

**National Assembly for Wales**  
Bill Summary

**Public Health (Wales) Bill**

July 2015

Cynulliad  
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National  
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July 2015

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# The Public Health (Wales) Bill

## Introduction

The [\*Public Health \(Wales\) Bill\*](#) was laid before the Assembly on 8 June 2015. The Bill was introduced in plenary by the Minister for Health and Social Services, Mark Drakeford AM on 9 June 2015.

The Bill aims to address a number of specific public health concerns: tobacco and nicotine products; ‘special procedures’ (acupuncture, body piercing, electrolysis and tattooing); intimate piercing; pharmaceutical services; and provision of toilets.

The Business Committee has remitted the Bill to the Health and Social Care Committee. The Committee should report on its Stage 1 consideration of the general principles of the Bill by 27 November 2015.

The Business Committee also agreed that Stage 2 proceedings should be completed by 5 February 2016, subject to the general principles of the Bill being agreed by the Assembly.

The Health and Social Care Committee is holding a [consultation](#) on the general principles of the Bill, which closes on 4 September 2015. The Committee began taking oral evidence on 1 July 2015.

## 1. Background

### 1.1. *Legislative competence*

The Explanatory Memorandum (EM) states (in section 2) that the subject of the Bill falls within the list of subjects in Part 1 of Schedule 7 of the *Government of Wales Act 2006* and is therefore within the competence of the Assembly. The EM lists the relevant subjects in Schedule 7 as:

**Subject 9 ‘Health and Health Services’:**

“Promotion of health. Prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder. Control of disease. Family planning. Provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities. Clinical governance and standards of health care. Organisation and funding of national health service.”

**Subject 12 ‘Local Government’:**

“...Powers and duties of local authorities and their members and officers...”

**Subject 15 ‘Social Welfare’:**

“...Protection and well-being of children (including adoption and fostering) and of young adults...”

The EM also states that Part 2 of the Bill contains provisions which remove pre-commencement functions of a Minister of the Crown and which therefore require the consent of the Secretary of State under Part 3 of Schedule 7 to the *Government of Wales Act 2006*. At the time the Bill was introduced discussions with the UK Government were ongoing with a view to obtaining that consent. The EM states that the Welsh Government anticipates that discussions on consent issues will be concluded during Stage 1 scrutiny of the Bill.

The Presiding Officer (PO) wrote to the Constitutional and Legislative Affairs Committee on 23 June 2015<sup>1</sup> stating that, in her view the Bill is mostly within competence, but that there is a need for the consent of the Secretary of State to provisions relating to levels of fines in sections 4(7), 5(6) and 11(7) and paragraphs 6 and 9 of Schedule 1, as highlighted in the EM. Since consent had not been obtained at that time, these parts of the Bill would not, in her view, be within competence. She also expressed concern about possible human rights issues regarding the provision in Part 2, Chapter 1 of the Bill for banning smoking in a workplace which is also a dwelling, i.e. a person’s home. Although the PO was of the view that the Bill strikes a reasonable balance between the competing human rights of smokers and employees, she emphasised the importance of careful consideration of the issue by the Assembly.

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<sup>1</sup> Provided as a paper to note at Committee meeting 6 July 2015  
<http://abms/mgChooseDocPack.aspx?ID=2704>



## *1.2. Policy Objectives of the Bill*

The Bill aims to take forward some of the Welsh Government's public health policies, including:

- promoting the continuing decline in the uptake of smoking by children and young people and the de-normalisation of smoking;
- ensuring that 'special procedures' (acupuncture, body piercing, electrolysis and tattooing) are better regulated;
- protecting children and young people from the potential health harms of intimate piercing;
- improving the planning and delivery of pharmaceutical services and strengthening their public health role, and;
- improving the planning of public toilet provision.

