

Finance Committee  
**Report on the Public Health  
(Wales) Bill**

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February 2017



**National Assembly for Wales**  
Finance Committee

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(Wales) Bill**

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February 2017



**National Assembly for Wales**  
Finance Committee

# Finance Committee

To carry out the functions of the responsible committee set out in Standing Order 19; the functions of the responsible committee set out in Standing Orders 18.10 and 18.11; and consider any other matter relating to the Welsh Consolidated Fund.

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## Current Committee membership:



**Simon Thomas AM (Chair)**  
Plaid Cymru  
Mid and West Wales



**Mike Hedges AM**  
Welsh Labour  
Swansea East



**Steffan Lewis AM**  
Plaid Cymru  
South Wales East



**Eluned Morgan AM**  
Welsh Labour  
Mid and West Wales



**Nick Ramsay AM**  
Welsh Conservative  
Monmouth



**Mark Reckless AM**  
UKIP Wales  
South Wales East



**David Rees AM**  
Welsh Labour  
Aberavon

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## The following Member attended as a substitute member during the course of this inquiry:



**Huw Irranca-Davies AM**  
Welsh Labour  
Ogmore

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## Recommendations

**Recommendation 1.** The Committee recommends that the Welsh Government should provide additional funding to local authorities to cover the additional costs they would face as a consequence of implementing the provisions in this Bill. .... Page 12

**Recommendation 2.** The Committee recommends that the additional funding provided should be ring-fenced to ensure its use specifically related to implementing local authorities' obligations from this Bill. .... Page 12

**Recommendation 3.** The Committee re-iterates the recommendation made by its predecessor Committee that the Welsh Government should publish information identifying how much money is raised by each local authority from fixed penalty notice income to cover its enforcement costs, and the enforcement costs incurred by local authorities in implementing this policy. .... Page 15

**Recommendation 4.** The Committee recommends that the guidance produced by the Welsh Government on implementing provisions relating to health impact assessments should explain clearly how the various impact assessments undertaken by public bodies are linked in order to avoid costly duplication. .... Page 19

**Recommendation 5.** The Committee recommends that the Welsh Government clarifies the steps it took to try to improve the way that benefits associated with reduced travel time were calculated, before it decided not to include them in the Regulatory Impact Assessment for this Bill. .... Page 21

**Recommendation 6.** The Committee recommends that the Welsh Government should review the effectiveness of the provisions relating to public toilets in improving access to facilities and the value for money they represent. .... Page 23

**Recommendation 7.** The Committee re-iterates the recommendation made by the previous Finance Committee that the Welsh Government should undertake work to develop a more consistent approach across Bills to providing costs associated with subordinate legislation to enable better scrutiny of the full costs and benefits of Bills. .... Page 24

**Recommendation 8.**The Committee recommends that when a revised Explanatory Memorandum is published after Stage 2, that estimated costs of implementing secondary legislation are provided where possible. .... Page 24



# 01. Background and Overview

1. The Public Health (Wales) Bill (the Bill) was introduced by Rebecca Evans AM, Minister for Social Services and Public Health (the Minister) on 8 November 2016.
2. The Bill contains similar provisions to those proposed in the Public Health Bill introduced in the Fourth Assembly, as amended at stage 3, with the exception of the proposals in the previous Bill to restrict the use of e-cigarettes in public places.
3. The Explanatory Memorandum (EM) details the key purposes of the Bill:
  - Re-state restrictions on smoking in enclosed and substantially enclosed public and work places, and give Welsh Ministers the power to extend smoking restrictions to additional premises or vehicles;
  - Place restrictions on smoking in school grounds, hospital grounds and public playgrounds;
  - Provide for the creation of a national register of retailers of tobacco and nicotine products;
  - Provide Welsh Ministers with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales;
  - Prohibit the handing over of tobacco and/or nicotine products to a person under the age of 18;
  - Provide for the creation of a mandatory licensing scheme for practitioners and businesses carrying out four ‘special procedures’ – acupuncture, body piercing, electrolysis and tattooing;
  - Prohibiting the intimate piercing of persons under the age of 16 years;
  - Require Welsh Ministers to make regulations to require public bodies to carry out health impact assessments in specific circumstances;
  - Change how pharmaceutical services are available in Local Health Board (LHB) areas, to create a system based on the needs of local communities;
  - Require local authorities to develop a local strategy for accessing public toilets to plan how they will meet the needs of their communities; and
  - Enable a ‘food authority’ defined under the Food Hygiene Rating (Wales) Act 2013 to retain fixed penalty receipts resulting from offences under that Act.<sup>1</sup>
4. A Regulatory Impact Assessment (“RIA”) is contained in the EM which presents the estimated additional costs resulting from the Bill.
5. The Committee took evidence on the financial implications of the Bill from the Minister on 19 January 2017.

