncture falls within the professional practice of chiropractors, but tattooing does not, and therefore the regulations would require a chiropractor to obtain a licence for tattooing. I trust this approach will address the concerns underlying the Committee’s recommendation.

I have closely followed the evidence the Committee received during Stage 1 on the issue of relevant offences for the special procedures licensing system. In response to this evidence I asked my officials to revisit this point and I can now confirm that I intend to bring forward Government amendments on this issue. I therefore **accept Recommendation 13**. The Bill as currently drafted provides that if an applicant has been convicted of a relevant offence, it will be for the local authority, when exercising its discretion to grant a licence, to consider whether the applicant’s fitness to perform the procedure has been called into question to

such an extent that it would be inappropriate to issue the licence. I am now persuaded that enabling local authorities to take account of information such as unspent sexual offences is justified on the grounds of public protection, particularly as some procedures such as genital piercings involve an element of intimacy, and clients are often alone with the practitioner whilst the procedure is performed.

I am also aware of two recent cases which are highly relevant to this issue. One concerned an 18 year old woman in England who tattooed three young children and who, due to the seriousness of the offence, was convicted of assault. The second ongoing case, also referred to earlier in this response, relates to a registered practitioner being charged with three counts of causing grievous bodily harm with intent and three alternative counts of wounding without intent for conducting procedures such as tongue splitting, ear removal and nipple removal. My view is that our legislation in Wales should enable local authorities to take into account the scenarios involved in these rare but serious cases when deciding whether or not to grant a licence. This principle will inform my approach to Government amendments on this issue.

### **Intimate piercing**

I outlined during the general principles debate that I have been giving very active consideration to **Recommendation 14**. I am grateful to the Committee for the detailed consideration it has given to the most appropriate age restriction for intimate piercings. Detailed consideration was given to the most appropriate age for the restriction throughout the development of the Bill and the issue was also explored in depth during scrutiny by the previous Assembly.

However, as I outlined in previous correspondence to the Committee and in view of the strong views of a number of stakeholders, I asked my officials to re-examine the evidence. This detailed work has now been completed and, as I indicated in correspondence to the Committee on 6 March, I am now content to **accept** this recommendation. I can also confirm that I have tabled Government amendments to raise the age for the proposed restrictions on intimate piercing, from 16 to 18.

### **Health Impact Assessments (HIAs)**

Whilst I am sympathetic to the intention behind **Recommendation 15**, I am not convinced that a change in name to health and well-being impact assessments is necessary, and so am **rejecting** this recommendation. I am fully satisfied that well-being is already an integral part of HIAs as the assessments are carried out through the broad lens of the wider determinants of health. It is a process which considers to what extent the health and well-being of a population may be affected by a policy, programme, plan or project. This concept is also shown by the definition of a HIA within the Bill, which encompasses mental health as well as physical health. In addition, my view is that an unnecessary name change could unintentionally lead to confusion as the current terminology is well embedded and understood, in Wales, the UK and internationally.

### **Provision of toilets**

The remaining four recommendations of the Committee relate to the part of the Bill dealing with provision of toilets for use by the public. Firstly, **Recommendation 16** refers to the statutory guidance which will be made under the Bill. I am unable to explicitly state in this guidance that toilet facilities in larger public buildings should be made available for use by the public, and so must **reject** this recommendation. In doing so my starting point is that I agree with the principle that the public sector should be an exemplar in the way it deals with this issue, however there are complexities involved in saying toilet facilities in all larger

public bodies should be made available for public use. There will be a number of factors to consider in terms of access and security, amongst others. It is therefore appropriate that this issue should be considered by local authorities when preparing their local strategies, taking into account the relevant factors to each circumstance. In addition, statutory guidance cannot and should not go further than the duties imposed by the Bill, which provide that the statutory guidance must make provision about the assessment of the need for toilets located in premises that are publicly funded, but does not place an explicit duty on public bodies to make toilet facilities in their buildings available to the public.

I am content to **accept Recommendation 17** which concerns the development of a national map to assist the public to locate locally available toilet facilities. My officials are currently considering the necessary infrastructure required to collect the appropriate data from local authorities and incorporate into existing mapping tools. The data will also be made available to third parties who will then be able to use the information to develop other maps and apps. Similarly, I recognise that an app, as envisaged in **Recommendation 18**, has potential to assist members of the public to locate the nearest toilet which meets this needs. I therefore **accept the principle** of this recommendation, but am of the view that such apps are best developed by third parties rather than the Welsh Government. I am, however, committed to ensuring that data are made available on public toilet facilities in an open format on the Welsh Government website, which will allow third party app developers to use the data in an innovative way, providing economic opportunities for small businesses.

Finally, I am pleased to **accept Recommendation 19**. I can confirm that I have asked my officials to explore options for the development of an easily recognisable logo that could be displayed at publicly accessible toilet facilities across Wales.

I trust that the information provided in this response will be helpful to the Committee. I look forward to further constructive discussions with the Committee as the Bill progresses through the remainder of the scrutiny process, in order to allow the many benefits of the Bill for the population of Wales to be realised.