## *1.3. Bill Development*

The Bill was preceded by a Welsh Government [Green Paper](#) on public health published in 2012. A [White Paper](#) followed in April 2014 which presented a series of proposals for primary and secondary legislation. It sought to address priority public health issues such as the effects of tobacco, alcohol misuse and obesity. The proposals were grouped under three key themes:

1. **Improving health over the life course**, through the introduction of a national tobacco retailers' register, restricting the use of e-cigarettes in public places, introducing a Minimum Unit Price for alcohol, and developing nutritional standards for certain settings. It also asked for early views about legislation on smoke-free outdoor spaces and internet sales of tobacco.
2. **Building community assets for health**, through proposals to strengthen the role of Local Health Boards in planning public health services provided by community pharmacies, and improving access to toilets for public use.
3. **Regulation for health**, through a proposal to introduce a National Special Procedures Register to regulate standards for activities such as cosmetic piercing and tattooing.

In the White Paper the Welsh Government set out its strategy for public health legislation which comprises two distinct approaches:

- an overarching approach to legislation requiring public bodies to address health across their functions, reflected in the *Well-being of Future Generations (Wales) Act 2015*, and
- targeted legislation to address specific public health concerns through a Public Health Bill.

Some of the Welsh Government's public health priorities, such as tackling obesity and physical inactivity, are being taken forward in secondary legislation and are not included in the Public Health Bill. The Welsh Government proposals on minimum unit pricing for alcohol are also absent from the Bill due to the current case against the Scottish Government in the European Court and are instead the subject of a Welsh Government [Draft Public Health \(Minimum Price for Alcohol\) Bill](#) which was published for consultation on 14 July 2015.

The Bill sets out a series of specific proposals in discrete areas of public health policy:

- Part 2 of the Bill deals with **tobacco and nicotine products** and includes a number of elements: restricting the use of nicotine inhaling devices such as e-cigarettes in public places; creating a national register of retailers of tobacco and nicotine products; adding to the offences which contribute to a Restricted Premises Order (RPO), and; prohibiting the handing over of tobacco/nicotine products to people under the age of 18.
- Part 3 creates a mandatory licensing scheme for practitioners and businesses carrying out '**special procedures**', namely acupuncture, body piercing, electrolysis and tattooing.
- Part 4 introduces a ban on the **intimate piercing** of people under 16 years old.
- Part 5 of the Bill changes the way Health Boards make decisions about **pharmaceutical services** so that these are based on assessments of pharmaceutical need in their areas.
- Part 6 requires local authorities to prepare local toilet strategies based on the needs of their communities for the provision of, and access to, **toilets for public use**.

## 2. The Public Health (Wales) Bill: summary of provisions

The Bill comprises seven parts, 102 sections and four schedules.

### *Part 1: Overview*

Part 1 provides an overview of the provisions in the Bill.

### *Part 2: Tobacco and Nicotine Products*

#### **Chapter 1 Smoking and use of nicotine inhaling devices**

The Bill aims to promote the continuing decline in the uptake of smoking by children and young people and ensure the de-normalisation of smoking is maintained. The Bill will restrict the use of nicotine inhaling devices, such as electronic cigarettes, in enclosed and substantially enclosed public and work places and bring the use of these devices into line with existing provisions on smoking.

Chapter 1, Part 1 of the *Health Act 2006*, in relation to Wales, will be re-stated and extended so that the smoke-free requirements will apply to the use of e-cigarettes in addition to tobacco products. It will therefore be an offence to use an e-cigarette in a smoke-free place and to fail to prevent the use of an e-cigarette in a smoke-free place.

A person found guilty of smoking tobacco or using an e-cigarette in smoke-free premises or a smoke-free vehicle is liable for a fine, up to and including, level 1 (£200) on the standard scale. A person (for example, a person managing the premises) found guilty of failing to take reasonable steps to prevent smoking or the use of an e-cigarette in a smoke-free premises will be liable for a fine, up to and including, level 4 (£2,500) on the standard scale.

The Bill restricts the use of e-cigarettes in any part of a person's private dwelling during the hours that part is being used as a work-place. This is even if that part of the dwelling is not solely used as a work-place.

Provisions on smoke-free vehicles and any additional smoke-free premises, including non-enclosed spaces, will be set out in Regulations. If such subordinate legislation is brought forward, in each case Assembly Members will have to decide whether e-cigarettes would be included within such measures.

