

Explanatory Memorandum to the Smoke-free Premises and Vehicles (Wales) Regulations 2020.

This Explanatory Memorandum has been prepared by the Department of Health and Social Services and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Smoke-free Premises and Vehicles (Wales) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Eluned Morgan MS
Minister for Mental Health, Wellbeing and Welsh Language
16 October 2020

PART 1

Description

1. This Explanatory Memorandum has been developed to consider the implications of introducing the Smoke-free Premises and Vehicles (Wales) Regulations 2020 (“the 2020 Regulations”). The 2020 Regulations will supplement certain provisions in Chapter 1 of Part 3 of the Public Health (Wales) Act 2017¹ (“the 2017 Act”) and support the Welsh Government’s overall vision of a smoke-free society for Wales in which the harm from tobacco is eradicated. The 2017 Act received Royal Assent on 3 July 2017.
2. Chapter 1 of the 2017 Act restates certain provisions relating to smoking in Section 1 of the Health Act 2006² (“the 2006 Act”), so far as it relates to Wales. The 2006 Act made enclosed and substantially enclosed workplaces and public places smoke-free and gave powers to national authorities to make limited exemptions to the smoke-free requirements and provide for smoke-free vehicles and additional smoke-free places. These were set out in the Smoke-free Premises etc. (Wales) Regulations 2007 (“the 2007 Regulations”) which came into force on 2 April 2007 and were amended in 2015³ in relation to smoking in private vehicles carrying persons aged under 18, and in 2016⁴ in relation to smoking in prisons.
3. Chapter 1 of the 2017 Act also extends the smoke-free provisions in Wales to include certain non-enclosed or substantially enclosed premises; these are hospital grounds, public playgrounds, school grounds and outdoor care settings for children and authorises each local authority to act as an enforcement authority in relation to the smoke-free premises, places and vehicles in their area.
4. The 2020 Regulations will supplement certain provisions in Chapter 1 of Part 3 of the 2017 Act and will revoke and replace the 2007 Regulations which prohibit smoking in enclosed public places and work places. They will also revoke and replace subsequent amendments to the 2007 Regulations concerning smoking in private vehicles.
5. Alongside powers and provisions in the 2017 Act, the 2020 Regulations will also extend the smoke-free provisions in Wales to include certain non-enclosed or substantially enclosed premises, being hospital grounds, public playgrounds, school grounds, and outdoor care settings for children. Voluntary smoking bans are already in place in many of these settings but despite best efforts enforcement has been difficult.
6. Detailed consideration of the costs and benefits of the provisions on smoking contained in the 2017 Act are provided in the Regulatory Impact

¹ Public Health (Wales) Act 2017 <https://www.legislation.gov.uk/anaw/2017/2/contents/enacted>

² Health Act 2006 <https://www.legislation.gov.uk/understanding-legislation>

³ The Smoke-free Premises etc. (Amendment) (Wales) Regulations 2015
<http://www.legislation.gov.uk/wsi/2015/1363/contents/made>

⁴ The Smoke-free Premises etc. (Amendment) (Wales) Regulations 2016
<http://www.legislation.gov.uk/wsi/2015/1363/contents/made>

Assessment (RIA) to that Act which is available on the Senedd Cymru website⁵. Only those costs and benefits additional to those already considered are therefore discussed in this document.

Matters of special interest to the Legislation, Justice and Constitution Committee

7. The 2020 Regulations required notification to the EU in line with the requirements of the Technical Standards and Regulations Directive 2015/1535/EC⁶. This is as a result of the technical requirements in the Regulations as to the lay-out and form of no-smoking signs (Regulations 13, 14 and 18). This process required a three-month standstill period during which the 2020 Regulations remained in draft form and were not laid before the Senedd. The standstill period commenced on 23/06/20 and ended on 24/09/20. No objections were made by Member States to the draft 2020 Regulations.

Legislative background

8. The 2020 Regulations will be made under powers in Chapter 1 of Part 3 and Schedule 1 of the 2017 Act. Part 3 relates to tobacco and nicotine products. Chapter 1 of Part 3 gives provisions to restrict smoking in workplaces, public places, outdoor care settings for children, school grounds, hospital grounds and public playgrounds, and confers powers on the Welsh Ministers to make Regulations restricting smoking in other premises, and in vehicles.
9. As stated above, the 2006 Act made enclosed and substantially enclosed workplaces and public places smoke-free and gave powers to national authorities to make limited exemptions to the smoke-free requirements and provide for smoke-free vehicles and additional smoke-free places. The 2007 Regulations were made under this Act which first established the smoke-free regime across the United Kingdom. The 2020 Regulations will revoke and replace the 2007 Regulations.
10. The 2007 Regulations will be saved by virtue of section 34 of the Legislation (Wales) Act 2019 ("the 2019 Act"). It is intended to also rely on section 34 of the 2019 Act to save the offences in the 2006 Act (which would be disapplied to Wales by a subsequent Commencement Order but come into force at the same time as the 2007 Regulations are repealed). This means that despite the 2007 Regulations being revoked, and the offences in the 2006 Act no longer applying in Wales, the 2007 Regulations and the 2006 Act would still apply to any things which happened or matters arose prior to the revocation of the 2007 Regulations and the disapplication of the offences in the 2006 Act in Wales.

⁵ Welsh Government. Public Health (Wales) Bill Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory notes. 2017. <http://www.assembly.wales/laid%20documents/pri-ld10796-em-r/pri-ld10796-em-r-e.pdf>

⁶ European Commission - <https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2020&num=374>

11. Chapter 1 of Part 3 of the 2017 Act restated certain provisions relating to smoking as set out in Section 1 of the 2006 Act, in so far as they relate to Wales. The 2017 Act also extends the smoke-free provisions in Wales to include certain 'non-enclosed' or 'substantially enclosed' premises, namely hospital grounds, public playgrounds, school grounds and outdoor care settings for children.
12. The 2017 Act provides powers to specify in regulations, for the purpose of the smoke-free provisions in Wales:
 - the meaning of 'enclosed', 'substantially enclosed' and 'not enclosed or substantially enclosed';
 - any additional smoke-free premises;
 - any exemptions to smoke-free premises;
 - the provisions on designated areas in hospital and relevant school grounds which are not smoke-free;
 - a duty to prevent smoking in smoke-free hospital grounds, school grounds, public playgrounds, additional smoke-free premises and smoke-free vehicles;
 - the requirements for smoke-free vehicles;
 - the requirements for signs in smoke-free premises and vehicles;
 - the designation of the chief officer of police for a police area as an authorised officer in relation to private vehicles; and,
 - the form and content of the penalty notice form and the amount of the penalty.
13. The 2020 Regulations draw on the above powers to supplement and provide the detail of the smoke-free provisions in Chapter 1 of Part 3 of the 2017 Act. The 2020 Regulations do not however exercise the power to make additional premises smoke-free (section 13 of the 2017 Act). This power provides flexibility for future regulations to be made on additional non-enclosed places, if Welsh Ministers are satisfied that doing so is likely to contribute towards the promotion of the health of the people of Wales.
14. The 2020 Regulations also rely on powers found in Schedule 1 to the 2017 Act. Schedule 1 makes detailed provision about Fixed Penalty Notices (FPNs) as introduced by section 27 of the 2017 Act.