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<sup>1</sup> Explanatory Memorandum, paragraph 3

## Scrutiny of the Public Health (Wales) Bill introduced in the Fourth Assembly by the previous Finance Committee

6. The previous Finance Committee scrutinised the Public Health Bill introduced during the Fourth Assembly, taking oral evidence from the then Minister for Health and Social Services in July 2015. That Committee **reported** in September 2015, making seven recommendations. These covered:

- the presentation of costs and monetised benefits in the RIA;
- identifying how much money has been raised by local authorities to cover costs of enforcing the register for retailers of tobacco and nicotine products;
- the impact of the Hemming vs. Westminster City Council case on the ability of local authorities to cover costs of licensing incurred from the Bill;
- the way that monetised benefits of reduced travel time to pharmaceutical services had been calculated; and
- developing a more consistent approach across Bills to providing costs associated with subordinate legislation to enable better scrutiny of these.

7. The then Minister **wrote to the previous Committee in December 2015**, providing an update on recommendations 4 and 5. He then **formally responded to the Committee’s report in January 2016**, accepting or accepting in principle the remainder of the Committee’s recommendations.

### Presentation of costs and benefits in the Regulatory Impact Assessment

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8. The previous Finance Committee raised concerns of potential confusion caused by the presentation of actual costs alongside monetised benefits in the RIA accompanying the previous Bill. That Committee recommended that the costs and benefits in the RIA for that Bill should be amended to show separate tables for costs and monetised benefits, and that future legislation should not present costs and benefits in this way as it could be confusing and unintentionally misleading.

9. In response to questions from the Committee, the Minister said that actions had been taken to address the recommendations made by the previous Committee. She explained that the previous RIA had been updated during the passage of the previous Bill, including the addition of summary tables relating to pharmaceutical services to separate costs and monetised benefits, and that changes made at that stage had been retained for the current Bill.

10. The Minister also explained that the previous Committee’s recommendation relating to the presentation of RIAs was being taken forward by the Welsh Government, and that officials had met with the Wales Audit Office. She added that the work done in response to the recommendation had led to a number of changes to the RIA, including the inclusion of the summary tables:

“One of the key things that we have introduced, as I said previously, is the summary report or the summary document at the start of the RIA. I think that addresses some of those concerns. Welsh Government guidance has also been amended to ensure that costs and monetised benefits are presented separately in future RIAs, and I think that again addresses one of those concerns that was raised... the summary tables at the start of the document—I think that they do

address some of those concerns because it does show, as we see, that costs are split between administrative costs and compliance costs. And within that, costs involved with preparing, so the transitional costs to the implementation are there alongside the ongoing recurring costs as well. So, that, I think, provides a clearer level of information for people as well.”<sup>2</sup>

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### **Committee view**

**11.** The Committee notes the Minister’s comments regarding the presentational changes made to the RIA following the recommendation made by its predecessor Committee, and welcomes the collaboration between the Welsh Government and the Wales Audit Office. It also welcomes the work done by the Welsh Government to improve the information provided in RIAs. The Committee intends to continue to monitor this through its scrutiny of the financial implications of legislation and, should it wish to see further changes, will recommend this to the Welsh Government as necessary.

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<sup>2</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraphs 23-25

## 02. Overall financial impact of the Bill on local authorities

12. The RIA states that local authorities would incur additional costs of approximately £2.1 million from implementing the provisions of the Bill between 2017-18 and 2021-22, including £365,900 in the first year.<sup>3</sup> The tables included in Annex 4 to the RIA set out a summary of the anticipated additional costs for various bodies in implementing the Bill's provisions and are provided for each part of the Bill. Based on these figures, the additional costs would work out at approximately £19,500 per year for each local authority between 2017-18 and 2021-22.<sup>4</sup> The senior responsible officer for the Bill told the Committee that the estimated costs had been calculated on a Wales-wide basis rather than for individual local authorities, and that he would expect the costs to be higher for some local authority areas than others.<sup>5</sup>

13. The Minister told the Assembly **in Plenary on 8 November 2016** that she had sought to minimise the cost to local government, due to the financial pressures that authorities are under. As an example of this, she cited the provisions relating to food hygiene rating offences, which would allow local authorities to retain the receipts from fixed penalty notices to reinvest in the inspection of premises.