A person who occupies or is managing premises must ensure signs are displayed in those premises which inform that they are smoke-free premises. A person found guilty of failing to comply will be liable for a fine, up to and including, level 3 (£1,000) on the standard scale.

Through Regulations, enforcement authorities will be designated to enforce the provisions of Part 2 Chapter 1 and authorised officers will be appointed by the enforcement authority. An authorised officer is given powers of entry to premises (or a vehicle) in Wales if it is believed that an offence has or may be being committed. Authorised officers may not enter premises by force, or premises used wholly or mainly as a dwelling unless they are provided with a signed warrant by a justice of the peace. Authorised officers are also given powers of inspection on entering premises and any person who intentionally obstructs an authorised officer will be committing an offence and, if found guilty, will be liable for a fine, up to and including, level 3 (£1,000) on the standard scale.

Authorised officers will be able to issue fixed penalty notices for certain offences. This fixed penalty notice allows the person who committed the offence to avoid conviction for the offence by paying a fixed penalty. The amount of penalty will be specified in Regulations. However, on receipt of a fixed penalty notice the person who committed the offence can ask to be tried for the alleged offence rather than paying the penalty notice.

## **Chapter 2 Retailers of tobacco and nicotine products and Chapter 3 Prohibition on sale of tobacco and nicotine products**

The Bill aims to reinforce the importance of protecting under 18s from tobacco and nicotine products, and reducing the risk of under 18s from accessing these products. The Bill includes provisions to establish a national register of retailers of tobacco and nicotine products and includes provisions to enhance the Restricted Premises Order (RPO) regime. The register will enable local authorities to enforce the tobacco and nicotine legislation, for example relating to age of sale and display of tobacco products.

All retailers who sell either tobacco products or nicotine products in Wales will have to register with a Registration Authority in order to be permitted to sell these products. The Registration Authority will be specified in Regulations (which could be, for example, a local authority or other body) to manage the national register for the whole of Wales.

One application form will be submitted per person to cover all of their premises where these products are sold and a proportionate payment<sup>2</sup> will accompany the application form, which will contribute to the overall administration costs of the register. A duty is placed on the registered person to inform the Registration Authority of any changes in circumstances to ensure the register is kept current.

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<sup>2</sup> The fee for retailers to register will be £30 for the first premise and £10 for each additional premise.

The Registration Authority must grant an application unless a premise or person has a Restricted Premises Order (RPO) or a Restricted Sales Order (RSO)<sup>3</sup>. A premise will not be included on the register until such time as the RPO or RSO has expired. The Bill provides Welsh Ministers with powers to include other tobacco offences towards a RPO, as long as it is at least a level 4 penalty and that it is an offence that relates to the supply, sale, transport, display, offer for sale, advertising or possession of tobacco and nicotine products.

It will be an offence for premises in Wales to sell tobacco or nicotine products if they are not on the national register and if a person fails to notify the Registration Authority of changes in their circumstances. A person found guilty of an offence will be liable for a fine up to and including level 2 (£500) on the standard scale.

Offences will be enforced by local authorities. Local authority officers are given powers of entry to premises in Wales if it is believed that an offence has or may be being committed. Authorised officers may not enter premises by force, or for premises used wholly or mainly as a dwelling unless they are provided with a signed warrant by a justice of the peace. Authorised officers are also given powers of inspection on entering premises and any person who intentionally obstructs an authorised officer will be committing an offence and, if found guilty, will be liable for a fine, up to and including, level 3 (£1,000) on the standard scale.

When an authorised officer believes an offence has been committed (other than the offence of obstructing an authorised officer) they can give that person a fixed penalty notice for that offence.

The Registration Authority must publish a list which sets out the name of each registered person and their premises. The register will be used to disseminate information and guidance to retailers.

#### **Chapter 4 Handing over tobacco etc. to persons under 18**

The Bill aims to reduce the risk of young people under the age of 18 from accessing tobacco and nicotine products through remote sales i.e. through internet or phone sales.

