

National Assembly for Wales
Finance Committee

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

September 2015

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Finance Committee

The Committee was established on 22 June 2011. The Finance Committee's role is to carry out the functions set out in Standing Order 19. This includes consideration of the use of resources by the Assembly Commission or Welsh Ministers, and in particular reporting during the annual budget round. The Committee may also consider any other matter relating to expenditure from the Welsh Consolidated Fund.

Their remit also includes specific statutory powers under the Public Audit Act 2013 relating to new responsibilities for governance oversight of the Wales Audit Office.

Current Committee membership:



Jocelyn Davies (Chair)
Plaid Cymru
South Wales East



Peter Black
Welsh Liberal Democrats
South Wales West



Christine Chapman
Welsh Labour
Cynon Valley



Mike Hedges
Welsh Labour
Swansea East



Alun Ffred Jones
Plaid Cymru
Arfon



Ann Jones
Welsh Labour
Vale of Clwyd



Julie Morgan
Welsh Labour
Cardiff North



Nick Ramsay
Welsh Conservatives
Monmouth

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The Committee's Recommendations

Recommendation 1. The Committee recommends that the summary table showing the costs and benefits in the Regulatory Impact Assessment of this Bill should be amended to show separate tables for costs and monetised benefits (Page 11)

Recommendation 2. The Committee recommends that the Welsh Government do not present costs and benefits in this way in future legislation, we believe this approach to be confusing and unintentionally misleading. The Committee would like to see the Welsh Government work with the Auditor General for Wales to agree on the best way to present cost and benefit information in Regulatory Impact Assessments. (Page 11)

Recommendation 3. The Committee recommends that the Minister commits to publishing information identifying how much money has been raised by each local authority from fixed penalty notice income to cover its enforcement costs, and of the enforcement costs incurred by local authorities in implementing this policy. (Page 16)

Recommendation 4. The Committee recommends that the Minister clarifies whether the judgement in the Hemming v Westminster case impacts upon other parts of the Bill (Page 20)

Recommendation 5. The Committee recommends the Minister provide clarity as to whether the updated Explanatory Memorandum will be on the basis of a 'type A' or 'type B' scheme as detailed under the Hemming v Westminster case. (Page 20)

Recommendation 6. The Committee recommends that the Minister provide further details of the work carried out to estimate these benefits, and whether this was based on any previous work undertaken in this area. (Page 23)

Recommendation 7. The Committee recommends that the Welsh Government 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 25)

1. Background and Overview

1. The Public Health (Wales) Bill (“the Bill”) was introduced by Mark Drakeford AM, Minister for Health and Social Services (“the Minister”) on 8 June 2015.
2. The Explanatory Memorandum¹ details the key purposes of the Bill:

Tobacco and nicotine products

- restricting the use of nicotine inhaling devices such as electronic cigarettes in enclosed and substantially enclosed public and work places, bringing the use of these devices into line with existing provisions on smoking;
- creating a national register of retailers of tobacco and nicotine products;
- adding to the offences which contribute to a Restricted Premises Order (RPO). (An RPO prohibits the sale of tobacco products from a premises);
- prohibiting the handing over of tobacco or nicotine products to people under the age of 18.

Special procedures

- creating a mandatory licensing scheme for practitioners and businesses carrying out ‘special procedures’, namely acupuncture, body piercing, electrolysis and tattooing;
- introducing a ban on the intimate piercing of people under 16 years old.

Pharmaceutical services

- changing the way Health Boards make decisions about pharmaceutical services by making sure these are based on assessments of pharmaceutical need in their areas.

¹ National Assembly for Wales, Explanatory Memorandum
www.assembly.wales/laid%20documents/pri-ld10224-em/pri-ld10224-em-e.pdf

Provision of toilets

- requiring local authorities to prepare local toilets strategies for the provision of, and access to, toilets for public use, based on the needs of their communities.²
- 3. A Regulatory Impact Assessment (“RIA”) is contained in the Explanatory Memorandum (“EM”) which presents the estimated additional costs resulting from the Bill.
- 4. The Committee took evidence on the financial implications of the Bill from the Minister on 15 July 2015.