Purpose and intended effect of the legislation

15. The purpose of the 2020 Regulations is to complement and complete the effect of provisions in Chapter 1 of Part 3 of the 2017 Act so as to make changes to the existing smoking ban established in the 2006 Act and 2007 Regulations. The 2020 Regulations introduce new elements needed to implement the provisions on smoke-free hospital grounds, school grounds, and public playgrounds in the 2017 Act. The 2020 Regulations will be supported by guidance to aid implementation by those in charge (or managers) of smoke-free premises and vehicles; and enforcement of the requirements by authorised officers. The 2020 Regulations complement the measures set out in our Tobacco Control Delivery Plan for Wales 2017-

2020⁷ to improve health and well-being in Wales, and to provide a greater emphasis on prevention in line with our national strategy *Prosperity for All*.

16. Smoking was once normal across much of society. It is now increasingly uncommon. Reducing the health impacts of smoking is a recognised policy priority for the Welsh Government. Smoking remains one of the main causes of inequalities in health in Wales with smoking rates in the most deprived areas over double those of the least deprived areas⁸.
17. The intended effect of the 2020 Regulations is to reduce exposure to second hand smoke and further denormalise smoking behaviour, particularly amongst children and young people.
18. The 2006 Act and the 2007 Regulations were introduced to protect employees and the public from the harmful effects of second-hand smoke. Restricting smoking in non-enclosed spaces, namely hospital grounds, school grounds and public children's playgrounds (in addition to outdoor care settings for children, as provided by Section 9 of the 2017 Act), will contribute to the policy rationale of continuing the denormalisation of smoking, as there would be less opportunities for the activity of smoking to be seen. The 2007 Regulations have demonstrated the effectiveness of smoke-free policies in denormalising smoking behaviours even though those restrictions were limited to enclosed and substantially enclosed spaces.
19. The smoke emitted by cigarettes and exhaled by smokers contains more than 50 chemicals recognised as carcinogens, as well as many toxic irritant agents⁹. Scientific evidence has linked second hand smoke exposure to adverse health outcomes, including respiratory outcomes in children and adults, acute cardiovascular disease and lung cancer. Whilst most of this evidence is based on long term exposure, there are some studies that have reported effects following short term exposure to tobacco smoke, such as eye and respiratory irritation amongst non-smokers¹⁰. Such studies show that even brief and short term exposure to second-hand smoke may generate significant adverse effects on the human respiratory system¹¹. The consensus, therefore, is that there is no safe level of exposure to second-hand smoke and, while some progress has been made in non-enclosed smoke-free environments through voluntary action, comprehensive legislation is required to make significant progress to protect public health.
20. The 2020 Regulations will also work with other legislation to contribute to the continuing decline in the uptake of smoking by children and young people. The 2020 Regulations will aim to ensure the further denormalisation of smoking by restricting smoking in more public places, particularly where children are likely to be present on a regular basis (such as school grounds and public playgrounds). This will reduce children's exposure to adult

7 <https://gov.wales/tobacco-control-plan-wales-2017-2020>

8 National Survey for Wales: <https://gov.wales/national-survey-wales>

9 <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf>

10 <http://www.ncbi.nlm.nih.gov/pubmed/11675270>

11 <http://www.ncbi.nlm.nih.gov/pubmed/21178628>

smoking behaviours in their everyday lives with the intention of making them less likely to grow up thinking that smoking is a normal or aspirational adult behaviour.

21. Prohibiting smoking in private vehicles carrying children under the age of 18 supports and promotes the following articles of the United Nations Convention on the Rights of the Child (UNCRC);
 - Article 3 – the best interests of the child
 - Article 24 - a child's right to the best possible health and protection in consideration of the dangers and risks of environmental pollution.
22. The provisions in the 2020 Regulations relating to hospital grounds are intended to promote behaviour change and support smoking cessation among smokers who use hospital services. The 2020 Regulations also remove the current exemption that allows designation of a room in which patients and residents of mental health units may smoke and replacing it with a time limited exemption that will expire 18 months after the 2020 Regulations come into force. Smoking prevalence among people with mental illness is substantially higher than the general population. Removing this exemption will bring the law in line with general hospital service users and will aim to address health inequalities for persons with mental health conditions. The 2020 Regulations also amend the provision of designated smoking rooms in adult care homes and adult hospices. The 2007 Regulations provided an exemption for adult care homes and adult hospices that permitted the manager of the premises to designate a room for smoking for use by those over 18 years of age. This exemption has been retained in the 2020 Regulations but with the additional condition that the designated smoking room is only for use by residents of the adult care home or adult hospice (Regulation 6(2)(a)).
23. The 2020 Regulations will also remove the exemption that permits the designation of bedrooms where smoking is allowed in hotels, guesthouses, hostels, inns and members' clubs and replace it with a time limited exemption that will expire 12 months after the 2020 regulations come into force. A similar provision is provided for self-contained holiday or temporary accommodation (such as static caravans used for holiday rental or temporary purposes and cottages and chalets, and flats and apartments provided via short-term lets for holiday rental accommodation). The smoking ban is embedded in Wales to the extent that the current exemption is not widely used. Removing this designation would extend the workplace protection from the health harms of second hand smoke to all workers in such premises and support the Welsh Government's ultimate aim of a smoke-free society.

Consultation

24. In 2018 the Welsh Government launched a 12 week consultation on the draft Smoke-free Premises and Vehicles Regulations, and a draft Regulatory Impact Assessment. A full summary of the consultation can be

found on the Welsh Government website¹². A number of amendments to the draft Regulations were made following stakeholder feedback to the consultation. These changes were in relation to the following issues:

Dwellings – exclusions to ‘work’

25. Section 7 of the 2017 Act provides that premises in Wales are smoke-free if they are workplaces. It is the intention to protect as many workers as possible from the risks of second hand smoke, including those working in the dwellings of others. The 2020 Regulations remove exclusions for certain types of work activities from the assessment of whether a dwelling is a workplace for the purpose of Section 7. Work activities were specifically defined in the 2007 Regulations and related to providing a service to the persons living there, such as personal/health care, assisting with domestic or maintenance work etc. The effect of removing these exclusions within the 2020 Regulations is that all types of work activities will be included in the assessment of whether a dwelling is a workplace and therefore more of those work places will be required to be smoke-free. However, this effect is limited by section 7(5) of the 2017 Act which requires that those classed as workplace-dwellings are only required to be smoke-free in the parts used as a workplace and for the duration so used.

Self-contained temporary or holiday accommodation

26. All temporary and holiday accommodations are to be smoke-free as soon as possible. The 2020 Regulations introduce a time-limited exemption to the smoke-free requirements for self-contained accommodation used for temporary or holiday purposes. The exemption for these types of premises will cease to apply 12 months after the 2020 Regulations come into force. This transition period will provide the person in charge of such premises time to make any necessary changes to their accommodation. After this period, self-contained accommodation used for temporary or holiday purposes will have to be smoke-free if they are a workplace or open to the public. This change brings the smoke-free requirements for such accommodation into line with hotels, guest houses, hostels and members' club, which will be required to remove any designated smoking bedrooms (permitted under the 2007 Regulations) by the end of the 12 month transition period. Premises used to any extent as a dwelling are excluded from these provisions.

Duty to prevent smoking

27. The 2020 Regulations have introduced a duty on those who control or manage school grounds, hospital grounds and public playgrounds to take reasonable steps to prevent smoking. This is a change to the original policy intent, which considered these types of premises were too dispersed to make this duty viable. However, following further discussions with enforcement teams and Health Boards in the post-consultation period, it has been agreed that a duty is required to establish responsibility.