14. In consultation responses to the Health, Social Care and Sport Committee ("HSCS"), a number of local authorities and representative organisations set out a common position on the ability of local authorities to deliver the increased responsibilities from the Bill. The Directors of Public Protection Wales ("DPPW") stated that:

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"DPPW warmly welcomes proposals to better protect public health and consumer rights but wishes to underline that the challenging financial environment within which we are currently managing our services means the need to ensure that any additional duties come with adequate funding or the ability to recover costs through fees."<sup>6</sup>

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15. The Welsh Local Government Association ("WLGA") expanded on this stating:

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"I think there are some opportunities through the licensing to recover some of those costs, but there are probably some areas where there will be financial implications that we'll need to consider or monitor in more detail and continue discussions with Welsh Government if they're becoming too burdensome within those areas."<sup>7</sup>

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16. Overall, there was support among those who presented evidence to the HSCS Committee for the proposed licensing system, with Public Health Wales stating that it would "enable local authorities to carry out their public protection duties more effectively."<sup>8</sup>

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<sup>3</sup> Explanatory Memorandum, Table A4.9, page 332

<sup>4</sup> Explanatory Memorandum, Tables A4.1-A4.9, pages 329-332

<sup>5</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 35

<sup>6</sup> Written evidence, Health, Social Care and Sport Committee, **PHB 07, Directors of Public Protection Wales**

<sup>7</sup> National Assembly for Wales, Health, Social Care and Sport Committee, **Record of Proceedings, 15 December 2016**, paragraph 20

<sup>8</sup> Written evidence, Health, Social Care and Sport Committee, **PHB 04, Public Health Wales**

17. A number of respondents supported the provision for local authorities to recoup their costs, with DPPW and the Wales Heads of Environmental Health Group stating:

“the establishment of a fee system enabling local authorities to recover their costs will ensure that finance is available to deliver and is absolutely necessary in the current financial climate.”<sup>9</sup>

18. A representative of the WLGA told the HSCS Committee:

“I think, in terms of the general nature of the way that the Bill has been framed, the licensing elements all come with a cost recovery fee-setting basis, which should, if properly worked through, enable local authorities to recover the costs of that licensing process and also of any enforcement of the new proposed systems as well. So, I think as long as the framing of the legislation is designed to fully cover the costs of that administrative and enforcement work within the function of that local government structure, we’d be quite happy with that.”<sup>10</sup>

19. The Minister told the Committee that in developing the Bill, the Welsh Government was aware of the pressures facing local authorities, and that it had taken opportunities to lower the costs to local authorities where possible:

“Lots of things in the Bill just require local authorities to do some things differently, rather than to spend extra costs. I think that’s an important thing to recognise. And, as I alluded to there, there are lots of opportunities within the Bill for local authorities to work very closely together, to collaborate, for example, on IT systems and taking a co-ordinated approach to training, or in communicating the Bill’s provisions as well.”<sup>11</sup>

20. The Minister went on to say that the Welsh Government did not intend to provide any additional funding to cover the costs to local authorities of implementing the provisions in the Bill, but that a commitment had been made over the medium term to “cover any shortfall between the fees raised and the costs of running the retail register.”<sup>12</sup>

## Committee view

21. The Committee is acutely aware that the additional costs of implementing the provisions in this Bill will be a significant burden for local authorities to bear at a time when budgets are already under pressure. It acknowledges the provisions made for local authorities to collect revenue through fees and reinvest this in delivering its inspection obligations, and that in the long term, the public health improvements that could be brought about through this legislation could bring savings to the public purse. However, the Committee believes that the up-front investment required from local government to implement the Bill is an unfair burden to place on local authorities when the potential benefits wouldn’t be reaped until a later stage. The Committee is aware of the agreement between previous Welsh Governments and the WLGA to fund new responsibilities before they are passed on to

<sup>9</sup> Written evidence, Health, Social Care and Sport Committee, [PHB 04, Public Health Wales](#); [PHB 07, Directors of Public Protection Wales](#) and [PHB 20, Wales Heads of Environmental Health Group](#)

<sup>10</sup> National Assembly for Wales, Health, Social Care and Sport Committee, [Record of Proceedings, 15 December 2016](#), paragraph 17

<sup>11</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 31

<sup>12</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 49

local government, and believes that the feasibility of implementing a similar arrangement should be explored by the Cabinet Secretary for Finance and Local Government.

**Recommendation 1.** The Committee recommends that the Welsh Government should provide additional funding to local authorities to cover the additional costs they would face as a consequence of implementing the provisions in this Bill.

**Recommendation 2.** The Committee recommends that the additional funding provided should be ring-fenced to ensure its use specifically related to implementing local authorities' obligations from this Bill.

## 03. Financial implications resulting from the creation of a register for tobacco and nicotine retailers

22. Part 2 of the Bill includes provision to create a national register which retailers of tobacco and nicotine products would be required to sign up to. The RIA sets out additional costs for local authorities of £84,700 between 2017-18 and 2021-22, which would be offset by the collection of an estimated £148,100 revenue from registration fees received from retailers.<sup>13</sup> The Welsh Government would see additional costs of just over £35,000 for developing the register, communications and publicity.<sup>14</sup>

### The impact of the register on the retail sector

23. The Bill provides for the level of registration fee to be set out in regulations, although the EM states that this would be set at £30 for the first premise and £10 for each additional premise.<sup>15</sup> Based on these figures, retailers would face additional costs of just under £285,000 between 2017-18 and 2021-22.<sup>16</sup>