² Explanatory Memorandum

2. Summary of additional costs and benefits of the Bill

Background

5. The RIA presents the options considered for each aspect of the Bill, along with the costs and benefits of each option and an assessment of how it meets the Bill's aims.

6. Taking into account costs and benefits, the net additional costs of the Bill to the various stakeholders are as follows:

- Public and work places - £6.5 million;
- Local Authorities - £1.8 million;
- E-cigarette industry - £1.3 million;
- Local Health Boards (LHBs) - £1.3 million;
- Tattooing and piercing practitioners and businesses - £944,600;
- Tobacco retailers - £406,800;
- Welsh Government - £361,700;
- Pharmacy contractors - £220,500;
- Unregistered tattooing and piercing practitioners - £34,400; and
- The public will see net benefits of £9.35 million.

7. Once all of the costs of the Bill have been considered alongside the benefits that can be quantified, the Bill is estimated to cost an additional £3.6 million between 2016-17 and 2020-21.³

8. The RIA states that the costs and benefits of the Bill were calculated following discussions with key stakeholders such as local authorities and LHBs. The RIA notes that:

“Throughout this RIA, where there is uncertainty, a cautious approach has been taken to the assessment of costs. This is likely to mean that in a number of areas the actual costs associated with implementing the legislation may be lower. There is also likely to be further potential for savings if certain aspects of implementation are co-ordinated across different

³ Explanatory Memorandum

areas of the Bill, for example if training sessions are combined for a number of related policies.”⁴

Methodology and overall costs and benefits of the Bill

Evidence from the Minister

9. The Minister said the costs and benefits identified in the RIA “represent the best current estimates that we’re able to make”.⁵

10. The Minister continued to state that the Bill began with a Green Paper and a full White Paper consultation where the costs and benefits had been “a very regular part of that whole discussion”.⁶ The Minister continued:

“We follow the standard Treasury Green Book methodology in deriving the RIA costs and benefits. We’ve been able to draw on a variety of data sources to give greater confidence in the figures that we provide.”⁷

11. In relation to whether further savings could to be made if aspects of the Bill’s implementation were combined, the Minister said there were “very significant opportunities for the costs...to be reduced and the benefits...to be maximised”.⁸ He continued:

“One of the ways in which we think costs can be reduced is by sharing effort amongst those who will be responsible for implementation of the Bill. So, there are training needs that are identified in different strands of the Bill; I think it’s possible to combine those training needs and to deliver them in a way that would reduce costs. There are publicity and communication costs involved in the seven different strands. Again, I think it is possible to combine those in a way that will drive down costs.”⁹

12. A number of sections of the Bill use mid-point values of a wide range of possible costs and benefits that might fall on businesses and public sector organisations.¹⁰ The Committee asked the Minister how

⁴ Explanatory Memorandum

⁵ RoP, paragraph 8, 15 July 2015

⁶ *ibid*

⁷ RoP, paragraph 8, 15 July 2015

⁸ RoP, paragraph 10, 15 July 2015

⁹ *ibid*

¹⁰ Explanatory Memorandum, page 301

robust these figures were. In response the Minister said that these organisations could “be confident”¹¹ as:

“where we have estimated costs for this Bill, we have pitched them at the higher end of what those costs will be, and, where we have identified benefits, we have pitched them at the lower end of where those benefits will be derived.”¹²

13. During the scrutiny of the financial implications of the Regulation and Inspection of Social Care (Wales) Bill, the Committee raised the concerns of the Auditor General for Wales (“the Auditor General”) that it is potentially misleading to display monetised benefits alongside cash costs. The Committee raised similar concerns with the Minister in relation to this Bill, the Minister said:

“...as a Government, we take very seriously the advice that we get from the auditor general. But I’ve thought about it quite a bit since we had the discussion that we had here, and, every time I go through it in my mind, I come back to the same belief that, actually, in this area, I think I don’t agree with the auditor general’s point of view. I think it is both standard practice, and, actually, helpful practice to people who are trying to understand the Bill to monetise both the costs and the benefits and to set them out in a way that allows people to make a more direct comparison than they otherwise would be able to do. It’s not in any sense intended to mislead. I think it is intended to try and translate into terms that an interested layperson would be able to understand: how the cost that the Bill creates and the benefits that it drives out can be compared with one another and monetising them for that purpose is the way to create clarity.”¹³

Our view

14. The Committee notes the cost information provided in the Explanatory Memorandum/RIA and is pleased to see a cautious approach has been taken to the assessment of costs. The Committee hopes that collaborative working on certain aspects of the Bill could lead to potential for savings.