Fixed penalty notices

¹² <https://gov.wales/smoke-free-premises-and-vehicles-wales-regulations-2018>

28. Provision around fixed penalty notices (FPNs) is found in section 27 of and Schedule 1 to the 2017 Act. The amount of the FPN and discounted penalty amount has been increased to £100 and £75 respectively (proposals prior to consultation were £50 and £30 respectively) in relation to the offences of:
- smoking in smoke-free premises or vehicles; and
 - failing to prevent smoking in a vehicle being used for social, domestic or other private purposes where a person under the age of 18 is present.

This will bring FPNs relating to smoke-free offences more in line with similar offences such as littering and dog fouling.

Hospital and school grounds: designated areas

29. No changes to the conditions around designated areas for smoking within hospital and the grounds of schools providing residential accommodation were made following the consultation. The possibility of permitting designated smoking areas in hospital and school grounds where the grounds are too small to comply with the usual conditions on distance (i.e. that it is 10 metres away from any other smoke-free premises) was considered but was discounted on the basis that it would be contrary to the underlying policy intention of limiting smoke-drift.

Consideration of ECHR and UNCRC

30. A very thorough assessment of provisions contained within these Regulations has taken place to ensure they are compatible with the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC).

PART 2 – REGULATORY IMPACT ASSESSMENT

1. This Regulatory Impact Assessment (RIA) has been completed to consider the implications of introducing the Smoke-free Premises and Vehicles (Wales) Regulations 2020 (the “2020 Regulations”). These Regulations will implement certain smoking provisions in Chapter 1 of Part 3 of the Public Health (Wales) Act 2017 (“the 2017 Act”) and support the Welsh Government’s overall vision of a smoke-free society for Wales in which the harm from tobacco is eradicated. This RIA builds upon the RIA for the 2017 Act (a link to the EM/RIA for the 2017 Act is provided at footnote 5 above, the relevant assessment is on pages 109-126).
2. An Integrated Impact Assessment has been completed for the 2020 Regulations. The Integrated Impact Assessment Summary is published on the Welsh Government website: <https://gov.wales/smoking>

Options

3. This RIA considers three options:
 - **Option One** – Do nothing.
 - **Option Two** – Introduce regulations on smoking bans in hospital grounds, school grounds and public playgrounds which would use the powers in the 2017 Act to:
 - provide a meaning for ‘not enclosed or substantially enclosed’,
 - set out the requirements on no-smoking signs in these premises, and
 - provide the conditions for any designated smoking areas within hospital grounds and grounds of schools with residential accommodation for pupils.

Option two would make no changes to the existing requirements of the Smoke-free Premises etc. (Wales) Regulations 2007 (“the 2007 Regulations”) (i.e. retain the existing provisions on, for example, no-smoking signs for enclosed and substantially enclosed premises, the permitted exemptions to enclosed and substantially enclosed smoke-free premises, and on smoke-free vehicles).

- **Option Three** – Introduce regulations on smoking bans in hospital grounds, school grounds and children’s playgrounds as per option two but also making changes to the existing provisions within the 2007 Regulations being:
 - refine the current meaning of ‘substantially enclosed’;
 - provide exemptions for dwellings that are workplaces where certain conditions exist;
 - introduce a time limited exemption for the designation of rooms for smoking for patients of mental health units that will expire 18 months after coming into force;

- introduce a time limited exemption for the designation of bedrooms for smoking in hotels, guesthouses, inns and members clubs, and also self-contained temporary or holiday accommodation that will expire 12 months after coming into force;
- reduced minimum requirements for the graphic images used on all no-smoking signs;
- introduce specific written warnings for no-smoking signs in hospital grounds, school grounds and public playgrounds;
- introduce a duty to prevent smoking in school grounds, hospital grounds and public playgrounds; and
- provide that enclosed vehicles are smoke-free when being used in the course of paid or voluntary work purposes whilst carrying a person who is receiving goods or services from another person also in the vehicle.

Option three would retain the provisions within the 2007 Regulations that:

- provide an exemption to the smoke-free requirements for research and test facilities;
- establish the requirements for any rooms designated for smoking;
- require enclosed vehicles used mainly for transporting members of the public or for work purposes by more than one person are smoke-free all of the time;
- require enclosed private vehicles to be smoke-free whilst carrying persons under the age of 18; and,
- establish the fixed penalty amounts.

4. Option three is the preferred option.

5. Additional non-enclosed/substantially non-enclosed grounds could be added in the future under options two and three.

Option One – Do nothing

Description

6. There would be no change to existing legislation under this option. The provisions in the 2017 Act on smoke-free hospital grounds, school grounds and public playgrounds would not be implemented. There would therefore be no additional costs or benefits associated with this option.

7. The option to do nothing is not considered sufficient.

Option Two – Introduce regulations on smoking bans in hospital grounds, school grounds and public playgrounds with no change to the existing requirements of the Smoke-free Premises etc. (Wales) Regulations 2007

Description

8. This option would introduce the regulations required to complete and make effective the restrictions on smoking in hospital grounds, school grounds and public playgrounds in the 2017 Act. The regulations would provide a meaning for ‘not enclosed or substantially enclosed’ and place a duty on managers of these places to display no-smoking signs that meet the minimum requirements specified in the 2007 Regulations with additional requirements specific to the premises type. It is envisaged that these signs could be displayed alongside existing no-smoking signs linked to voluntary smoking bans in hospital grounds and public playgrounds. Any areas within hospital grounds and the grounds of schools with residential accommodation for pupils that are designated for smoking would have to be within parameters established in regulations. The provisions on smoke-free vehicles, exemptions to the requirements on smoke-free workplaces and public places and smoke-free signs for enclosed and substantially enclosed workplaces and public places would remain as the status quo established by the 2007 Regulations.
9. Table 1 provides a summary of the no-smoking signage requirements for hospital grounds, school grounds and public playgrounds proposed under Option Two.

Table 1.

Aspect of sign	Option two proposal
Graphic warning	<p><u>As per 2007 Regulations:</u></p> <p>A no-smoking sign must contain a graphic representation of a burning cigarette enclosed in a red circle at least 85 millimetres in diameter with a red bar across the circle which crosses the cigarette symbol.</p>
Overall size/shape	<p><u>As per 2007 Regulations:</u></p> <p>Must be flat and rectangular and at least 160 millimetres by 230 millimetres.</p>
Written warning	<p>Must contain a legible warning bilingually in Welsh and in English that smoking is not permitted in the premises covered by the smoke-free requirements with specific warning message per premises type.</p> <p>For example: <i>“It is against the law to smoke in these hospital grounds/Mae ysmygu yn nhir yr ysbyty hwn yn erbyn y gyfriath”</i>; for playgrounds with no clear boundary <i>“It is against the law to smoke within 5 metres of this play equipment/Mae ysmygu o fewn 5 metr i’r cyfarpar chwarae hwn yn erbyn y gyfriath.”</i></p>

Location	Must be displayed in a prominent position at or near the main entrance(s) to smoke-free premises; for playgrounds with no clear boundary, in a prominent position near the playground.
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Costs

Welsh Government

10. The costs to Welsh Government for this option are accounted for in the RIA to the 2017 Act (table 2 includes these costs uprated to 2019-20 prices).

There are no additional costs to those previously stated in that RIA for Welsh Government under this option.

Enforcement

11. The costs related to enforcement of the provisions of this option are accounted for in the RIA to the 2017 Act (table 2 includes these costs uprated to 2019-20 prices). There are no additional costs to those previously stated in that RIA for enforcement under this option. The number and value of FPNs and fines issued to members of the public are assumed to be the same as in the RIA for the 2017 Act.