It will be an offence for a person to knowingly hand over tobacco and/or nicotine products to a person under the age of 18, who is unaccompanied by an adult. An offence would only occur if the delivery person is aware that they are handing over tobacco and/or nicotine products to someone under the age of 18. For example, delivering a fully enclosed and addressed package would not be covered

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<sup>3</sup> A RPO or RSO can be placed on a premise that has persistently sold tobacco to under 18s. An RPO prohibits all sales of tobacco products from the premises for up to one year. A RSO prohibits a person from selling any tobacco products or having any management functions in products to any person for up to one year.

by the offence. It is the responsibility of the person handing over tobacco or nicotine products to visually assess if the person is over the age of 18, and verify age where appropriate. A person found guilty of an offence will be liable for a fine, up to and including, level 4 (£2,500) on the standard scale.

### *Part 3: Special Procedures*

Special procedures, as described in the Bill, include acupuncture, body piercing, electrolysis and tattooing. The purpose of the proposals is to ensure that where special procedures are carried out in Wales, they are done so in a manner which is not potentially harmful to health. The Bill aims to drive up standards in relation to the performance of special procedures, and ensure an improved and consistent approach to the regulation of these procedures across Wales.

The Bill will create a mandatory licensing scheme for practitioners and businesses carrying out special procedures in Wales. It will be an offence for a practitioner to carry out any special procedures without a licence or to perform any procedures from premises or vehicles that are not approved.

Practitioners will also be required to provide pre and post-procedure consultations to ensure that people are fully aware of the risks associated with the procedure and how to self-administer any required aftercare.

Local authorities will be responsible for enforcing the licensing requirements and for keeping a public register current.

Licensing criteria and mandatory licensing conditions will be set through Regulations, to ensure that standards of practice and enforcement of special procedures are consistent throughout Wales.

The procedure for applying for a special procedure licence, including the process for varying, reviewing or revoking a licence is provided for in Schedule 3 of the Bill.

The Bill does provide for some exemptions. For example members of a specific profession, such as doctors, will not be required to have a licence to practice special procedures, unless Regulations provide otherwise.

In order to ensure the legislation remains up to date as new types of procedures are developed the Bill includes provision to amend the list of special procedures. This will be done via secondary legislation, subject to the affirmative procedure.

## *Part 4: Intimate Piercing*

The primary purpose of these provisions in the Bill is to protect children and young people from the potential health harms from an intimate piercing, and to avoid circumstances where children and young people are placed in a potentially vulnerable situation.

The Bill defines an intimate piercing as the perforation of the skin or mucous membrane of the anus, breast (including the nipple and areola), buttock, natal cleft, penis (including the foreskin), perineum, pubic mound, scrotum or vulva.

Under the Bill, it will be an offence for someone to perform, or make arrangements to perform, an intimate piercing on a person who is under the age of 16. This means that even if a young person had not undergone an intimate piercing the making of arrangements for the procedure would be classed as an offence.

The Bill does provide for a 'due diligence' defence for a person who offers to perform or performs the intimate piercing if they have taken reasonable steps to ensure that the person requesting an intimate piercing was aged 16 or over, such as checking their age.

The fact that a person under the age of 16 may have given their consent, or that a parent or guardian may have consented on their behalf, will not be a defence.

Local authorities will have a duty to undertake enforcement action in relation to the provisions, including bringing forward prosecutions, investigating complaints and taking other steps. These steps may involve communicating with, and educating, body piercing practitioners, or undertaking 'test purchasing' inspections to assess compliance.

In undertaking enforcement action, a local authority must consult with the police as it considers appropriate.

## *Part 5: Pharmaceutical Services*

The Bill aims to improve the planning and delivery of pharmaceutical services, and strengthen the role of community pharmacy in promoting and protecting public health. It seeks to encourage pharmacies to adapt and expand their services, beyond their traditional dispensing role, in response to local needs.

The Bill will require Health Boards to prepare and publish 'pharmaceutical needs assessments' for their areas. These assessments must be kept under review.

Provision about timescales, the circumstances in which a Health Board should review/revise its assessment, and the way in which assessments should be published, will be set out in Regulations. Other provisions about the carrying out of assessments including their contents, the extent to which they should take

account of future needs/other matters, consultation, and procedural requirements may be made in Regulations.