¹¹ RoP, paragraph 13, 15 July 2015

¹² *ibid*

¹³ RoP, paragraph 15, 15 July 2015

15. The Committee notes the Auditor General's concerns regarding the way the RIA displays monetised costs and benefits alongside cash costs. The Committee is pleased to see the Welsh Government have attempted to monetise the benefits associated with the Bill. However, the Committee believe the way the costs and monetised benefits are presented in this Bill has the potential to mislead in the same way that the Auditor General identified in the Regulation and Inspection of Social Care (Wales) Bill.

The Committee recommends that the summary table showing the costs and benefits in the Regulatory Impact Assessment of this Bill should be amended to show separate tables for costs and monetised benefits.

The Committee recommends that the Welsh Government do not present costs and benefits in this way in future legislation, we believe this approach to be confusing and unintentionally misleading. The Committee would like to see the Welsh Government work with the Auditor General for Wales to agree on the best way to present cost and benefit information in Regulatory Impact Assessments.

3. Financial implications resulting from e-cigarette proposals

Background

16. This section of the Bill restricts the use of tobacco and nicotine inhaling devices such as electronic cigarettes in enclosed and substantially enclosed public and work places.

17. The additional costs of this part of the Bill are the largest of all of the Bill's elements, at £8.2 million between 2016-17 and 2020-21, once the potential benefits of the Bill have been considered. Of these costs, an estimated £6.5 million will fall upon public and work places which will be required to update their smoke-free policies and will face a cost associated with working time lost due to users of e-cigarettes being required to take vaping breaks.¹⁴

18. Additionally, e-cigarette businesses will see an estimated loss of sales worth around £1.3 million over this period. The Welsh Government will incur additional costs of £300,000 in 2016-17 for communications to businesses and the public (£200,000) and for smoke-free signage (£100,000). Members of the public and local authorities will incur small additional costs of £22,500 and £12,300 respectively.¹⁵

19. However, there are a wide range of potential costs that could fall upon public and work places and the e-cigarette industry. The RIA uses the midpoint figures, although these are subject to uncertainty as a result of the wide range of potential costs. The costs to e-cigarette companies are estimated to be between £0 and £2.7 million, and the costs to public and work places may lie between £1.8 million and £11.2 million. When added to the costs to the Welsh Government, local authorities and the public, this means that the total additional cost of this element of the Bill could be between £2.1 million and £14.2 million.¹⁶

¹⁴ Explanatory Memorandum, page 301

¹⁵ *ibid*

¹⁶ Explanatory Memorandum, page 118

Evidence from the Minister

20. The Committee asked the Minister whether he would be undertaking any work with businesses to minimise any additional costs they may face as a result of updating smoke-free policies. The Minister said that the £2.4 million is:

“the cost of business familiarising themselves with and implementing the new law to bring e-cigarettes in line with conventional cigarettes. So, it’s the cost of updating their policy. We work out that this will cost £15 for any public sector organisation, £26 for any large employer, and £10 for any SME in Wales, and that’s the cash equivalent of the time it would take to update the policy.”¹⁷

21. The Minister continued:

“We are assuming here that policies are not updated for any other purpose. So, whereas you would expect that policies, very often, would be being updated in any case, we’ve taken the precautionary position that every organisation would have to update its policy as a result of the Act and that’s what costs fall out of that.”¹⁸

22. The Minister’s official said they were able to look at the costs in relation to the legislation to ban conventional tobacco:

“we were able to look at the costs of the development of signage, the development of guidance, the training that was necessary, and the likely drop in the number of users in order to look at industry costs. So, we were able to take all of those into account in developing these [figures].”¹⁹

23. The Minister confirmed the additional cost to the Welsh Government of £200,000 for communicating the change in the law relating to e-cigarettes, to business and the public again was based on the Welsh Government’s “experience of implementing the tobacco regulations”.²⁰ He said:

¹⁷ RoP, paragraph 70, 15 July 2015

¹⁸ RoP, paragraph 71, 15 July 2015

¹⁹ RoP, paragraph 76, 15 July 2015

²⁰ RoP, paragraph 81, 15 July 2015

“We think that this will be a relatively simple thing to communicate, because the change is very straightforward and simple... We will rely on the existing ways in which changes in policy are communicated, through Welsh Government, local government, and social media and so on.