Hospital grounds, school grounds and public playgrounds

12. Under this option, managers of hospital grounds, school grounds and public playgrounds would be required to provide no-smoking signs that comply with the requirements. This would be additional to any current voluntary smoking ban signs that already exist. The RIA to the 2017 Act calculated the cost of a limited number of additional signs in hospital grounds and public playgrounds, and new signs for school grounds; for hospital grounds, the cost of stickers for entrance doors and bus shelters as well as pedestrian exits from car parks were also included. Under this option, there would therefore be no additional costs to those accounted for in the RIA to the 2017 Act (table 2 includes these costs uprated to 2019-20 prices).

13. The designation of areas where smoking is allowed within school grounds with residential accommodation for pupils and hospital grounds would not be a mandatory requirement of the legislation and so the cost of erecting smoking shelters and signage are not accounted for in this appraisal.

14. The costs associated with considering guidance, updating smoke-free policies and payment of any fixed penalty notices for non-compliance with the duty to display appropriate signage are accounted for in the RIA to the 2017 Act (table 2 includes these costs uprated to 2019-20 prices).

Table 2. Summary of additional costs associated with option two.

	2020/21 (£)	21/22 (£)	2022/23 (£)	2023/24 (£)	2024/25 (£)
Welsh Government					
Communications Campaign	£51,400 - £72,500	£0	£0	£0	£0
Producing guidance to organisations, businesses and the general public.	£9,000	£0	£0	£1,600	£0
Design and translation of the new guidance	£1,200	£0	£0	£0	£0
Updating WLGA guidance relating to enforcement of the provisions in the 2006 Act and the Smoke-Free Regulations 2007.	£1,600	£0	£0	£1,600	£0
Enforcement training sessions	£2,500	£0	£0	£0	£0
Total costs for Welsh Government	£65,700 - £86,800	£0	£0	£3,200	£0
Local Authorities					
Reviewing existing voluntary practices or policies against legislation	£40,900	£0	£0	£0	£0
Enforcement training	£9,900	£0	£0	£0	£0
Signage – Schools	£17,400 - £68,000	£0	£0	£0	£0
Signage – Playgrounds	£24,000 - £66,700	£6,100 - £16,700	£0	£0	£0
Total costs for local authorities	£92,200 - £185,500	£6,100 - £16,700	£0	£0	£0
Schools (Voluntary aided, foundation and independent)					

Reviewing existing voluntary practices or policies against legislation	£6,600	£0	£0	£0	£0
Signage	£3,400 - £11,200	£0	£0	£0	£0
Total costs for schools	£10,000 - £17,800	£0	£0	£0	£0
Health Boards					
Reviewing existing voluntary practices or policies against legislation	£3,500	£0	£0	£0	£0
Signage	£17,500 - £22,000	£0	£0	£0	£0
Total costs for Health Boards	£21,000 - £25,500	£0	£0	£0	£0
Independent Hospitals					
Reviewing existing voluntary practices or policies against legislation	£900				
Signage	£3,400 - £4,000	£0	£0	£0	£0
Total costs for independent hospitals	£4,300 - £4,900	£0	£0	£0	£0
Public					
Fixed penalty notices	£3,100	£4,200	£4,000	£2,000	£2,000
Fines	£2,000	£1,800	£2,200	£600	£600
Total costs for the public	£5,100	£6,000	£6,200	£2,600	£2,600
Total costs	£198,300 - £325,600	£12,100 - £22,700	£6,200	£5,800	£2,600

Benefits

Welsh Government

15. The benefits to Welsh Government for this option are accounted for in the RIA to the 2017 Act. There are no additional benefits to those previously stated in that RIA for Welsh Government under this option.

Enforcement

16. Enforcement would benefit from a meaning for 'not enclosed or substantially enclosed' as this would provide clarity when applying the provisions on hospital grounds, school grounds and public playgrounds and any future smoke-free premises that are not enclosed or substantially enclosed.

17. Other benefits for enforcement are accounted for in the RIA to the 2017 Act.

Hospital grounds, school grounds and public playgrounds

18. The benefits to managers of hospital grounds, school grounds and public playgrounds that currently operate voluntary smoke-free policies and that would be backed by legislation under this option are accounted for in the RIA to the 2017 Act. There are no additional benefits to those previously stated in that RIA for managers of hospital grounds, school grounds and public playgrounds under this option.

Public

19. Clear signs that inform the public that smoking is not permitted by law in hospital grounds, school grounds and public playgrounds will help with compliance and therefore help the public to avoid incurring a fixed penalty notice fine for smoking in a smoke-free place.

Health

20. Option Two would work alongside other tobacco control measures to further denormalise smoking and reduce the risks from exposure to second hand smoke. These benefits are explored in the RIA to the 2017 Act. There are no additional health benefits to those previously stated in that RIA.

Option Three – Introduce regulations on smoking bans in hospital grounds, school grounds and public playgrounds with changes to the existing requirements of the Smoke-free Premises etc. (Wales) Regulations 2007

Description

21. This option would be as per Option Two but with some changes to the smoke-free provisions established by the 2007 Regulations.

Definitions

22. Option Three would update the meaning of 'substantially enclosed' established by the 2007 Regulations. This change would make clear that other structures that form part of the perimeter of the premises should be included when making such a consideration.

Exemptions

23. The 2007 Regulations provide that dwellings that are workplaces are only smoke-free in those parts that are used solely for work and that those parts should be smoke-free all of the time in accordance with the 2006 Act. Option Three would change this provision to support the policy intention of protecting as many workers as possible from the risks of second hand smoke, including those working in the dwellings of others. Option 3 removes exclusions for certain types of work activities from the assessment of whether a dwelling is a workplace for the purpose of Section 7 of the 2017 Act. Work activities were specifically defined in the 2007 Regulations and related to providing a service to the persons living there, such as personal/health care, assisting with domestic or maintenance work etc. The effect of removing these exclusions is that all types of work activities will be included in the assessment of whether a dwelling is a workplace and therefore more work places will be required to be smoke-free. However, this effect is limited by section 7(5) of the 2017 Act which requires that workplace-dwellings are only required to be smoke-free in the parts used as a workplace and for the duration that they are so used.
24. Option Three would replace three of the current exemptions in the 2007 Regulations with time limited exemptions. For mental health units (MHUs) the permission to designate a room for smoking within the premises would expire 18 months after the regulations come into effect. For hotels, guesthouses, inns, hostels and members' clubs ("hotels, etc.") the permission to designate smoking bedrooms would expire 12 months after the regulations come into effect. Self-contained holiday and temporary accommodation (such as static caravans used for holiday rental or temporary purposes, holiday rental accommodation such as cottages and chalets, and flats and apartments provided via short-term lets) will be required to be smoke-free 12 months after the regulations come into effect. Once these time limited exemptions have expired, MHUs, hotels etc. and holiday and temporary accommodation would have to be smoke-free throughout the entirety of their enclosed and substantially enclosed premises.

Duty to prevent smoking

25. Option Three would introduce a duty on those who control or manage school grounds, hospital grounds and public playgrounds to take reasonable steps to prevent smoking. This duty is required to establish responsibility for preventing smoking.