24. Representatives of the tobacco and nicotine products retail sector, in responding to the consultation carried out by the HSCS Committee, raised concerns around the financial impact of introduction register. The National Federation of Retail Newsagents stated that the propose charge was too high, as based on after-tax profit on a packet of cigarettes of 27p, a retailer would need to sell 111 packs to cover the costs of the registration fee, it said:

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“It is clear from these figures that whilst £30 may not seem like a significant sum, to an independent retailer it involves a great deal of hard work and eats into their already small profit margins. The charge to register could see many independent retailers close their shop, particularly when taking into account additional cost of doing business burdens, such as the Living Wage, Auto-Enrolment, Business Rates, etc; this will have an additional impact on their business.”<sup>17</sup>

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25. In its consultation response, the Association of Convenience Stores said that if the Welsh Government wished to introduce a register for retailers of tobacco and nicotine products, this should follow the model adopted in Scotland and Northern Ireland, where there is no registration fee.<sup>18</sup>

26. **In Plenary on 8 November 2016**, the Minister noted, in relation to the register, that the previous Welsh Government changed its initial plans to require businesses to re-register every three years, and that concerns of businesses underpinned this decision:

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“We’re aiming to keep it as simple as possible to minimise the burden on business, so retailers will only need to notify the registration authority of any changes to the details of their entry once they’ve registered, rather than formally re-registering every three years, which is why a formal licensing

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<sup>13</sup> Explanatory Memorandum, table 7.6, pages 136-137

<sup>14</sup> Explanatory Memorandum, table 7.6, pages 136-137

<sup>15</sup> Explanatory Memorandum, paragraph 440

<sup>16</sup> Explanatory Memorandum, table 7.6, pages 136-137

<sup>17</sup> Written evidence, Health, Social Care and Sport Committee, **PHB 32, National Federation of Retail Newsagents**

<sup>18</sup> Written evidence, Health, Social Care and Sport Committee, **PHB 30, Association of Convenience Stores**

system would have actually put more burden on business. That is why we've opted for this approach. It will also be a helpful resource in terms of local authorities being able to disseminate information, advice, guidance and support for businesses on their register, because, at the moment, they do rely to a large extent on local intelligence, which is quite fragmented. So, now they'll be able to be aided much more robustly in their enforcement duties as well."

**27.** The Minister told the Committee that the level of registration fee would be set out in regulations, which would be subject to a full consultation. The Minister went on to say she believed the proposed level of £30 was fair in order to share the costs of implementing the scheme between local authorities and the retail sector:

"we have tried to consider how we can create not too much of a burden on one sector—so, not the entire burden on local authorities and not the entire burden on other sectors as well. So, I think that our approach has been fair and that £30 is a reasonable amount, but it will be subject to full consultation."<sup>19</sup>

### Enforcement costs for local authorities

**28.** The RIA includes estimated costs for administering the register, including staff costs, producing guidance and training. However, the RIA does not include an estimate of costs to local authorities associated with enforcement of the register through investigating unregistered retailers.

**29.** The Minister told the Committee that there would be a requirement on local government officers to investigate reports of unregistered retailers selling tobacco and nicotine products.<sup>20</sup> She said that, based on the experience in Scotland, she would expect the number of fixed penalty notices issued per year to be around seven. In terms of the level of fixed penalty notice, the Minister estimated that a ballpark figure would be £200 with a reduced amount of £150, but that this would also be set by regulations.<sup>21</sup> In response to questions from the Committee, the Minister said that while the level of fixed penalty notices would be set by regulations, it would be reasonable to set the same level for all local authorities, rather than vary the level of penalty between areas.<sup>22</sup>

**30.** In response to the previous Committee's recommendation relating to identifying how much money is raised by local authorities from fixed penalty notice income, the Minister stated that Welsh Government officials were working with local authorities to determine the feasibility of doing this.

### Committee view

**31.** The Committee notes that the financial information provided to accompany the Bill does not include details as to whether the amount of revenue collected from fixed penalty notices would be sufficient to cover the costs borne by local authorities to enforce the legislation. The Committee is concerned by the lack of this information as such details could assist local authorities in assessing the financial implications they could face in implementing the provisions of the Bill.

**32.** The Committee believes that fixed penalty notices should be set at the same level for all local authorities, regardless of any differing costs faced by local authorities in enforcing these provisions.

<sup>19</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 56

<sup>20</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 60

<sup>21</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 63

<sup>22</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 68



**Recommendation 3.** The Committee re-iterates the recommendation made by its predecessor Committee that the Welsh Government should publish information identifying how much money is raised by each local authority from fixed penalty notice income to cover its enforcement costs, and the enforcement costs incurred by local authorities in implementing this policy.

