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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Smoke-free Premises and Vehicles (Wales) Regulations 2018

Consultation on draft Regulations

Date of issue: 25 May 2018

Action required: Responses by 17 August 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This consultation seeks views on the draft Smoke-free Premises and Vehicles (Wales) Regulations 2018 and their expected regulatory impact.

How to respond

The closing date for responses is midnight on 17 August 2018.

Responses can be submitted using the online form.

Alternatively, a response form is provided at Annex A which can be returned by email to:

Tobaccopolicy@gov.wales

Or by post to:

Risk Behaviours (Tobacco, Alcohol and Gambling)
Public Health Division
4th Floor, East
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

The consultation document can be accessed from the Welsh Government website at:

<https://beta.gov.wales/consultations>

Contact details

For further information:

Risk Behaviours (Tobacco, Alcohol and Gambling)
Public Health Division
4th Floor, East
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

General Data Protection Regulations

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data holds about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:

Welsh Government

Cathays Park

CARDIFF

CF10 3NQ

Email:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Tel: 01625 545 745 or

0303 123 1113

Website: www.ico.gov.uk

The Smoke-free Premises and Vehicles (Wales) Regulations 2018

Consultation on draft Regulations

Contents

Ministerial Foreword

	Page
1. Introduction	6
2. Where we are now	7
3. What are the main changes?	9
4. What will stay the same?	15
5. Consultation questions	17
6. Next steps	21
Annex A - Response form	22

Ministerial Foreword

I am pleased to launch this consultation document which sets out the detail of the draft Smoke-free Premises and Vehicles (Wales) Regulations 2018.

These Regulations will implement Chapter 1 of Part 3 of the Public Health (Wales) Act 2017 and will replace the Smoke-free Premises etc. (Wales) Regulations 2007 which prohibit smoking in enclosed public places and work places. They will also replace subsequent amendments to the 2007 Regulations concerning smoking in private vehicles.

Using powers in the Public Health (Wales) Act 2017, the Regulations will also extend the smoking ban to outdoor areas of hospital grounds, school grounds, and local authority playgrounds. Voluntary smoking bans are already in place in many of these settings but despite best efforts enforcement has been difficult.

The consultation considers the removal of an exemption that allows designation of a room in which patients and residents of mental health units may smoke and replacing it with a time limited one that would expire 18 months after the new regulations come into force. Smoking prevalence among people with mental illness is substantially higher than the general population and is of great concern. Removing the exemption will bring the law in line with general hospital service users and will aim to address health inequalities for persons with mental health conditions.

The consultation also considers the removal of an exemption that permits the designation of bedrooms where smoking is allowed in hotels, guesthouses, hostels, inns and members' clubs and replacing it with a time limited one that would expire 12 months after the new regulations come into force. The smoking ban is embedded in Wales to the extent that the current exemption is not widely used. Removing this designation would extend the workplace protection from the health harms of second-hand smoke to all workers in such premises and support the Welsh Government's ultimate aim of a smoke-free society. Reducing the health impacts of smoking is a recognised policy priority for the Welsh Government. Smoking remains one of the main causes of inequalities in health in Wales with smoking rates in the most deprived areas over double those of the least deprived areas. Smoking causes around 5,450 deaths each year in Wales, and costs the Welsh NHS an estimated £302 million per year.

These Regulations complement the measures set out in our Tobacco Control Delivery Plan for Wales 2017-2020 to improve health and well-being in Wales, and to provide a greater emphasis on prevention in line with our national strategy Prosperity for All.

I look forward to receiving responses from as many people as possible.

Vaughan Gething AM

Cabinet Secretary for Health and Social Services

Chapter 1: Introduction

1. The purpose of this consultation is to seek views on the draft Smoke-free Premises and Vehicles (Wales) Regulations 2018 (“the 2018 Regulations”) and their expected regulatory impact. These are set out in the draft Regulatory Impact Assessment (RIA) published alongside this consultation document.
2. It is intended that the 2018 Regulations will implement Chapter 1 of Part 3 of the Public Health (Wales) Act 2017¹ (“the 2017 Act”) in relation to smoking. The 2018 Regulations will also replace the Smoke-free Premises etc. (Wales) Regulations 2007² (“the 2007 Regulations”) which came into force on 2 April 2007 and were amended in 2015³ in relation to smoking in private vehicles carrying persons aged under 18, and in 2016⁴ in relation to smoking in prisons.
3. The Welsh Government is inviting responses to the consultation questions. A response form is provided at the end of this document.