No-smoking signs

26. Option Three would reduce the minimum requirements for all types of smoke-free signs by relaxing the requirements on the graphic warning and removing the specific text warning for enclosed and substantially enclosed smoke-free premises. The intention would be to review the no-smoking signage requirements for hospital grounds, school grounds and public playgrounds three years after the provisions come into force with a view to relaxing them - should compliance with the smoking bans there be at

acceptable levels - to the same more minimal requirements as enclosed and substantially enclosed premises.

27. Table 3 provides a summary of the changes to the no-smoking signage requirements proposed under option Three.

Table 3

Aspect of sign	2007 Regulations	Option 3 proposal
Graphic warning	<p><u>Premises</u> A no-smoking sign must contain a graphic representation of a burning cigarette enclosed in a red circle at least 85 millimetres in diameter with a red bar across the circle which crosses the cigarette symbol.</p> <p><u>Vehicles</u> A no-smoking sign must contain a graphic representation of a burning cigarette enclosed in a red circle at least 75 millimetres in diameter with a red bar across the circle which crosses the cigarette symbol.</p>	<p><u>All premises and vehicles</u> Require that the no-smoking sign must contain a legible graphic representation of a lit cigarette within a circle with a line through it which crosses the cigarette symbol.</p>
Overall size/shape	<p><u>Premises</u> Must be flat and rectangular and at least 160 millimetres by 230 millimetres.</p> <p><u>Vehicles</u> Not specified.</p>	<p><u>All premises and vehicles</u> Not specified.</p>
Written warning	<p><u>Premises</u> Must contain the following words – “mae ysmygu yn y fangre hon yn erbyn y gyfraith / It is against the law to smoke in these premises”.</p> <p><u>Vehicles</u> Not applicable.</p>	<p><u>Enclosed and substantially enclosed premises and vehicles</u> Not specified.</p> <p><u>Hospital grounds, school grounds and public playgrounds</u> [As per option two] Must contain a legible warning bilingually in Welsh and in English that smoking</p>

		<p>is not permitted in the premises or area covered by the smoke-free requirements with specific warning message per premises type.</p> <p>For example: <i>“It is against the law to smoke in these hospital grounds/Mae ysmegu yn nhir yr ysbyty hwn yn erbyn y gyfriath”</i>; for playgrounds with no clear boundary <i>“It is against the law to smoke within 5 metres of this play equipment/Mae ysmegu o fewn 5 metr i’r cyfarpar chwarae hwn yn erbyn y gyfriath”</i>.</p>
Location	<p><u>Premises</u> Must be displayed in a prominent position at or near each entrance to smoke-free premises.</p> <p><u>Vehicles</u> Must be displayed in a prominent position in each compartment of the vehicle, which is wholly or partly covered by a roof, including the driver’s compartment.</p>	<p><u>Enclosed and substantially enclosed premises and vehicles</u> Not specified.</p> <p><u>Hospital grounds, school grounds and public playgrounds</u> [As per Option Two] Must be displayed in a prominent position at or near the main entrance(s) to smoke-free premises; for playgrounds with no clear boundary, in a prominent position near the playground.</p>

Smoke-free vehicles

28. Option Three would add to the types of enclosed vehicles that are required to be smoke-free by requiring that enclosed vehicles are smoke-free when being used in the course of paid or voluntary work purposes whilst carrying a person who is receiving goods or services from the person using the vehicle. Such vehicles are not covered by the existing provisions on smoke-free vehicles because they are not wholly or mainly used for work or public transport purposes and they are not being used in a private capacity at the time of use. For example, a car that is used in the course of child-minding to take children to/from school but is otherwise used for private, social or

domestic purposes; a car that is used only part-time to provide private hire services. These vehicles would not be required to be smoke-free all of the time but only when a person in the vehicle is receiving goods or services from the person using the vehicle.

Costs

Welsh Government

29. There would be a cost associated with this option in implementing the legislation and producing associated guidance.
30. The new legislation would need to be publicised with schools, hospitals, local authorities, child care providers, hotels, etc., tourism operators and the general public. For managers of premises and enforcement officers, this would be done using the normal routes of communication. There would also be a public information campaign on the new provisions of the smoking ban.
31. In the Explanatory Memorandum supporting the Public Health (Wales) Act 2017, the approach for providing guidance was to update the existing smoke-free guidance. However, since the consultation, it has become clear that the guidance will require a more extensive overhaul therefore the costs have been updated to reflect the additional work. These costs are estimated at approximately £9,000 and cover staffing costs to write the guidance (based on 6,000 words) and engaging with stakeholders to ensure the guidance is fit for purpose.. This is based on approximately five weeks of a full-time equivalent (FTE) higher executive officer (£5,500) to develop the guidance, and five weeks of a FTE team support for administration support (approximately £3,500).
32. It is anticipated that design and typesetting would require one week of a 0.5 FTE executive officer, which would cost approximately £600. It is estimated that translation and proofreading would cost approximately £600. There would be no printing costs for the guidance as it would only be produced electronically. The total cost for the development, design and translation of guidance would therefore be £10,200. The costs associated with producing the guidance would be incurred in 2020/21.
33. The guidance would be updated every three years. It is anticipated that this would require approximately one week of a FTE higher executive officer, which would equate to approximately £1,100. Design and translation costs would amount to half the original costs, a total of £600. There would be no printing costs for the review as it would only be produced electronically. The total cost for each review would therefore be approximately £1,700, incurred every three years. The first review would take place in 2023-24.
34. The Welsh Local Government Association (WLGA) guidance¹³ relating to enforcement of the provisions in the 2006 Act and the 2007 Regulations would similarly need to be updated to include a common support and enforcement approach to the new provisions, with best practice advice for

¹³ www.wlga.gov.uk/download.php?id=1235&l=1

those implementing the legislation.

35. The costs for the public information campaign were considered in the RIA for the 2017 Act. Based on that assessment, the cost to Welsh Government in 2020-21 is estimated to be between £51,400 to £72,500 (costs have been updated to 2019-20 prices).

Enforcement

36. Under this option, the duty to prevent smoking would be applied to hospital grounds, school grounds and public playgrounds. Guidance will be provided to the managers of these premises to support them in implementing the duty, to demonstrate compliance and to ensure consistency in the application of any enforcement action. Training will also be available to enforcement officers on this element.

37. Funds of £2,000,000 per annum were made available to local authorities when the 2007 Regulations came into force. As the existing smoke-free requirements are virtually self-enforcing, enforcement of the extended smoke-free requirements would be expected to be accommodated within this existing budget.

Dwellings that are workplaces

38. There would be no additional costs to dwellings that are workplaces under this option because dwellings are not expected to make any adaptations to the premises in order to be smoke-free during the time they are used as a workplace. There is no legal requirement to display no-smoking signs because dwellings are exempt from the requirements on signage by the 2017 Act; as a result there are no associated costs for signage.

Smoke-free vehicles

39. There would be no additional costs for owners of smoke-free vehicles under this option. Vehicles that are not wholly or mainly used for work purposes but are required to be smoke-free when a person in the vehicle is receiving goods or services from another person also in the vehicle are not required to display no smoking signs. There are therefore no associated costs for signage.

Hotels, Guesthouses, Inns, Hostels and Members clubs and holiday and temporary accommodation.

40. There may be some costs for managers of hotels, etc. relating to revoking any rooms designated for smoking under the 2007 Regulations, as well as for owners/managers of self-contained accommodation used for temporary or holiday purposes. These would be costs associated with reviewing the new guidance, updating their smoking policy and giving the accommodation and its soft furnishings a deep clean.
41. Robust data on how many hotels, etc. and self-contained accommodation used for temporary or holiday purposes in Wales that enable smoking are not available. An internet search showed very few hotels, etc. in Wales that provide smoking bedrooms or static caravans and holiday rental

accommodation (cottages etc) that permit smoking; whilst it is possible that not all premises that permit smoking advertise this explicitly, it appears that the exemption provided by the 2007 Regulations is not widely used.