## 04. Financial implications resulting from the introduction of a licensing scheme for special procedures

**33.** Part 3 of the Bill contains provisions to introduce a compulsory, national licensing system for practitioners of specified special procedures. The procedures specified in the Bill are acupuncture, body piercing, electrolysis and tattooing, and provision is made to amend the list of procedures covered through regulations. This element of the Bill has the largest proportion of additional costs at just under £2 million over the 2017-18 to 2021-22 period. These costs are mostly split between registered and unregistered practitioners (£1.1 million) and local authorities (£840,000).<sup>23</sup>

**34.** The additional local authority costs include those for preventing unlicensed activity, issuing Remedial Action Notices (“RANs”) to premises not complying with licence conditions and other general costs. The RIA notes that registration costs and those associated with renewing licences will be covered by income generated from registered practitioners of special procedures.

**35.** The additional costs to practitioners include familiarising themselves with the new legislation, registration costs and opportunity costs of applying for a license.<sup>24</sup> There would also be additional costs for contravening RANs, which incur a fine, and for the minority of unregistered practitioners who would be issued with stop notices preventing them from performing special procedures.

**36.** There would be costs of just under £60,000 to the Welsh Government for developing and distributing guidance, training sessions for environmental health officers and awareness raising.<sup>25</sup>

**37.** The RIA highlights that one area of costs that has not been quantified is that for appeals against this part of the legislation.<sup>26</sup> These would cover appeals against refusals to grant licenses or premises approval applications, as well as fines levied in relation to enforcement action. The EM states that while it would be expected that local authorities would assist practitioners and businesses in becoming compliant with the legislation before taking action, there will be appeals heard both by local authorities and magistrates courts. It estimates that 10-15 appeals would be heard at magistrates’ courts in Wales per year.

### Cost recovery of licensing and registration costs incurred by local authorities in respect of special procedures

**38.** During scrutiny of the previous Public Health Bill, the then Minister described how the Bill had been constructed in a way that would allow for local authorities to recover costs they incur in respect of licensing and registration of practitioners undertaking special procedures. The previous Finance Committee recommended that the Welsh Government should clarify whether the judgement in the *Hemming vs. Westminster City Council* case would impact on other parts of the Bill and that it should provide clarity on the type of licensing scheme under which applicants pay fees that would be used for special procedures licensing.

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<sup>23</sup> Explanatory Memorandum, Table 7.21, pages 180-182

<sup>24</sup> Explanatory Memorandum, Tables 7.18, 7.19 and 7.20, pages 177-179

<sup>25</sup> Explanatory Memorandum, Table 7.21, pages 180-182

<sup>26</sup> Explanatory Memorandum, paragraph 612

**39.** In December 2015, the then Minister responded that, in the Welsh Government’s view, other parts of the Bill would not be affected by the judgement.<sup>27</sup> He also noted that it will be for local authorities to determine how schemes operate in their areas as long as they remain within the bounds of EU law. The current Welsh Government has subsequently stated that the Bill has been drafted so that it charges license holders rather than applicants, and therefore is compliant with EU law.

**40.** The Court of Justice at the European Union (“CJEU”) recently clarified how fees can be charged as part of an application to provide various services as part of the Hemming vs. Westminster City Council case. The CJEU said that, at the time an application is made, a local authority can charge a fee which covers the local authority’s costs of dealing with the application itself. However, the local authority, at the time the application is made, cannot charge a fee which covers the local authority’s costs of enforcing the licensing regime in general - even if that element of the application fee is refunded to unsuccessful applicants.

**41.** The Minister confirmed to the Committee that the Bill complied with European law following the Hemming judgement:

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“I’m happy to confirm that the Bill is very much in compliance with European law on this point following the Hemming judgment ... the Bill provides that, when applying for a licence, an applicant can only be charged a fee that is set having regard to administration costs. But then section 73 of the bill provides local authorities with the power to charge licence holders an additional fee for the management and enforcement of the licensing system. So that’s an example of how the Bill is compatible with law on this point.”<sup>28</sup>

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### **Committee view**

**42.** The Committee welcomes the Minister’s assurance that the Bill complies with European law following the judgement in the Hemmings vs. Westminster City Council case and the clarity this allows local authorities and applicants in knowing how the application fee can be utilised.

