

PHB 29

Bil Iechyd y Cyhoedd (Cymru)

Public Health (Wales) Bill

Ymateb gan: ASH Cymru

Response from: ASH Wales

### **Consultation on the Public Health (Wales) Bill – ASH Wales response**

1. ASH Wales is the only public health charity in Wales whose work is exclusively dedicated to tackling the harm that tobacco causes to communities. Further information about our work can be found at <http://www.ashwales.org.uk/>
2. We are engaged in a wide range of activities including:
  - Advocating for tobacco control public health policy
  - Undertaking tobacco control research projects
  - Training young people and those who work with young people to provide factual information about the health, economic and environmental effects of smoking
  - Engaging young people and professionals working with young people through the ASH Wales Filter project
  - Bringing health information and advice to the heart of the community
3. We also oversee the Wales Tobacco or Health Network (a network of over 300 individual members) and the Wales Tobacco Control Alliance (an alliance of 35 voluntary and professional bodies in Wales), providing forums for sharing knowledge and best practice. Our newsletters for those interested in tobacco control directly reaches 1,190 subscribers every month, whilst our combined social media channels have a following of over 6,400 individuals and organisations, with the content of our three websites being viewed around 6,000 times every month combined. ASH Wales has no direct or indirect links with, and is not funded by, the tobacco industry.

## Smoking prevalence in Wales

4. The percentage of the adult (age 16 and over) population in Wales categorised as a smoker is 19%, with this figure greater for males (21%) compared to females (18%)<sup>1</sup>. In terms of numbers of smokers, this equates to approximately 492,000 adults in Wales currently smoking. Smoking is the largest single cause of avoidable early death in Wales. In 2010, around 5,450 deaths in people aged 35 and over were caused by smoking<sup>2</sup>, and about half of all life-long smokers will die prematurely as a result of their habit<sup>3</sup>. Smoking prevalence in Wales varies considerably by deprivation level, with current figures showing an 18% difference in smoking rates between the most and least deprived areas of the country (least deprived: 11%; most deprived: 29%)<sup>1</sup>. Indeed, smoking represents the most significant factor underlying the variation in health outcome and life expectancy between the wealthiest and poorest in Welsh communities.

## ASH Wales comments on the terms of reference of the Public Health (Wales)

### Bill

- *re-state restrictions on smoking in enclosed and substantially enclosed public and work places, and give Welsh Ministers a regulation-making power to extend the restrictions on smoking to additional premises or vehicles*
5. ASH Wales supports giving Welsh Ministers a regulation-making power to extend the restrictions on smoking in enclosed and substantially enclosed public and work places to include additional premises or vehicles. We believe this will add greater flexibility to the regulation making process and make it easier for new premises and/or vehicles to be added to the list of places where smoking is banned without having to contend with the often time consuming process of manoeuvring through the multiple stages involved in the passage of a Bill within the National Assembly for Wales. ASH Wales holds the opinion that when extending the restrictions on smoking to additional premises or vehicles are in the interests of the health of the people of

Wales it is highly important the necessary changes to the legislation are made without delay. Affording Welsh Ministers with a regulation-making power to extend these restrictions will serve to ensure this is the case.

- *place restrictions on smoking in school grounds, hospital grounds and public playgrounds*
6. ASH Wales is strongly in favour of extending the current restrictions on tobacco smoking to include some non-enclosed spaces, such as school grounds, hospital grounds and public playgrounds. We consider this to be an important development that will serve to further denormalise smoking in communities across Wales given the reduced opportunities for the activity to be seen. By increasing the number of places where smoking is banned the fact that tobacco use is not a mainstream or normal undertaking in our society will be reinforced. Furthermore, in our view restricting smoking in these areas will serve to protect members of the public from the damage to their health caused by inhaling second-hand smoke.
7. In the case of school grounds and public playgrounds specifically, these are places frequented by children and young people on a regular basis. Children, in particular, are especially vulnerable to exposure from second-hand smoke as they breathe more rapidly, inhaling more pollutants per pound of body weight (a higher relative ventilation rate) than adults<sup>4</sup>. Children also ingest higher quantities of tobacco smoke pollutants due to more hand-to-mouth behaviours<sup>5</sup>. In addition, children have little control over their environment and are often unable to remove themselves from the risk of exposure to tobacco smoke. Research has found that after exposure to similar levels of tobacco smoke, cotinine levels (a metabolite of nicotine used to measure second-hand smoke exposure) in children are about 70% higher than in adults<sup>6</sup>. In Wales around 570 hospital admissions in children aged 0-14 were attributable to second-hand smoke exposure in 2010<sup>2</sup>, with the majority due to lower respiratory infections.