42. The most recent Welsh Government bedstock¹⁴ data show there were 96,386 bedspaces available in Wales in the Service sector (hotels, guesthouses and bed and breakfasts) and hostels in 2013. Assuming most bedrooms in hotels, etc. are double occupancy rooms we have based per-bedroom cost estimates in this RIA on there being around 48,193 bedrooms across hotels, etc. in Wales. Given the lack of robust data on bedrooms designated for smoking within hotels, etc. and the small number listed on the internet, we have based cost estimates on a range of 1% to 2% of hotel, etc. bedrooms being designated for smoking, which equates to approximately 482 to 964 bedrooms across Wales in which smoking is permitted. The same dataset shows there were 3,429 Serviced accommodation and hotels in Wales in 2013. We have therefore based per-premises cost estimates on the same range of 1% and 2%, (which equates to approximately 34 to 68 premises) across Wales that have one or more bedrooms designated for smoking.
43. The Welsh Government bedstock data also showed there are 7067 self-catering establishments (cottages, apartments etc), and 1322 establishments in Wales offering Caravan/camping. It is understood that there is great variation between holiday parks/sites, with some accommodating hundreds of caravans and others just a few. The data also does not differentiate between establishments providing camping and those providing caravans, or indeed those offering caravans for holiday rental, rather than for use as a dwelling. It is therefore not possible to accurately estimate the number of these types of premises that currently permit smoking and will be affected by the provisions. Cost estimates are therefore based on a range of 1% to 2% of self-contained establishments and caravan camping establishments which equates to 84 to 168 self-contained temporary or holiday premises across Wales that permit smoking.
44. Managers of hotels, etc. would need to consider the legislation against their existing smoking policy and read any related guidance. However, this would be limited to those premises that currently permit smoking in designated bedrooms as there would be little action required for hotels, etc. that already operate a totally no smoking policy. Hotels, etc. with smoking rooms will vary in the amount of time they allocate to do this work and so it has been assumed that, on average, each premises would spend an hour on it. Assuming it would be the manager or proprietor of a hotel, etc. that would undertake this work, we estimate the total cost would be a range of £548 to £1,096 in the first year. This is based on Office for National Statistics data on mean hourly rates of pay for hotel and accommodation managers¹⁵ and

¹⁴ Summary of Wales Bedstock Data: Situation as at March 2013. Welsh Government <https://gov.wales/accommodation-bedstock-march-2013>

¹⁵ Work Region Occupation SOC10 (4) Table 15.6a Hourly Pay (mean £16.12) – Excluding overtime 2019. Office for National Statistics. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashtable15>

between 34 and 68 premises needing to carry out this work. Similar assumptions have been made in relation to self-contained temporary or holiday accommodation in Wales. The total cost would be a range of £1,354 to £2,708 in the first year.

45. Costs to deep clean any smoking bedrooms have been based on those available for studio flats as these would generally include a bathroom and small kitchen area and therefore comparable to an en-suite bedroom. An internet search of the websites of cleaning service providers¹⁶ found the costs to be around £125 to £150 per studio flat; the additional cost of steam or dry cleaning an average sized bedroom carpet, one double mattress, one armchair and one long pair of curtains is around £125 to £175, giving a total cost per bedroom of between £250 to £325. Self-contained accommodation, such as caravans and cottages tend to be larger than an en-suite hotel bedroom but the variety of these types of accommodation make cost estimates difficult. For these purposes the costs estimated are between £400 and £500.
46. Based on a range of 482 to 964 current smoking bedrooms in hotels, etc. requiring a deep clean at a cost per bedroom of between £250 to £325, the cost to hotels, etc. to go entirely smoke-free is estimated to be between £120,500 to £313,300 in the first year of implementation. The costs associated with the upkeep of bedrooms from there onwards are considered to be maintenance in the normal course of business and so are not included in future years. For self-contained accommodation being used for holiday or temporary purposes, the estimate for cleaning costs is between £33,600 and £84,000.
47. Any 'smoking permitted' signage would have to be removed and the costs associated are considered to be minimal. There would be no legal requirement to replace these with no-smoking signs in the previously designated bedrooms for smoking/premises, although managers of premises may choose to display new signage. The other enclosed and substantially enclosed areas of the hotels, etc. are required to be smoke-free and so it is assumed that hotels, etc. would already display no-smoking signs at the main entrance(s) to the premises in line with the requirements of the 2007 Regulations. There are therefore no costs associated with new or additional signage.
48. Hotels, etc. that have a number of designated smoking bedrooms/ establishments that provide self-contained accommodation and permit smoking may lose some trade if their customers choose to stay at their premises solely because they provide smoking accommodation. They may, however, also gain some trade from customers who otherwise would not choose to stay there because smoking is permitted in some of the bedrooms. The overall impact on trade for hotels, etc. and the holiday and

¹⁶ A studio flat was considered the most comparable property to a hotel, etc. bedroom which commonly includes an en suite bathroom. Costs taken from <http://www.bdcleaning.co.uk/prices.html>, http://www.clean-and-dusted.co.uk/cleaning_services_pricelist.php, <http://busyhandscleaners.co.uk/prices/#1494394796419-1ccb5461-ea08>

temporary accommodation tourism sector is therefore considered to be cost neutral.

Mental health units

49. There will be costs for Mental Health Units (MHUs) that have designated smoking rooms under the exemption provided by the 2007 Regulations. The costs to remove the smoking rooms include reviewing new guidance and updating smoking policies. Costs associated with cleaning a room designated for smoking within a mental health unit have not been included as we understand such rooms are usually sparsely furnished due to the risk of fire (i.e. no carpet or curtains; only plastic furniture).
50. The Welsh Government issued a questionnaire to mental health units in Wales (NHS mental health hospitals, private adult mental health units and care homes with mental health units). Responses received from private and NHS MHUs, on whether indoor smoking rooms are designated, indicate that numbers are low, that most have indoor smoking policies in place and most have designated outdoor smoking areas. The total number of designated smoking rooms across all responses indicated that eleven smoking rooms have been designated.
51. Managers of MHUs would need to consider the legislation against their existing smoking policy and read any related guidance. This would be limited to MHUs that currently permit smoking in designated rooms as there would be little action required for those that already operate a totally no-smoking indoor policy. It has been assumed that every MHU would spend an hour on it. Assuming it would be the manager that would update the guidance; we estimate that the cost would be around £200 in the first year. This is based Office on National Statistics data on hourly rates of pay for residential, day and domiciliary care managers and proprietors¹⁷.
52. Existing signage that indicates smoking is permitted in a designated room would have to be removed. There would be no legal requirement to put up no-smoking signs instead. MHUs will already be required to display no-smoking signs that comply with the regulations as there will already be smoke-free parts of the premises.
53. There may be costs for MHUs that choose to designate an area for smoking in their grounds. However, the designation of areas within grounds for smoking would not be a mandatory requirement of the legislation and so the cost of such, including erecting smoking shelters and signage, is not accounted for in this appraisal.
54. Responses to the Welsh Government questionnaire sent to mental health units also indicated that all except one offered nicotine replacement therapy or cessation advice and support. There may be an increase in the uptake of

¹⁷ Work Region Occupation SOC10 (4) Table 15.6a Hourly Pay (mean £17.33) – Excluding overtime 2019. Office for National Statistics.