The Bill amends the current 'control of entry' test so that decisions on applications to join a Health Board's pharmaceutical list will be based on whether the application meets the need(s) identified in the local pharmaceutical needs assessment. Regulations may make provision about the procedure Health Boards must follow when dealing with applications and the matters which they must take into account.

Where a Health Board does not receive applications to provide required pharmaceutical services (as identified in its pharmaceutical needs assessment), it will be able to invite applications for inclusion on its pharmaceutical list.

Under the Bill, Health Boards will also be able to remove pharmacists from their lists following serious and/or persistent breaches of terms and conditions of service.

### *Part 6: Provision of Toilets*

The Bill aims to improve planning of provision of toilets available for use by the public by ensuring local authorities assess the needs of their communities in relation to toilets, and then take a strategic and transparent approach to meeting those needs.

Each local authority in Wales will be required to prepare and publish a local toilets strategy for its area. This must include an assessment of their community's need for toilets (including changing facilities for babies and changing places facilities for disabled people), and must set out how the local authority proposes to meet this need.

Local authorities will be required to consult with interested parties on their draft strategies. Strategies must be reviewed, at least once each local government term.

The Welsh Government may issue guidance to local authorities about the preparation, review or publication of strategies, which local authorities must have regard to.

The duty to prepare a local toilets strategy will not in itself require local authorities directly to provide and maintain public toilets. It is envisaged that local authorities will consider a 'full range of options' for making facilities available to the public.



### 3. Financial Implications of the Bill

The Regulatory Impact Assessment (RIA) presents the options considered for each aspect of part of the Bill, along with the costs and benefits of each option and an assessment of how far it meets the Bill's aims.

#### Estimated additional costs and benefits of the preferred option

Table 1 provides a summary of the additional costs and benefits resulting from the legislation, which can be identified broken down by who the costs fall upon. In terms of benefits, a total figure is not provided in the RIA. However, where it has been possible to calculate benefits, the Welsh Government has done so, including those resulting from changes to how pharmaceutical services are delivered. Further details of the main estimated costs and benefits of each part of the Bill are set out below the table.

**Table 1: Additional costs and benefits of preferred option for each stakeholder between 2016-17 to 2020-21 (in £)**

Total costs to stakeholders	2016-17	2017-18	2018-19	2019-20	2020-21	Total
Welsh Government	430,800	23,800	-33,700	-25,500	-33,700	361,700
Local Authorities	288,500	642,100	309,700	296,200	273,700	1,810,200
Local Health Boards	0	205,100	359,800	359,800	359,800	1,284,500
Public and work places	3,704,700	1,294,400	501,000	498,500	498,500	6,497,100
E-cigarette industry	269,600	269,600	269,600	269,600	269,600	1,348,000
Tobacco retailers	80,300	248,000	13,100	52,300	13,100	406,800
Members of the public	5,100	6,000	-3,118,600	-3,122,200	-3,122,200	-9,351,900
Tattoo and piercing practitioners/businesses	46,600	430,100	80,000	81,100	306,800	944,600
Unregistered tattoo and piercing practitioners	0	10,000	9,000	8,100	7,300	34,400
Pharmacy contractors	0	0	73,500	73,500	73,500	220,500
<b>Total additional cost of Bill</b>	<b>4,825,600</b>	<b>3,129,100</b>	<b>-1,536,600</b>	<b>-1,508,600</b>	<b>-1,353,600</b>	<b>3,555,900</b>

Source: Research Service calculations from National Assembly for Wales, [Explanatory Memorandum – Public Health \(Wales\) Bill – slightly different to the figures in the summary tables on pages 301-303 in Annex B to the RIA.](#)

#### 3.1. Summary of overall costs and benefits

It can be seen from table 1 that the Bill will have a financial impact on a number of organisations and stakeholders. Taking into account both costs and benefits, the **net additional costs** of the Bill to different 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.

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.

Table 2 provides a more detailed breakdown of the costs to each organisation for each part of the Bill.