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<sup>27</sup> Letter from the previous Minister for Health and Social Services to the previous Finance Committee, 7 December 2015

<sup>28</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 75

## 05. Financial implications resulting from the introduction of health impact assessments

43. Part 5 of the Bill contains provisions which will require the Welsh Ministers to make regulations about the circumstances in which public bodies must carry out health impact assessments. The RIA sets out the additional estimated costs of this part of the Bill as just under £565,000 between 2017-18 and 2020-21. It estimates that the majority of this amount (£454,000) will be faced by public bodies such as local authorities, and will cover familiarisation with the new legislation, training and production of additional healthcare impact assessments. The Welsh Government will incur costs of £77,500 for updating guidance, communications and producing additional healthcare impact assessments. Public Health Wales will incur costs of £33,000 for guidance, training and producing additional resources.<sup>29</sup>

44. Many respondents to the HSCS Committee’s consultation were supportive of the inclusion of health impact assessments in the Bill. However, the Chartered Institute of Environmental Health (“CIEH”) and the Association of Directors of Public Health noted the need to consider the financial implications of their inclusion. The CIEH stated that:

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“As evidenced the CIEH strongly supports HIAs as a mechanism for protecting and improving health and wellbeing, however we note that their statutory inclusion in some developments will have cost implications for local authorities. It is important to ensure local authority environmental health departments have sufficient resources to deliver the required health impact assessments where these are generated by the local authority and to consider the merit of those submitted by developers in support of proposals and that there is funding available to ensure that staff who will be required to deliver or assess HIAs are trained to the appropriate level to allow them to do so.”<sup>30</sup>

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45. The Association of Directors of Public Health recommended:

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“that the use of HIAs is proportionate to the policy being considered and takes into consideration the resources available to the body required to carry them out.”<sup>31</sup>

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46. Dr Nnoaham, Director of Public Health at Cwm Taf University Health Board told the HSCS Committee that the resource implications of provisions relating to health impact assessments should be made clearer:

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“I believe there is perhaps a need to be clearer about resource implications. So, how is this going to be done? What is the methodology? What is the process? I am aware that there’s a standard methodology around health impact assessments. Are we going to adopt that methodology? Is there a need to look at alternative methodologies that would be more efficient and what is the resource implication? I think those are the accompanying questions that do

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<sup>29</sup> Explanatory Memorandum, Table A4.6, pages 330-331

<sup>30</sup> Written evidence, Health, Social Care and Sport Committee, [PHB 05, Chartered Institute of Environmental Health](#)

<sup>31</sup> Written evidence, Health, Social Care and Sport Committee, [PHB 37, Association of Directors of Public Health](#)

need to be posed and answered. But I think it is a very good start in the Bill around health impact assessments.”<sup>32</sup>

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**47.** The Minister told the Committee that the aim of the provisions was not to increase the number of health impact assessments being undertaken, but to strengthen and formalise existing arrangements. She referred to the expertise that already exists within public bodies in Wales, including the Welsh impact support unit based in Public Health Wales, which she said would be able to provide advice and support to those carrying out the assessments. In terms of the anticipated costs of undertaking health impact assessments, the Minister said:

“Most health impact assessments are likely to be fairly rapid and small. I think the cost estimate for that is around £2,000, and that includes staff time as well. There would be a small—a much, much smaller number that would be the major health impact assessments, costing, for example, £30,000 to £150,000, potentially taking place over a number of years. Those would, really, be only for very major projects.”<sup>33</sup>

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**48.** In response to questioning by the Committee in relation to the costs of establishing additional arrangements to the existing regime, including training staff, the Minister said that these had been accounted for in the figures provided in the RIA. She added that the Welsh Government would be updating its guidance on health impact assessments which would include advice on duplication.<sup>34</sup>

**49.** In relation to discussing the costs of implementing these provisions with public bodies, the senior responsible officer for the Bill told the Committee:

“We’ve had general discussions about the Bill with the directors of public protection, for example, about the way that they can support health impact assessments in local government. My understanding is that they are generally very supportive.”<sup>35</sup>

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## Committee view

**50.** The Committee acknowledges that public bodies currently undertake various assessments as part of their decision making processes, and whilst it welcomes the requirement for the health impact of certain decisions to be assessed, it believes that duplication of work must be avoided. The Committee welcomes the Minister’s assurance that updated guidance will cover duplication, but it believes it crucial that the guidance should encompass how the various assessments would be linked. It believes that, particularly at a time where public bodies are facing financial pressures, duplication of work by separate departments or bodies should be avoided.

**Recommendation 4.** The Committee recommends that the guidance produced by the Welsh Government on implementing provisions relating to health impact assessments should explain clearly how the various impact assessments undertaken by public bodies are linked in order to avoid costly duplication.