¹ Chapter 1 of Part 3 The Public Health (Wales) Act 2017
<http://www.legislation.gov.uk/anaw/2017/2/part/3/chapter/1/enacted>

² The Smoke-free Premises etc. (Wales) Regulations 2007
<http://www.legislation.gov.uk/wsi/2007/787/contents/made>

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

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

Chapter 2: Where we are now

1. Chapter 1 of the 2017 Act restates certain provisions relating to smoking in Section 1 of the Health Act 2006⁵, so far as it relates to Wales. The Health Act 2006 made enclosed and substantially enclosed workplaces and public places smoke-free and gave powers to national authorities to make limited exemptions to the smoke-free requirements and provide for smoke-free vehicles and additional smoke-free places. These were set out in the 2007 Regulations. The 2017 Act extends the smoke-free provisions in Wales to include certain non-enclosed or substantially enclosed premises, being hospital grounds, public playgrounds, school grounds and outdoor care settings for children.
2. The 2017 Act provides powers to specify in regulations, for the purpose of the smoke-free provisions in Wales:
 - the meaning of ‘enclosed’, ‘substantially enclosed’ and ‘not enclosed or substantially enclosed’;
 - any additional smoke-free premises;
 - any exemptions to smoke-free premises;
 - the provisions on designated areas in hospital and relevant school grounds which are not smoke-free;
 - a duty to prevent smoking in smoke-free hospital grounds, school grounds, public playgrounds, additional smoke-free premises and smoke-free vehicles;
 - the requirements for smoke-free vehicles;
 - the requirements for signs in smoke-free premises and vehicles;
 - the designation of the chief officer of police for a police area as an authorised officer in relation to private vehicles; and,
 - the form and content of the penalty notice form and the amount of the penalty.
3. In line with the Statement of Policy Intent for Subordinate Legislation to the 2017 Act⁶, there is no current intention to place a duty on managers of hospital grounds, school grounds and public playgrounds to prevent smoking there due to their extensive and dispersed nature. Compliance with the smoking ban in those premises will be monitored, with a review four years after the regulations come into force to assess their effectiveness.

⁵ The Health Act 2006 <http://www.legislation.gov.uk/ukpga/2006/28/part/1/chapter/1>

⁶ Public Health (Wales) Bill Statement of Policy Intent for Subordinate Legislation. November 2016. Welsh Government. <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=16155>

4. The power to make additional premises smoke-free allows for flexibility to make regulations on additional non-enclosed places in the future if Welsh Ministers are satisfied that doing so is likely to contribute to the promotion of the health of the people of Wales. Whilst there are no proposals for additional smoke-free premises in these 2018 Regulations, we welcome your views on the types of premises that could be considered in future consultations on moving towards the ambition of a smoke-free Wales (see Question 24).

Chapter 3: What are the main changes?

1. The main proposed changes to the current regulatory regime on smoke-free premises are as follows. This includes changes to the existing smoking ban established by the 2007 Regulations and the new elements needed to implement the provisions on smoke-free hospital grounds, school grounds and public playgrounds in the 2017 Act. Once finalised, the 2018 Regulations will be supported by guidance to aid implementation by managers of smoke-free premises and vehicles; and enforcement of the requirements by authorised officers.

Definition of substantially enclosed and not enclosed or substantially enclosed

2. The 2018 draft Regulations would amend the meaning of 'substantially enclosed' that was established by the 2007 Regulations. The amendment intends to address the current confusion as to whether structures which do not form part of the premises but which serve the purpose of walls, and therefore form part of the perimeter of the premises, should be considered when assessing whether the premises is 'enclosed' or 'substantially enclosed'. Regulation 3(2) makes clear that other structures that form part of the perimeter of the premises should be included when making such a consideration.
3. Regulation 3(5) makes clear the meaning of 'not enclosed or substantially enclosed' for the purpose of the smoke-free requirements. This is simply that a premises is not enclosed or substantially enclosed if it does not fit within the meanings of 'enclosed' at Regulation 3(1) or 'substantially enclosed' at Regulation 3(2).

Exemptions

Dwellings

4. The 2007 Regulations provide that dwellings that are workplaces are only smoke-free in those parts that are used solely for work and that those parts should be smoke-free all of the time in accordance with the 2006 Act. The 2017 Act provides that dwellings that are workplaces are smoke-free only in those parts that are used as a workplace and only for the duration that they are so used. The 2018 Regulations go on to exempt dwellings that are workplaces when all of the people who work there are members of the household but only when no members of the public might attend the dwelling to receive goods and services there (Regulation 4(2)-(5)). For example, a child minder's home would have to be smoke-free in the parts being used to provide child minding services for the duration that the children are present; the parts of the home used to provide

overnight accommodation would have to be smoke-free for the period that the guest is present; a home being used by members of the household for work with no third parties present would not have to be smoke-free.

5. Work activities that are carried out in dwellings which relate to providing a service to the persons living there (such as health/personal care, assisting with domestic or maintenance work) are excluded from the assessment of whether a dwelling is a workplace by Regulations 4(6) and 4(7). These activities are the same as those exempted by the 2007 Regulations.
6. In all instances, smoking would not be restricted in those parts of the dwelling not used for work and there are no restrictions on smoking outside of working hours.