**Table 2: Additional costs and benefits of preferred option for each part of the Bill for each stakeholder between 2016-17 to 2020-21 (in £)**

Costs	2016-17	2017-18	2018-19	2019-20	2020-21	Total
<b>Restrictions on use of tobacco and e-cigarettes</b>						
Welsh Government	300,000	0	0	0	0	300,000
Local Authorities	19,300	-1,500	-1,900	-900	-2,700	12,300
Public and work places	3,704,700	1,294,400	501,000	498,500	498,500	6,497,100
E-cigarette industry	269,600	269,600	269,600	269,600	269,600	1,348,000
Members of the public	5,100	6,000	6,200	2,600	2,600	22,500
<b>Total costs for restrictions on use of tobacco and e-cigarettes</b>	<b>4,298,700</b>	<b>1,568,500</b>	<b>774,900</b>	<b>769,800</b>	<b>768,000</b>	<b>8,179,900</b>
<b>Register of retailers of tobacco and nicotine products</b>						
Welsh Government	26,500	8,700	0	0	0	35,200
Local Authorities	6,500	-116,800	15,000	16,400	15,000	-63,900
Tobacco retailers	0	246,000	11,100	11,100	11,100	279,300
<b>Total costs for register of retailers of tobacco and nicotine products</b>	<b>33,000</b>	<b>137,900</b>	<b>26,100</b>	<b>27,500</b>	<b>26,100</b>	<b>250,600</b>
<b>Handing over tobacco to under 18s</b>						
Welsh Government	15,900	0	0	1,400	0	17,300
Local Authorities	125,700	72,000	72,000	72,000	72,000	413,700
Tobacco retailers	80,300	2,000	2,000	41,200	2,000	127,500
<b>Total costs of handing over tobacco to under 18s</b>	<b>221,900</b>	<b>74,000</b>	<b>74,000</b>	<b>114,600</b>	<b>74,000</b>	<b>558,500</b>
<b>Special procedures</b>						
Welsh Government	61,500	-2,500	-2,500	3,100	-2,500	57,100
Local Authorities	61,000	234,000	178,400	162,500	143,200	779,100
Tattoo and piercing practitioners/businesses	0	387,700	37,600	36,600	264,400	726,300
Unregistered practitioners	0	10,000	9,000	8,100	7,300	34,400
<b>Total cost of special procedures</b>	<b>122,500</b>	<b>629,200</b>	<b>222,500</b>	<b>210,300</b>	<b>412,400</b>	<b>1,596,900</b>
<b>Prohibiting intimate piercing for under 16s</b>						
Welsh Government	18,500	0	0	1,200	0	19,700
Local Authorities	76,000	76,000	38,000	38,000	38,000	266,000
Tattoo and piercing practitioners/businesses	46,600	42,400	42,400	44,500	42,400	218,300
<b>Total costs of prohibiting intimate piercing for under 16s</b>	<b>141,100</b>	<b>118,400</b>	<b>80,400</b>	<b>83,700</b>	<b>80,400</b>	<b>504,000</b>
<b>Changes to delivery of pharmaceutical services</b>						
Welsh Government	0	17,600	-31,200	-31,200	-31,200	-76,000
Local Health Boards	0	205,100	359,800	359,800	359,800	1,284,500
Contractors	0	0	73,500	73,500	73,500	220,500
Health and travel time benefits to members of the public	0	0	-3,124,800	-3,124,800	-3,124,800	-9,374,400
<b>Total costs of changes to delivery of pharmaceutical services</b>	<b>0</b>	<b>222,700</b>	<b>-2,722,700</b>	<b>-2,722,700</b>	<b>-2,722,700</b>	<b>-7,945,400</b>
<b>Strategy of provision of toilets</b>						
Welsh Government	8,400	0	0	0	0	8,400
Local Authorities	0	378,400	8,200	8,200	8,200	403,000
<b>Total costs of strategy for provision of toilets</b>	<b>8,400</b>	<b>378,400</b>	<b>8,200</b>	<b>8,200</b>	<b>8,200</b>	<b>411,400</b>
<b>Total additional cost of the Bill</b>	<b>4,825,600</b>	<b>3,129,100</b>	<b>-1,536,600</b>	<b>-1,508,600</b>	<b>-1,353,600</b>	<b>3,555,900</b>

Source: Research Service calculations from National Assembly for Wales, [Explanatory Memorandum – Public Health \(Wales\) Bill – slightly different to the figures in the summary tables on pages 301-303 in Annex B to the RIA.](#)

### *3.2. Proposals in relation to restrictions on use of tobacco and e-cigarette products in public places*

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.