We include, within the costs, providing a poster to publicise the change, to be displayed in those places where the change will happen, in advance of the change. On top of the £200,000, we also have a budget line of £100,000, because we will provide, as we did when the law changed in relation to tobacco, signage free to all employers and in all public places where the new law will apply.”²¹

24. In a follow-up letter, the Minister stated there was no evidence that the proposal to restrict the use of e-cigarettes in indoor public places would cause e-cigarette users to return to smoking. The Minister said that in light of this uncertainty:

“the EM provides an illustrative example to explore the hypothetical health effect of e-cigarette users returning to tobacco smoking using a study which looks at the Quality Adjusted Life Years (QALYs) gained by every smoker who quits smoking long-term.”²²

Our view

25. The Committee notes that some of the costs associated with the restriction of the use of tobacco and nicotine inhaling devices such as electronic cigarettes in enclosed areas have been cautiously costed. The Committee believes the financial implications are difficult to verify and are pleased that costs have been based in relation to the legislation to ban conventional tobacco products.

²¹ RoP, paragraph 81, 15 July 2015

²² FIN(4)-18-15 P1 - Letter to the Chair of Finance Committee from Minister for Finance and Government Business

4. Financial implications resulting from introducing a national register of retailers of tobacco and nicotine products

Background

26. This element of the Bill creates a national register which retailers of tobacco and nicotine products are required to sign up to. The registration fee for individual retailers, is proposed to be set at £30 for the first premise and a further £10 for each additional premise.

27. In the response to the proposals outlined in the Welsh Government's Public Health White Paper in 2014, there were a wide range of views on the potential financial implications of this policy, although there was majority support for the creation of a register.²³

28. NHS and anti-smoking organisations including Action on Smoking and Health (ASH) Scotland, Cardiff and Vale and Cwm Taf University Health Boards felt that the levels of registration fees for tobacco and nicotine product retailers were reasonable and proportionate.²⁴

29. The RIA anticipates that by having one local authority taking the lead on the register, there will be savings across the local authorities of £64,000 between 2016-17 and 2020-21.²⁵

30. However, enforcement costs for local authorities are not estimated in the RIA. In Plenary on 9 June 2015,²⁶ the Minister stated that the enforcement costs of the register will be partially met by fee income. The RIA does not include an estimate of costs to local authorities associated with enforcement of the register through investigating unregistered retailers, although it notes that some retailers may not register.

²³ Welsh Government, Public Health White Paper
<http://gov.wales/consultations/healthsocialcare/white-paper/?status=closed&lang=en>

²⁴ Responses from Action on Smoking and Health (ASH) Scotland; Cardiff and Vale UHB & Cwm Taf UHB
<http://gov.wales/docs/phhs/consultation/141104phwhitepaperresponses01en.pdf>

²⁵ Explanatory Memorandum, page 137

²⁶ Plenary, Record of Proceedings, 9 June 2015 <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3169&assembly=4&c=Record%20of%20Proceedings#223918>

Evidence from the Minister

31. The Minister confirmed that the registration fee that would be charged for the creation of the tobacco retailers register would “create an income stream for local authorities to allow them to offset, in full the costs of creating, administering and maintaining the register”.²⁷

32. The Minister did not think the proposed fee of £30 would be a “great burden” on businesses but cumulatively would allow “local authorities to discharge those responsibilities”.²⁸

33. He said that the money raised from the registration fee would be used for maintaining the register and could not be used for enforcement. However, local authorities would be able to use “fixed-penalty notice income to help with enforcement”.²⁹ He continued:

“I think the fact of having a register will reduce enforcement costs in duties that local authorities already have in this area.”³⁰

Our view

34. The Committee are content with the proposed registration fee for individual retailers, set at £30 for the first premise and a further £10 for each additional premise.