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashetable15>

these services but service provision to all patients should already be accounted for within existing budgets and would not therefore represent an actual increase. Staff time to accompanying patients to outdoor areas to smoke could be minimised by ensuring that any designated smoking areas within hospital grounds are located as close as possible to the mental health unit and by limiting escorted smoking breaks to specific times.

Hospital grounds, school grounds and public playgrounds

55. There would be no additional costs to managers of hospital grounds, schools grounds or public playgrounds under this option to those already expressed in the RIA to the 2017 Act (table 4 includes these costs uprated to 2019-20 prices). Only limited additional new smoke-free signs would be required to make it clear that smoking in the grounds is against the law, and the costs associated with these are accounted for in the RIA to the Act (table 4 includes these costs uprated to 2019-20 prices). Existing signage relating to voluntary smoking bans in hospital grounds and public playgrounds may be retained and some may even comply with the proposed minimum requirements on the graphic warning depending on the design; although a sign bearing the written warning will be required in all instances. Some schools may already operate voluntary smoking bans in their grounds and these signs could also be retained.
56. The costs associated with considering guidance on the new requirements, updating policies and payment of any fixed penalty notices that may be issued in relation to smoke-free offences are accounted for in the RIA to the 2017 Act (table 4 includes these costs uprated to 2019-20 prices).
57. There may be costs for managers of hospital grounds and schools that provide residential accommodation for pupils, that choose to designate an area for smoking in their grounds. These would be associated with complying with the requirements of such a designation such as clearly marking the area for smoking, recording the designation and communicating it to relevant stakeholders, plus any other costs such as erecting bins for smoking debris. However, as it is not a legal requirement that such a designation is made, these costs have not been accounted for here.

Managers of enclosed and substantially enclosed smoke-free premises and vehicles

58. There would be no additional costs to managers of enclosed and substantially enclosed smoke-free premises and vehicles under this option as existing no-smoking signs would comply with the new provisions. There is no requirement for vehicles that are not wholly or mainly used in the course of paid or voluntary work but where members of the public attend to receive goods or services to be smoke-free to display no-smoking signs and so there are no associated costs.
59. Should managers choose to replace their no-smoking signs due to refurbishment or when fitting out new premises, they will have flexibility to choose the size and colour of their no-smoking sign provided the graphic warning complies. There may, therefore, be some cost savings, although

these have not been quantified here.

The Public

60. Removal of the specific requirements on size and location of smoke-free signs could result in signs going unnoticed by the public in enclosed and substantially enclosed premises which may increase the risk of smoking in a smoke-free place. However, the current smoking ban has high levels of compliance¹⁸ and changes to the signage requirements are unlikely to affect this. In addition, the proposed legibility requirement would, to a certain extent, dictate the overall size of the sign ensuring that it is not so small it cannot be read. It is in the interest of managers of enclosed and substantially enclosed smoke-free premises to display effective smoke-free signs in order to meet their duty to prevent smoking there.
61. Removal of the specific requirements on colour of the graphic warning could result in the sign not being recognised as a smoke-free sign. However, the risk of this is low as the 'no-smoking' symbol is already well established and therefore easily recognised even when not a red/white sign. Where a sign is required for the purpose of conveying a message on health and safety at work¹⁹, separate legislation requires that these signs are red²⁰ and this would not change. The number and value of FPNs and fines issued are therefore assumed to be the same as in the RIA for the 2017 Act.

Health

62. Smoke-drift from any areas designated for smoking would potentially expose people near those areas to second-hand smoke. The conditions of designation should minimise this by requiring that designated areas are located at least 10 metres from any other smoke-free premises other than the smoke-free premises in which the area has been designated. Evidence suggests that in outdoor settings the harm from second hand smoke begins to dissipate from a single cigarette after 2 metres²¹, and continues to fall and approach zero at distances greater than this, particularly beyond 5 metres. A clearly marked designated area will ensure the public is well informed about where smoking is permitted within the grounds, therefore minimising the risk of non-smokers entering the area unawares. The maximum size of the designated area will prevent large areas of the grounds, which would otherwise be smoke-free, from being designated as not smoke-free. The overall impact on the health of non-smokers of designated smoking areas in hospital grounds and relevant school grounds is therefore considered limited and not costed here.
63. Patients of mental health units may consider that their wellbeing is being impacted negatively by being forced to go outside to smoke; however, they have the option of receiving nicotine replacement therapy or cessation advice which may help to mitigate this. Furthermore, this is difficult to

18 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216319/dh_124959.pdf

19 Management of Health and Safety at Work Regulations 1992 requires that a risk assessment is made by the employer; where that assessment finds that a risk cannot be avoided or adequately reduced, the employer should provide appropriate safety signs to warn or instruct, or both, employees of the nature of those risks and the measures to be taken to protect against them.

20 <http://www.legislation.gov.uk/uksi/1996/341/schedule/1/made>

21 <http://www.ncbi.nlm.nih.gov/pubmed/17518219>

quantify, therefore no estimate has been included.

Table 4. Summary of additional costs associated with option three and the Public Health (Wales) Act 2017 (costs have been updated to 2019-20 prices).

	2020/21 (£)	21/22 (£)	2022/23 (£)	2023/24 (£)	2024/25 (£)
Welsh Government					
Communications Campaign	£51,400 - £72,500	£0	£0	£0	£0
Producing guidance to organisations, businesses and the general public.	£9,000	£0	£0	£1,600	£0
Design and translation of the new guidance	£1,200	£0	£0	£0	£0
Updating WLGA guidance relating to enforcement of the provisions in the 2006 Act and the Smoke-Free Regulations 2007.	£1,600	£0	£0	£1,600	£0
Enforcement training sessions	£2,500	£0	£0	£0	£0
Total costs for Welsh Government	£65,700 - £86,800	£0	£0	£3,200	£0
Local Authorities					
Reviewing existing voluntary practices or policies against legislation	£40,900	£0	£0	£0	£0
Enforcement training	£9,900	£0	£0	£0	£0
Signage – Schools	£17,400 - £68,000	£0	£0	£0	£0
Signage – Playgrounds	£24,000 - £66,700	£6,100 - £16,675	£0	£0	£0

Total costs for local authorities	£92,200 - £185,500	£6,100 - £16,700	£0	£0	£0
Schools (Voluntary aided, foundation and independent)					
Reviewing existing voluntary practices or policies against legislation	£6,600	£0	£0	£0	£0
Signage	£3,400 - £11,200	£0	£0	£0	£0
Total costs for schools	£10,000 - £17,800	£0	£0	£0	£0
Health Boards					
Reviewing existing voluntary practices or policies against legislation	£3,500	£0	£0	£0	£0
Signage	£17,500 - £22,000	£0	£0	£0	£0
Total costs for Health Boards	£21,000 - £25,500	£0	£0	£0	£0
Independent Hospitals					
Reviewing existing voluntary practices or policies against legislation	£900				
Signage	£3,400 - £4,000	£0	£0	£0	£0
Total costs for independent hospitals	£4,300 - £4,900	£0	£0	£0	£0
Mental Health Units					
Reviewing guidance and updating smoking policies in mental health units	£200	£0	£0	£0	£0
Total cost to Mental health units	£200	£0	£0	£0	£0
Hotels, etc. and Holiday and temporary accommodation					
Cleaning existing smoking rooms	£120,500 to £313,000 (Hotels etc)	£0	£0	£0	£0

	£34,000 to £84,000 (holiday and temporary accommodation)				
Reviewing guidance and updating smoking policies in hotels	£500 to £1,000 (hotels etc.) £1,300 to £2,700 (holiday and temporary accommodation)	£0	£0	£0	£0
Total cost to Hotels, etc.	£156,300 to £400,700	£0	£0	£0	£0
Public					
Fixed penalty notices	£3,100	£4,200	£4,000	£2,000	£2,000
Fines	£2,000	£1,800	£2,200	£600	£600
Total costs for the public	£5,100	£6,000	£6,200	£2,600	£2,600
Total costs	£354,800 to £726,500	£12,100 - £22,700	£6,200	£5,800	£2,600

64. The total costs related to this option are estimated to be £354,800 to £726,500 in the first year before dropping sharply from the second year onwards.