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<sup>32</sup> National Assembly for Wales, Health, Social Care and Sport Committee, Record of Proceedings, 7 December 2016, paragraph 225

<sup>33</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 83

<sup>34</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 92

<sup>35</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 95

## 06. Financial implications resulting from provisions relating to pharmaceutical services

**51.** Part 6 of the Bill contains provisions relating to the planning and delivery of pharmaceutical services. The EM explains that the purpose of these provisions is to replace the current system for providing pharmaceutical services with a needs-based system. This would include the use of pharmaceutical needs assessments (“PNAs”) and the introduction of a performance management regime to allow action to be taken against under-performing providers including an exit regime. While there are additional costs of £1.5 million between 2017-18 and 2021-22 to LHBs and just over £230,000 to pharmacy contractors, the RIA states that these will be outweighed by the £7.7 million health benefits to the public.<sup>36</sup> The RIA also estimates that the Welsh Government will see a saving of £76,000 as it will face reduced costs in appeals to Welsh Ministers by pharmacies, which will outweigh the costs of producing guidance.<sup>37</sup>

**52.** The RIA states that the additional costs to LHBs are calculated based on costs for undertaking PNAs, commissioning additional services to meet pharmaceutical needs and managing under-performing pharmacy contractors. It also states that pharmacy contractors will incur costs for providing information to enable LHBs to assess their performance, and for responding to action taken to address poor performance.<sup>38</sup>

**53.** The estimated health benefits provided for in the RIA have been calculated based on an estimate that there will be a 20% increase in pharmaceutical service provision. The RIA quantifies the benefits based on those resulting from stop smoking services located in pharmacies on pages 222-225.<sup>39</sup> Based on a 20% increase in service provision from 2019-20, it is estimated that there will be an estimated benefit of £2.58 million per year from 2019-20 to 2021-22, a total benefit of £7.7 million over this period.<sup>40</sup>

**54.** In the evidence presented to the HSCS Committee, the bodies representing pharmacies and pharmacists were generally supportive of the provisions in the Bill. The Company Chemists Association Ltd highlighted the need to consider the financial implications of this part of the Bill on local health boards, it noted that an unintended consequence of the Bill could be:

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“The inevitable cost implications with the introduction, implementation and sustainability of pharmaceutical needs assessments to be borne by the Health Boards already under severe financial pressures.”<sup>41</sup>

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**55.** One change from the costs and benefits set out in the previous Public Health (Wales) Bill is that the RIA for this Bill does not include monetised benefits associated with reduced travel time to access pharmaceutical services. In the previous Bill these were estimated to be approximately £1.3 million in the five years after the Bill became law. The previous Finance Committee had recommended that the Minister provide further details of the work carried out to estimate these benefits, and whether this

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<sup>36</sup> Explanatory Memorandum, Table 7.37, page 232

<sup>37</sup> Explanatory Memorandum, Table 7.35, page 230 and Table 7.36, page 232

<sup>38</sup> Explanatory Memorandum, Table 7.35, pages 230-231

<sup>39</sup> Explanatory Memorandum, paragraphs 786-800, pages 222-225

<sup>40</sup> Explanatory Memorandum, Table 7.36, page 232

<sup>41</sup> Written evidence, Health, Social Care and Sport Committee, [PHB 23, Company Chemists Association Ltd](#)

was based on any previous work undertaken in this area. The then Minister accepted this recommendation, providing details in his response to the Committee.

**56.** The Minister confirmed to the Committee that no additional funding would be provided to local health boards for the delivery of these provisions, but that she would expect:

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“local health boards would undertake this work alongside the work that they’re doing under the Well-being of Future Generations (Wales) Act 2015 to ensure that their pharmaceutical needs assessments are undertaken at the same time as their local well-being plan assessments. In doing so, it’s possible then for health boards to utilise those population assessments for the purposes of the pharmaceutical needs assessments. So, there would be no major extra costs to local authorities in terms of developing them.”<sup>42</sup>

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**57.** In response to a question from the Committee as to why the anticipated monetised benefits for implementing the provisions relating to pharmaceutical services were exactly the same for each year, the senior responsible officer explained:

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“When we calculated the health benefits, we only took account of one increase in services provided by pharmacies and that is smoking cessation, because that is the area where we have best evidence about how we could cost the health benefits. So, we expect, over a number of years, to have more smoking-cessation facilities in pharmacies. Over the three-year period, we think it was reasonable to assume that, for that area, there would be a continuing increase in benefits from more smokers giving up through going to pharmacies for their smoking-cessation support. So, that’s why, for those periods, it is constant. But we didn’t take account of any increase in any other services that pharmacies might develop during that period because we didn’t think there was sufficient evidence of the financial benefits that will be accrued from those additional services. So, it’s a very conservative figure for benefits, we think.”<sup>43</sup>

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**58.** The Minister clarified that the figures included in the previous Bill for the estimated benefits from reduction in travel had not been included for this Bill in response to the concerns raised by the previous Finance Committee about the reliability of those figures.<sup>44</sup>

## Committee view

**59.** The Committee understands the difficulties around reliably calculating benefits. However it is concerned that only focussing on one aspect of pharmaceutical service delivery can provide limited insight into the potential benefits of the Bill. While it understands the reasons why the RIA produced by the Welsh Government did not include the benefits from reduced travel times that had been included in the previous RIA, the Committee is concerned that this only leaves one benefit.

**Recommendation 5.** The Committee recommends that the Welsh Government clarifies the steps it took to try to improve the way that benefits associated with reduced travel time were calculated, before it decided not to include them in the Regulatory Impact Assessment for this Bill.