8. With regards to hospital grounds, in making these smokefree the opportunity to initiate and support cessation among the many smokers, and their visitors, who use hospital services will be created. In addition, secondary care providers have a duty of care to protect the health of, and promote healthy behaviour among, people who use, or work in, their services. For these reasons NICE guidance recommends hospital premises are smokefree<sup>7</sup>. In the case of hospital grounds specifically, legislation banning smoking is necessary given the problems that have been encountered enforcing voluntary smoking bans in these areas. All seven health boards and Velindre NHS Trust currently have comprehensive smokefree policies but evidence suggests many are struggling to enforce the voluntary smoking bans on their grounds. The message that people (patients, visitors and staff) should not expect their smoking behaviour to be facilitated by the National Health Service therefore needs to be reinforced in an unambiguous way. It should be made clear that you cannot come to NHS premises and expect to smoke, given that smoking is the single largest avoidable cause for many serious illnesses. We would therefore welcome the prospect of legislation in this area in order to ensure that this issue is taken seriously by staff, patients and visitors alike.
  
9. The current smokefree legislation, introduced in the UK in 2007, bans smoking in virtually all enclosed and substantially enclosed public and work places. These regulations have been shown to be effective in terms of initiating health benefits for smokers/non-smokers and changes in smoking related attitudes and behaviour<sup>8</sup>. Furthermore, the extension of smoking bans to include non-enclosed public places has also been shown to be effective. For instance, following the parks and beaches in New York City (NYC) becoming smokefree in 2011 Johns et al found the trend in the frequency of NYC residents noticing people smoking in local parks and beaches decreasing significantly over the six quarters after the law took effect, leading the authors to conclude that their results provide population-level evidence that suggest the law has reduced smoking in parks and on beaches<sup>9</sup>. Furthermore, there is strong public support in Wales for an extension of the smoking ban to include additional non-enclosed spaces. In a 2016 YouGov survey commissioned by ASH Wales 82% of respondents

agreed that smoking should be banned in outdoor children's play areas, whilst the 2014 survey found 71% of respondents supported banning smoking in hospital grounds<sup>10</sup>.

10. As well as being strongly supportive of extending smokefree legislation to include school grounds, hospital grounds and public playgrounds, ASH Wales believes the Welsh Government should go further and additionally include bans on smoking in the outdoor, non-enclosed, public places of school gates, playing fields, sports grounds and beaches. As with school grounds and public playgrounds these are all places frequented on a regular basis by children and young people meaning the rationale behind banning smoking in school grounds and public playgrounds equally apply to banning smoking at school gates, playing fields, sports grounds and beaches. That is, legislated bans on smoking in these areas will also serve to denormalise smoking as an activity and reduce exposure to second-hand smoke. Furthermore, in the case of school gates, playing fields and sports grounds in particular, banning smoking in these areas through legislation will make it easier to enforce the proposed smoking bans in school grounds and public playgrounds. A potential issue that may arise when enforcing bans in these areas involves confusion around where the restricted smoking area begins and ends. For instance, it is likely some members of the public will be unaware of whether the school gates are included in the grounds of the school or not and, hence, adding school gates to the list of areas where smoking is banned through legislation will serve to ensure this confusion is avoided. Likewise, it is possible some members of the public will not be able to distinguish between the perimeters of a playground and the adjoining playing fields, thereby leading to potential confusion and possible problems with enforcement of, and compliance with, the law.

11. An additional reason why it is necessary for this Public Health (Wales) Bill to extend the smokefree legislation to additionally include the outdoor, non-enclosed, public places of school gates, playing fields, sports grounds and beaches concerns the fact that should smoking continue to be allowed in these areas it will serve to diminish the impact of the new smoking bans set to be introduced in school

grounds and public playgrounds. For example, it will prove difficult for smokefree school grounds to successfully denormalise smoking and reduce exposure to second-hand smoke should smoking at the adjoining school gate be allowed. In the same way not banning smoking in playing fields and sports grounds will potentially reduce the positive impact of denormalisation and exposure to second-hand smoke that banning smoking in public playgrounds will bring.

12. Legislated smoking bans are also further required in places such as school gates and beaches given the difficulty in getting voluntary smoking bans introduced in these areas. For instance, we have been in discussions with all Local Authorities in Wales with regards to the introduction of smokefree school gates and smokefree beaches in their jurisdictions. Whilst some authorities have implemented voluntary restrictions others have not yet done so, often citing a lack of resources or confusion as to whether they have sufficient power to introduce such changes.

- *provide for the creation of a national register of retailers of tobacco and nicotine products*

13. ASH Wales agrees with the proposal to create a national register of retailers of tobacco and nicotine products. We would favour retailers of tobacco to be on a separate register from retailers of nicotine products given these are very different products that require different messages to be relayed to the retailer in question. We welcome the measure as an important initial step towards reducing the number of young people in Wales who become smokers or start using e-cigarettes, and consider it to be both workable and proportionate. In our view the establishment of a national register of retailers of tobacco and nicotine products will allow regulators to monitor where tobacco is sold in Wales, thereby providing an accurate picture of the number, size and type of legitimate tobacco sellers, and thus facilitating the identification, and ultimately reduction, of rogue tobacco traders. Illegal tobacco accounts for 15% of the tobacco market in Wales<sup>11</sup>, which is by far the highest in the UK. Moreover, evidence from the

North East of England in 2013 showed that young smokers (14–15 year olds) are significantly more comfortable than their adult counterparts in purchasing illegal tobacco. 30% of 14–15 year olds were buyers of illegal tobacco, making them twice as likely as adult smokers in having purchased illegal tobacco<sup>12</sup>. The proposed retailers register would also assist enforcement agencies and regulators to communicate tobacco law changes directly to retailers.