Benefits

Enforcement

65. The amendment to the meaning of 'substantially enclosed' will address the current confusion as to whether structures which do not form part of the premises but which serve the purpose of walls, and therefore form part of the perimeter of the premises, should be considered when assessing whether the premises is 'enclosed' or 'substantially enclosed'. This will help enforcement of the provisions by making clear that other structures that form part of the perimeter of the premises should be included when making such a consideration.

66. The relaxed requirements on no-smoking signs would allow the provisions to cover all types of enclosed, substantially enclosed and not enclosed or substantially enclosed smoke-free premises and smoke-free vehicles. Reviewing the specified written warning and requirements on location of sign for hospital and school grounds and public playgrounds after four years of coming into force, with a view to removing this requirement provided compliance with the smoking ban in those places is at acceptable levels, will result in an overall simpler regime for no-smoking signs across all premises

types.

Dwellings that are workplaces

67. Members of the public who work from home would have clarity on whether their dwelling should be smoke-free when being used as a workplace. Where the dwelling is required to be smoke-free, there would be a benefit to the household because the premises would not have to be smoke-free all of the time (as is the case in the requirements of the 2007 Regulations) with no associated cost.

Workers in hotels, etc., holiday or temporary accommodation and mental health units

68. The smoking ban was introduced to protect employees and the public from the harmful effects of second-hand smoke. Option Three would provide health benefits to workers in hotels, etc., and holiday and temporary accommodation and mental health units who would no longer have to enter a room, premises or bedroom designated for smoking whilst smoking is taking place or shortly afterwards to undertake their work duties. Second-hand smoke is known to emit more than 50 chemicals recognised as carcinogens, as well as many toxic irritant agents²². In addition, research conducted since the 2007 Regulations were made shows that tobacco smoke residues lingering in the indoor environment, also termed third-hand smoke (THS), can be a source of long-term exposure to harmful pollutants²³.

Mental health units

69. Removing the exemption will bring the law in line with general hospital service users and will aim to address health inequalities for persons suffering with mental health conditions. It will also bring Welsh law in line with England, which since 1 July 2008 requires all enclosed or substantially enclosed areas in residential mental health units in England to be smoke-free.

Managers of smoke-free premises and vehicles

70. Removing the specifications on the colour and size of no-smoking signs from the 2007 Regulations would allow premises to comply flexibly with their own signage providing it meets the proposed basic prescribed design principles.

71. Many of the pre-existing signs for voluntary smoking bans in hospital grounds and public playgrounds incorporate a version of the international no-smoking symbol; these may comply with the new reduced minimum requirements for no-smoking signs. Continued use of these signs would therefore be permitted provided they are supported by the proposed written warning.

²² <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf>

²³ Inhalable Constituents of Third hand Tobacco Smoke: Chemical Characterization and Health Impact Considerations. Environ. Sci. Technol., 2014, 48 (22), pp 13093–13101 DOI: 10.1021/es5036333 <http://pubs.acs.org/doi/abs/10.1021/es5036333>

Health

72. Legislation to ban smoking in enclosed public places was introduced in Wales in 2007 to protect the public from the harms associated with second-hand smoke. The smoking ban has been a public health success. Research commissioned by the Welsh Government shows air quality in enclosed public places has improved significantly since the smoking ban was introduced²⁴. The number of non-smokers being exposed to second-hand smoke has also reduced from 66% in 2005-06 to 42% in 2007, and has remained fairly stable²⁵. Extending the places where smoking is not permitted is therefore likely to have similar positive effects on the health of the people of Wales. Reducing opportunities to smoke and making it more difficult to do so may also encourage quit attempts by existing smokers.

Summary and preferred option

73. Option One would maintain the existing situation and would not contribute to the ongoing denormalisation of smoking in society or promote behaviour change to smoking cessation.

74. Option Two would support the enforcement of the current voluntary bans in school grounds, hospital grounds and public playgrounds and would implement the provisions of the Act but without further impact on current smoke-free legislation.

75. Option Three is the preferred option as it would further extend the places that are smoke-free in Wales and therefore marks a step towards the Welsh Government's aim of a smoke-free society. Reinvigorating public awareness on the smoking ban may also have the added benefit of encouraging additional smokers to quit.

76. It is estimated that, on average, preventing the uptake of smoking results in one year life gain per individual²⁶. This life gain is valued at £60,000²⁷ per person. Applying these figures, option Three would therefore need to prevent a minimum of seven children and a maximum of thirteen children in Wales from taking up tobacco smoking over the five-year period for this measure to be cost neutral.

Competition Assessment

77. There are no anticipated effects on competition arising from this legislation. Table 5 below sets out the conclusions of the competition filter test and the test does not indicate the need for a full competition assessment. There are no detrimental effects on competition expected.

²⁴ <http://gov.wales/topics/health/improvement/smoking/legislation/ban/?lang=en>

²⁵ Tobacco and Health in Wales 2012 – <http://www.wales.nhs.uk/sitesplus/922/page/50314>

²⁶ Age of Sale for Nicotine Inhaling Products: Impact Assessment. <https://www.gov.uk/government/consultations/nicotine-inhaling-products-introducing-a-minimum-age-of-sale>

²⁷ HM Treasury Green Book, Annex A2, p73

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf

A value of £60,000 is assigned to a Quality Adjusted Life Year. Where Quality Adjusted Life Year estimates are not readily available, and it is appropriate this value is used for Life Years. This is consistent with similar valuation of policies that mitigate mortality or morbidity risk by other Government departments, based upon studies of what members of the public are on average willing to spend to reduce their own mortality risk, or to improve their own health outcomes.

Table 5 - Competition filter test

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	no
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Post implementation review

78. As the provisions in the 2017 Act and the 2020 Regulations will be implemented at the same time, a review of this smoking legislation will take place three years after implementation to establish the actual costs and benefits and also whether it is achieving its desired effects.

79. The impact from the 2020 Regulations, as well as the 2017 Act will be monitored as part of wider health surveillance on smoking behaviours in the National Survey for Wales. However, it will be difficult to fully attribute

certain population level trends (as may be identified through this type of data) to the effects of the legislation. Whilst the provisions seek to make a general contribution towards reducing smoking rates and uptake, particularly among children and young people by further restricting the visibility of smoking, it would not be possible for such a trend to be attributed solely to the legislation. This is because other areas of legislation such as the introduction of age restrictions on the sale of nicotine products, standardised packaging for tobacco products, and the Tobacco and Related Products Regulations 2016, which transpose the EU Tobacco Products Directive will also be having an effect, alongside other societal influences.