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<sup>42</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 101

<sup>43</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 104

<sup>44</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 108

## 07. Financial implications of proposals requiring local authorities to produce local toilets strategies

60. Part 7 of the Bill includes provisions to require local authorities to produce a strategy for the provision of public toilets. The provisions would not require local authorities to actually provide public toilet facilities. Welsh Government funding for improving public access to toilet facilities through the Revenue Support Grant would remain at £200,000.<sup>45</sup> The RIA states that there would be additional costs of just over £451,900 from this element of the Bill, of which £442,900 will fall upon local authorities. Local authorities would incur costs from developing and consulting on their strategy, and some small additional costs from managing the process for grant allocation to businesses allowing free public access to their toilets. In addition, the Welsh Government would incur £9,000 of additional costs from producing and reviewing guidance.<sup>46</sup>

61. The RIA explains that the Welsh Government chose not to impose a statutory duty on local authorities to ensure access to toilets due to the additional costs of capital investment and maintenance of increased provision – which were estimated by the Welsh Government to be between £32 million and £64 million between 2017-18 and 2021-22.<sup>47</sup>

62. A number of local authorities and representative organisations that represent local authority environmental health and public protection staff expressed concern that the proposal to develop strategies would not achieve the policy aims on its own. The DPPW noted that:

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“DPPW recognises the potential health and environmental impact of a lack of public toilet facilities, some direct some indirect... We also recognise that the resource climate has put local authorities under significant pressure and point out that a strategy will have no impact if it is merely that.”<sup>48</sup>

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63. The Minister told the Committee that the approach in the Bill was a “reasonable and proportionate” way of trying to seek to improve access to public toilets given the financial pressures faced by local authorities.<sup>49</sup> In response to questions from the Committee as to whether the investment required to produce the strategies represented value for money if the production of the strategies didn’t lead to an improvement in services, the Minister said she believed that the provision would result in improved access to facilities.<sup>50</sup>

### Committee view

64. The Committee acknowledges that the estimated costs to local authorities of producing local toilets strategies should not be significant, however, it has concerns as to whether the production of strategies alone would lead to improved public access to toilets, and therefore whether the investment would represent value for money. The Committee believes that the Welsh Government should review the effectiveness of the provisions relating to public toilets in improving access to facilities and the value for money they represent.

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<sup>45</sup> Explanatory Memorandum, paragraph 862

<sup>46</sup> Explanatory Memorandum, Table A4.8, page 331

<sup>47</sup> Explanatory Memorandum, paragraph 898

<sup>48</sup> Written evidence, Health, Social Care and Sport Committee, [PHB 07, Directors of Public Protection Wales](#)

<sup>49</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraph 110

<sup>50</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraphs 127-132



**Recommendation 6.** The Committee recommends that the Welsh Government should review the effectiveness of the provisions relating to public toilets in improving access to facilities and the value for money they represent.

## 08. Financial implications of subordinate legislation

**65.** The Bill contains a number of provisions to make subordinate legislation. Although RIAs will be produced to show the costs and benefits when the various pieces of subordinate legislation are introduced, such information is not included in the costs and benefits set out for this Bill.

**66.** The previous Committee in its scrutiny of legislation noted that amending primary legislation through secondary legislation would not allow for sufficiently robust financial scrutiny by the Assembly. In respect of the Public Health (Wales) Bill introduced in the Fourth Assembly, the previous Committee recommended that the Welsh Government undertake work to develop a more consistent approach to providing costs associated with subordinate legislation to enable better financial scrutiny of Bills. The then Minister for Health and Social Services accepted the recommendation in principle, noting that this would be considered as part of the review of legislation at the end of the Fourth Assembly.

**67.** The Minister told the Committee that some estimated costs relating to provisions to be made through secondary legislation had been included in the RIA, including for signage in smoke-free open spaces and the production of additional health impact assessments. She added that it had not been possible to provide estimated costs for some aspects, notably adding special procedures to the list of those covered by the licensing system, as it was difficult to foresee how future fashion trends could influence the costs.<sup>51</sup>

### Committee view

**68.** The Committee believes that the provision of estimated costs for the delivery of provisions being made by secondary legislation is important to enable the Assembly to fully understand the costs and benefits of a Bill.

**Recommendation 7.** The Committee re-iterates the recommendation made by the previous Finance Committee that the Welsh Government should undertake work to develop a more consistent approach across Bills to providing costs associated with subordinate legislation to enable better scrutiny of the full costs and benefits of Bills.

**Recommendation 8.** The Committee recommends that when a revised Explanatory Memorandum is published after Stage 2, that estimated costs of implementing secondary legislation are provided where possible.

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<sup>51</sup> National Assembly for Wales, Finance Committee, Record of Proceedings, 19 January 2016, paragraphs 136-137