**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 smokers of e-cigarettes being required to take smoking breaks. 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.

Pages 119 to 130 of the RIA discuss the potential benefits to local authorities and public and work places of this element of the Bill.

### *3.3. Creating a register for retailers of tobacco and nicotine products*

This element of the Bill creates a national register which retailers of tobacco and nicotine products are required to sign up to. **Additional costs set out in the RIA are relatively modest, at £265,000 between 2016-17 and 2020-21 once savings have been taken into account.** Retailers will face additional costs of just under £295,000 over this period, while local authorities will see savings of around £64,000 as a result of fee revenues covering the additional administrative costs of the scheme. However, enforcement costs for local authorities are not estimated in the RIA. The Welsh Government will also see small additional costs of around £35,000 for developing the register, communications and publicity.

### *3.4. Prohibiting the handing over of tobacco to under-18s*

Overall, this section of the Bill **is estimated to have just under £560,000 additional costs between 2016-17 and 2020-21.** The majority of these costs will fall on local authorities, who will incur additional costs of just under £415,000, mainly for test purchases by trading standards departments and for staff costs. In addition, retailers will incur costs of around £130,000 to develop terms and conditions and policies on the delivery of tobacco products, and the Welsh Government will incur additional costs of £17,000 for training and guidance.

### *3.5. Introducing a licensing system for special procedures*

The Bill will create a licensing system for the practice of four special procedures. These are acupuncture, body piercing, electrolysis and tattooing.

This element of the Bill has **the second largest amount of additional costs of the different parts of the Bill, 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).

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.

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.

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.

### *3.6. Prohibiting intimate piercing for under 16s*

**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.

### *3.7. Pharmaceutical services*

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. **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 believes 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.

The additional costs to 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.

The health benefits have been calculated based on an estimate that there will be a 20% increase in pharmaceutical service provision. To give a conservative estimate of the potential benefits of this, the RIA quantifies the benefits of stop smoking services located in pharmacies on pages 212 to 216. Based on a 20% increase in service provision from 2018-19, it is estimated that **there will be an estimated benefit of £2.7 million per year from 2018-19 to 2020-21, a total benefit of £8.1 million over this period.**

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.**

### *3.8. Developing a strategy for the provision of public toilets*

Each of the local authorities will be required to produce a strategy for the provision of public toilets under this part of the Bill. There are no requirements to actually provide toilets contained in the Bill. Welsh Government funding for improving public access to toilet facilities will remain at £200,000 under this option. There will be **additional costs of just over £410,000 from this element of the Bill, of which just over £400,000 will fall upon local authorities.** Local authorities will 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 public toilets. In addition, the Welsh Government will incur a small amount of additional costs from producing and reviewing guidance.

#### 4. Response to the Bill

The Bill was introduced in [plenary](#) by the Minister for Health and Social Services, Mark Drakeford AM, on 9 June 2015. The following issues were raised by Members.

In his introduction the **Minister** stated that two issues covered in the public health Green Paper are not included in the Bill: minimum unit pricing for alcohol which, due to the current case against the Scottish Government in the European Court, will be the subject of a Welsh Government draft Bill to be published before the summer recess, (which has subsequently been published) and the introduction of nutritional standards in pre-school settings and care homes which will be implemented by other means such as secondary legislation.