The Committee recommends that the Minister commits to publishing information identifying how much money has been raised by each local authority from fixed penalty notice income to cover its enforcement costs, and of the enforcement costs incurred by local authorities in implementing this policy.

²⁷ RoP, paragraph 121, 15 July 2015

²⁸ *ibid*

²⁹ *ibid*

³⁰ *ibid*

5. Financial implications resulting from introducing a licensing scheme for special procedures and prohibiting intimate piercing for under-16s

Background

35. This section of the Bill involves introducing legislation to create a compulsory, national licensing system for the practice of special procedures in Wales. These special procedures would be defined in the legislation as acupuncture, body piercing, electrolysis and tattooing.

36. In order to perform any of these special procedures, an individual would need to be licensed and the premises which they practice from approved. Local authorities would be responsible for screening practitioners and inspecting premises to ensure they meet specified criteria before a license could be granted or premises approved.³¹

37. This element of the Bill has the second largest additional costs, at £1.6 million over the 2016-17 to 2020-21 period. These costs are mostly split between local authorities (£780,000) and registered and unregistered practitioners (£760,000).³²

38. 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.³³

39. The additional costs to practitioners include those for familiarising themselves with the new legislation, registration costs and opportunity costs of applying for a license. There are also additional costs for contravening RANs, which incurs a fine, and for the minority of unregistered practitioners who would be issued with stop notices preventing them from performing special procedures.³⁴

³¹ Explanatory Memorandum, page 182

³² Explanatory Memorandum, page 302

³³ Explanatory Memorandum, pages 186-7

³⁴ *ibid*

40. 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.³⁵

Prohibiting intimate piercing for under-16s

41. The additional costs of this element of the Bill are just over £500,000 for the five years from 2016-17 to 2020-21. Local authorities incur additional costs of £265,000 over this period for staff costs to support businesses in complying with the legislation. In addition, practitioners will incur costs of just under £220,000 for lost business, familiarising themselves with the legislation, and in fines for the minority of businesses discovered to be carrying out banned procedures. The Welsh Government will incur minor costs of around £20,000 for guidance, training and communication.³⁶

Evidence from the Minister

42. Section 61 of the Bill requires a local authority to maintain a register containing details of all valid special procedures licences issued by it. The Committee asked the Minister how he would respond to concerns expressed in responses to the Public Health White Paper that the resources required to enforce the special procedures register may divert local authority funding away from other priority services. The Minister said:

“this is one of the places where we will need to update the information provided in the EM because—and this is all very detailed—when we were producing the original explanatory memorandum, the case of *Hemming v. Westminster City Council*, which is the test case in this field...

“... had gone to the appeal court, and the appeal court had concluded that it was not legal for a local authority to recover, in the fee that the registrant was required to pay, the cost of enforcing those people who did not register. So, the costs that we set out here are assumed on that basis: that local authorities would not be able to charge fees that would cover the cost of enforcement. That case has now gone to the Supreme Court, and the Supreme Court has overturned the

³⁵ Explanatory Memorandum, pages 186-7

³⁶ Explanatory Memorandum, page 186

position set out in the Court of Appeal, and the position, which is now the final position, is that local authorities can include in the cost of registering an element to cover their costs of enforcing the register.”³⁷

43. The Committee raised concerns with the Minister as to whether the special procedures registration scheme could meet unnecessary bureaucracy, disproportionately impacting upon small businesses and resulting in the cost of registration being passed onto customers.

44. In response to this the Minister said:

“There may be some marginal costs that will be passed on to the user... I think that’s not an unfair cost for that person to bear, in knowing that the service that they will now be getting will be one that will not be injurious to their health.”³⁸

45. The Minister continued:

“It will be for local authorities to set the fee themselves, and that’s quite important because the nature of the industry varies a great deal between one part of Wales and another. It won’t be in local authorities’ interests to set fees at a level that turns off the income stream that they will be generating otherwise...”³⁹

Our view

46. The Committee is of the view that the Minister’s statement relating to the *Hemming v Westminster* case requires clarification as the Committee understands that the decision in this case has not fully resolved the issue of charging in respect of enforcing a registration scheme. The Committee notes that the Supreme Court was asked to consider whether a licensing scheme which required an applicant for a licence to pay a fee made up of two parts: one part relating to the administration of application and which was non-refundable, and other (larger) part which related to the management of the scheme and which was refundable if the application was refused, was legitimate under both domestic and European law.