14. Evidence from Scotland, where a tobacco retailers register was introduced in 2011, suggests that the register has been useful as a means of improving proactive communication to retailers in terms of what their responsibilities are. However, from an enforcement point of view the retail register in place in Scotland appears to be less successful. There have been very few prosecutions and the register doesn't improve the ability of enforcement officers to tackle illicit tobacco outside legitimate retailers. Ultimately an effective tobacco retailers register must provide a deterrent among retailers for breaches of tobacco legislation in order to ensure compliance with age of sale restrictions and to tackle illicit tobacco sellers. In order for this to be the case there must be sufficient sanctions in place to accompany the register. At present, very few retailers have been removed from the retailers' register in Scotland for selling to minors or selling illicit tobacco. Effective enforcement of these restrictions is essential in order to protect young people from tobacco addiction and to keep smuggled tobacco off the streets. Hence, we would like to see a one-strike policy introduced, where one infraction against the law results in expulsion from the retailers' register. We believe this would serve to reinforce the message that selling a product as dangerous as tobacco is a privilege that comes with responsibilities.

- *provide Welsh Ministers with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales*

15. ASH Wales fully supports this measure as we believe it will act as a greater deterrent to any retailers tempted to breach the new

requirements associated with a national retailers register. As mentioned in our answer above it is important retailers face the prospect of a severe sanction for failing to comply with the law in order to properly enforce a tobacco or nicotine offence. In our view a strengthened Restricted Premises Order regime will assist in ensuring this is the case. The current system in Scotland has resulted in very few banning orders, at least one of which was side-stepped by transferring registration to another person. With evidence showing that a large proportion of young people who smoke get their tobacco directly from shops, we believe that a dual banning order that can apply to both the registered person and to the premises is necessary.

16. It is important however that following any changes the regime is easy to enforce plus there should be clear guidance for enforcement officers and magistrates on how to implement the changed regime.

- *prohibit the handing over of tobacco and/or nicotine products to a person under the age of 18*

17. ASH Wales supports this proposal as we believe it would be in line with the commitment demonstrated by other legislative steps, such as the vending machine ban, point of sale display bans and the introduction of a retail register, to limit as far as possible the access of young people to tobacco/nicotine products. Unintentionally or not, allowing under-18s to receive delivery of tobacco/nicotine products blurs the message that is being developed on the issue of proxy purchasing. If an under-18 is the only person present to receive a delivery, even if ordered by an adult, there would be no way of preventing them accessing the goods delivered, whether they were intended for their consumption or not.

## References

- <sup>1</sup> Welsh Government (2015). Welsh Health Survey 2014.



- <sup>2</sup> Public Health Wales NHS Trust / Welsh Government (2012). Tobacco and health in Wales.
- <sup>3</sup> ASH (2014). Smoking statistics: illness and health.
- <sup>4</sup> Canadian Institute of Child Health (1997). Environmental hazards: Protecting children. Canada.
- <sup>5</sup> Matt GE, Quintana PJE, Hovell MF, Bernert JT, Song S, Novianti N, et al. (2004). Households contaminated by environmental tobacco smoke: sources of infant exposures. *Tobacco Control*. 13(1):29–37.
- <sup>6</sup> Willers S, Skarping G, Dalene M, Skerfving S. Urinary cotinine in children and adults during and after semiexperimental exposure to environmental tobacco smoke. *Archives of Environmental Health*. 1995. 50(2): 130–138.
- <sup>7</sup> NICE (2013). Smoking: acute, maternity and mental health services. Public health guideline.
- <sup>8</sup> Bauld, L. (2011). The impact of smokefree legislation in England: Evidence review.
- <sup>9</sup> Johns M., Farley SM., Rajulu DT., Kansagra SM., Juster HR. (2014). Smoke-free parks and beaches: an interrupted time-series study of behavioural impact in New York City. *Tobacco Control*.
- <sup>10</sup> YouGov for ASH Wales. Total sample size was 1,002 adults. Fieldwork was undertaken between 26<sup>th</sup> February to 12<sup>th</sup> March 2015.
- <sup>11</sup> ASH Wales (2015). *Illegal Tobacco: Undermining Tobacco Control Measures in Wales*.
- <sup>12</sup> NEMS Market Research (2013). *North East Illicit Tobacco Survey*. NEMS Market Research.