**Andrew RT Davies**, Leader of the Welsh Conservatives, welcomed the requirement on local authorities to produce strategies on the provision of toilet facilities in their areas but wanted to know how this would result in better provision. He also welcomed the community pharmacy elements of the Bill but questioned how they would enable Health Boards and others to commission pharmacy services which contribute to better public health. He questioned the need for potentially burdensome new regulation of tattooists and suggested that strengthening the regulatory role of professional bodies may offer a better alternative. He expressed opposition to the proposal to ban the use of e-cigarettes in public places believing they have a role to play in reducing tobacco use and sought clarification from the Minister on any plans to extend the ban to open spaces in the future.

The **Minister** said that the development of the local authority strategies on toilet facilities will include consideration of how to make maximum use of existing facilities which are already paid for with public funds such as those in sports and leisure centres. He said that the new pharmaceutical needs assessments will allow Health Boards to encourage new pharmacies to provide the broader range of public health related services. The Minister confirmed that he intends to bring forward Regulations under the Bill, should it be passed, to extend the smoking ban to hospital grounds, playing fields and children's playgrounds.

**John Griffiths** asked the Minister whether the proposed special procedures register would prevent a repeat of the recent hygiene incidents at a piercing and tattoo studio in Newport, and whether the Bill is future-proofed against changing fashions in body piercing and similar procedures.

The **Minister** replied that both practitioners and premises concerned with special procedures will be required to be licensed. The special procedures register will be publicly accessible and the Bill is future-proofed by the inclusion of regulation

making powers to allow Ministers to add other special procedures to the register. Additional procedures might, for example, include tattoo removal.

**Elin Jones** asked the Minister why he is proposing to place a duty on local authorities to produce a strategy on public toilet provision rather than a duty to provide toilet facilities themselves. She was concerned that such provision is hampered by a lack of resources.

She questioned the value of banning e-cigarettes given the view of ASH, Cancer Research and the Royal College of Physicians that they help to reduce tobacco smoking, and she hoped the Minister would keep an open mind on the issue to avoid undermining a consensus in support of the remaining provisions in the Bill. She wished to know why the Bill is not being used as a means to reduce the consumption of sugary drinks, an issue highlighted by the World Health Organisation.

The **Minister** stated that he did not believe it would be right to impose duties around toilet provision on local authorities without being able to provide the additional resources they would need to implement it. The publication of a strategy would sharpen local authority performance and improve accountability to local electorates. In the absence of firm evidence on the effects of e-cigarettes he believed it is better to adopt the precautionary principle and ban it in public places now. He clarified that the Assembly does not have the legislative powers to adopt a similar approach in the case of sugar but that restrictions on place of sale is an approach worth exploring.

**Kirsty Williams** was not convinced that acupuncture, semi-permanent skin colouring and electrolysis presented the same health risks as other procedures in the proposed special procedures register. She wished to know the scale of the problem of community pharmacies not providing enhanced services. She welcomed the proposals on public toilets but wished to know how they will improve provision. She was critical of the provisions in the Bill to ban e-cigarettes and cited evidence that such a ban may result in a reversal of the decline in tobacco use.

The **Minister** said that the four types of special procedures identified in the Bill all involved skin piercing and all therefore have potential health risks if not done properly. The Bill would strengthen the powers available to local authorities to regulate these procedures. He said there is a wide diversity of public health provision amongst community pharmacies and a pharmaceutical needs assessment would enable Health Boards to identify gaps in provision. He said that there is nothing in the Bill preventing the use of e-cigarettes to reduce tobacco consumption.

**Keith Davies** welcomed the provisions in the Bill to prevent the handing of tobacco products to people under 18 years.

**Mark Isherwood** asked why there is little mention in the Bill of vaccination, given the need to increase uptake. He was critical of the proposal to ban e-cigarettes.

The Minister acknowledged that vaccination is a very important public health measure but said he has no plans to make it compulsory.

**Alun Davies** suggested that the issue of competence to introduce a sugar tax could be raised with the UK Government. He agreed with the Minister's position on e-cigarettes and believed smoking should be removed entirely from the public domain, as Finland is aiming to do. He asked the Minister for further details about the tobacco retailers register.

The **Minister** confirmed the tobacco retailers register will be mandatory, enforcement costs will be met in part by the registration charge and e-cigarette retailers will be included. He said the register will consolidate a disparate system, making tobacco law enforcement easier.