³⁷ RoP, paragraphs 141 & 143, 15 July 2015

³⁸ RoP, paragraph 150, 15 July 2015

³⁹ RoP, paragraph 152, 15 July 2015

47. The Committee notes that as part of its deliberations the Court considered potential two scenarios:

- “type A scheme” under which a local authority charges an applicant, on making an application for registration, the costs of making the application and then charges a successful applicant a further fee to cover the costs of running and enforcing the scheme; and
- “type B scheme” under which the costs of running and enforcing the scheme were charged at the time of making the application but refunded to unsuccessful applicants.

48. The Supreme Court held that a type A scheme was permissible under both domestic and European law. However, with regard to a type B scheme, the Court was of the view that the matter should be referred to the European Court of Justice with a view to establishing whether such a scheme was consistent with European law.

49. The Committee is pleased that the Minister has said that the costs facing local authorities from this part of the Bill will be lowered as a result of the appeal in the *Hemming v Westminster* case,⁴⁰ and that he will be updating the Explanatory Memorandum to reflect the changes to these costs.

The Committee recommends that the Minister clarifies whether the judgement in the *Hemming v Westminster* case impacts upon other parts of the Bill where local authorities will be undertaking enforcement activities, and provides details on any financial impact on these areas of the Bill.

The Committee recommends the Minister provide clarity as to whether the updated Explanatory Memorandum will be on the basis of a ‘type A’ or ‘type B’ scheme as detailed under the *Hemming v Westminster* case.

⁴⁰ The Supreme Court, *R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) (Respondents) v Westminster City Council (Appellant)*

6. Financial implications of replacing the current system for providing pharmaceutical services with a needs-based system

Background

50. This section of the Bill will replace the current system for providing pharmaceutical services with a needs-based system. This will use pharmaceutical needs assessments (“PNAs”) and introduce a performance management regime to allow action to be taken against under-performing providers including an exit regime.⁴¹

51. While there are additional costs of £1.3 million between 2016-17 and 2020-21 to LHBs and £220,000 to pharmacy contractors, the RIA states that these will be outweighed by the £9.4 million health and travel time benefits to the public. The Welsh Government will also see a small 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.⁴²

52. The additional costs to Local Health Boards (“LHBs”) are based on costs for undertaking PNAs, commissioning additional services to meet pharmaceutical needs and managing under-performing pharmacy contractors. 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.⁴³

53. The travel time benefits are based on estimates of reduced distance to pharmacies as a result of better service provision and new pharmacies in areas with unmet need. They are estimated to be £425,000 per year from 2018-19 to 2020-21, a total benefit of just under £1.3 million over this period.⁴⁴

Evidence from the Minister

54. The Committee discussed with the Minister whether the current funding arrangements for NHS community pharmacy services would need to be reviewed. The Minister said

⁴¹ Explanatory Memorandum, page 207

⁴² Explanatory Memorandum, page 218

⁴³ Explanatory Memorandum, page 220

⁴⁴ Explanatory Memorandum, page 223

“They are arguing, as, believe me, any particular strand in the health service will always argue, for their particular bit to be ringfenced, and therefore to be protected against any other use that could be made of it. In practice, without a ring fence, we see that there are health boards in Wales that have already gone much further in securing local discretionary services that health boards can choose to finance or not. So, in Betsi Cadwaladr, for example, we have the best smoking cessation services provided by pharmacies anywhere in Wales, and they will argue that they have done that by moving money to promote smoking cessation in pharmacies, because it is the most effective way that we have of persuading people to give up smoking. So, they’ve moved resource around in order to fund services in pharmacies, and have done so successfully. I think that that is a better model to use rather than ring-fencing small amounts of money, with all the bureaucratic costs that go with policing that.”⁴⁵

55. The Committee noted that the EM says that Public Health Wales would not incur additional costs and asked the Minister how he had reached that the conclusion. The Minister said:

“I come to that conclusion, Chair, in this way: Public Health Wales is a wholly-owned subsidiary of the Welsh Government. My priorities are its priorities, and, if this is my priority, it’s their priority as well. I was not impressed by their suggestion that I would have to find extra funding for them. They don’t carry out pharmaceutical needs assessments for a start; it’s local health boards that do that. I understand that they advise in the process. We provide them with more than £85 million a year to discharge their obligations. They will have to find this very marginal amount of money from that rather large sum.”⁴⁶

56. The Minister said there was an “extensive network of community pharmacies across Wales—over 700 of them”. He said the Bill “could lead to there being more pharmacies, but the real ambition is to get the existing system to do more” such as pharmacies providing

⁴⁵ RoP, paragraph 156, 15 July 2015

⁴⁶ RoP, paragraph 158, 15 July 2015

smoking cessation services, flu vaccination, the morning after pill, substance misuse services etc.⁴⁷

57. The Minister continued:

“...what the Bill says is, first of all, you go to the pharmacy that’s already there and you try and persuade them to provide these additional services that they’re not providing at the moment. If they’re not able or not willing to do that, then the health board would be able to secure new entrants into the system to provide services that a pharmaceutical needs assessment would have established are needed for that community.”⁴⁸

58. In relation to the financial benefits of this provision, the Minister said:

“There are only two places where we say there are cashable benefits in this part of the system, and I think we could have argued that there are more. But, if more pharmacies are providing more services locally, then people will have to travel shorter distances in order to access those services.”⁴⁹

Our view

59. The Committee is concerned that the Minister has identified financial benefits including shorter travelling time for people accessing services at pharmacies. The Committee believes that these financial benefits are insignificant and difficult to verify.

The Committee recommends that the Minister provide further details of the work carried out to estimate these benefits, and whether this was based on any previous work undertaken in this area.

⁴⁷ RoP, paragraph 165, 15 July 2015

⁴⁸ *ibid*

⁴⁹ RoP, paragraph 167, 15 July 2015

7. Costs associated with subordinate legislation

Background

60. The Bill contains a number of provisions to make subordinate legislation. However, the costs and benefits of subordinate legislation are not included within the RIA for the Bill.

61. It is difficult to ascertain the full cost and benefit of the Bill without the details of the proposed secondary legislation especially in cases where there is a substantial amount of secondary legislation.

62. The Committee recently considered the financial implications of the Regulation and Inspection of Social Care (Wales) Bill, which provided estimates for the Welsh Government costs of developing the subordinate legislation. However, this Bill does not take this approach.

Evidence from the Minister

63. The Minister said that where he considers subordinate legislation powers might result in costs and benefits, he has attached the affirmative procedure to those parts of the Bill. He said:

“That will mean that the Government will have to produce a sort of mini RIA against every one of those things, and they will have to be consulted upon. We will learn things, we believe, during Stage 1 scrutiny of the Bill, which will assist us in that.”⁵⁰

64. The Minister said he told the Health and Social Care Committee that the one area where subordinate legislation might be significant is to extend places that will be tobacco and e-cigarette free in the future, such as hospital grounds and children’s play areas. He said:

“We will produce the draft regulations before the end of Stage 1, so Members will be able to see how we intend to do that. Where those costs become more apparent as a result of Stage 1 proceedings, we will amend the explanatory memorandum after Stage 2 and we will take account of subordinate legislation costs more fully at that stage.”⁵¹

⁵⁰ RoP, paragraph 181, 15 July 2015

⁵¹ *ibid*

Our view

65. The Committee notes that the Regulation and Inspection of Social Care (Wales) Bill provided estimates developing subordinate legislation. However, for this Bill no estimates for costs associated with subordinate legislation have been provided and are unlikely to be available until the Explanatory Memorandum is revised by the end of Stage 2.

The Committee recommends that the Welsh Government 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.

Annex - Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. The transcript of the oral evidence session can be viewed in full at:

www.senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=1243

Wednesday 15 July 2015

Name	Organisation
Mark Drakeford AM	Minister for Health and Social Services
Sue Bowker	Head of Tobacco Policy Branch, Welsh Government
Chris Tudor-Smith	Public Health (Wales) Bill Senior Responsible Officer, Welsh Government