Adult care homes and adult hospices

7. The 2007 Regulations provided an exemption for adult care homes and adult hospices that permitted the manager of the premises to designate a room for smoking for use by those over 18 years of age. This exemption has been retained in the 2018 Regulations but with the additional condition that the designated room is only for use by residents of the adult care home or adult hospice (see Regulation 6(2)(a)).
8. The meaning of 'adult care home' for the purpose of the 2017 Act, and therefore these regulations, is aligned to the Regulation and Inspection of Social Care (Wales) Act 2016⁷ which provides that a "care home service" is the provision of accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need. This does not include accommodation together with nursing or care provided at: a hospital; a school; residential family centre; a place providing a secure accommodation service; or a place providing accommodation for an adult arranged as part of an adult placement service.
9. The meaning of 'adult hospice' for the purpose of the 2017 Act⁸, and therefore these regulations, is premises wholly or mainly used for the provision of palliative care to persons aged 18 or over, who are suffering from a progressive disease in its final stages, by or behalf of an establishment the primary function of which is the provision of such care.

⁷ Paragraph 1 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016 <http://www.legislation.gov.uk/anaw/2016/2/schedule/1>

⁸ Section 28(1) of the Public Health (Wales) Act 2017 <http://www.legislation.gov.uk/anaw/2017/2/section/28>

Mental health units

10. Regulation 8 would replace the exemption for mental health units in the 2007 Regulations with a time-limited exemption that would expire 18 months after the 2018 Regulations come into force, should responses to this consultation support such a change. This would place mental health units on a par with the smoke-free requirements of hospitals generally and reflect their role as exemplars of health.
11. A time-limited exemption would enable managers of mental health units to work towards the removal of the indoor smoking facility and allow them to designate outdoor smoking areas for patients and residents within the grounds of the establishment, if required. The time-limited exemption would also enable patients and residents to adjust to policy changes and seek support to give up smoking if they wish to or to seek alternative methods of nicotine delivery such as NRT or e-cigarettes for those who are unable to stop smoking. For the duration of the exemption the designated room would be only for use by patients of the mental health unit.
12. Although an exemption is currently in place under the 2007 Regulations, not all mental health units across Wales have designated rooms in which patients may smoke. In order to capture the extent to which they are allocated Welsh Government officials conducted an information gathering exercise from private and NHS establishments that accommodate and treat mental health patients. Additionally, personal experiences and views on smoking in mental health units were gathered from mental health service users. From the responses received it is clear that the majority of mental health units already have smoking policies in place and most support a full indoor smoking ban.
13. A mental health unit is defined as an entire premises or part of premises of which the primary purpose is for the reception and treatment of persons with a mental disorder, but does not include an adult care home as defined at paragraph 8 even when that care home provides treatment to persons with a mental disorder.

Hotels, guesthouses, inns, hostels and members' clubs

14. The 2007 Regulations currently permit managers of hotels, guesthouses, inns, hostels and members' clubs ("hotels, etc.") to designate bedrooms where smoking is allowed; however, the smoking ban is embedded in Wales to the extent that the current exemption is not widely used. Regulation 9 therefore provides a time-limited exemption for hotels, etc. that would expire 12 months after the 2018 Regulations come into force, should responses to this consultation support such a change. This would mean that hotels, etc. would have to be smoke-free throughout the entirety of their enclosed and substantially enclosed

premises once the exemption period expires. The time-limited exemption is intended to provide a transition period during which hotels, etc. could make any necessary adjustments to their premises to comply with the smoke-free requirement.

15. Removing smoking bedrooms would extend the workplace protection from the health harms of second-hand smoke to all workers in such premises and support the Welsh Government ultimate aim of a smoke-free society. It would also align hotels, etc. with the provision of other types of non-residential accommodation such as hospitals.

Designated smoking areas in hospital grounds and grounds of schools with residential accommodation for pupils

16. The 2018 Regulations provide the conditions that areas in the grounds of schools with residential accommodation for pupils (Regulation 10) and hospital grounds (Regulation 11) would have to meet before they can be designated as not smoke-free (i.e. areas designated for smoking). However, as with designated smoking rooms in premises with permission to provide them, there would be no requirement for a manager of a relevant smoke-free school ground or hospital ground to designate an area for smoking – it is discretionary.
17. The first condition is that designated smoking areas may only be used by persons over 18 years of age and by persons indicated by the manager of the premises (for example, the manager may state that visitors and patients can use the area but not staff or pupils). The second condition limits the maximum size of the designated smoking area to 8.25m² (about the size of an average bus shelter), requires that any designated smoking area is located at least 10 metres from any other smoke-free premises (other than the smoke-free grounds in which the area is located) and be clearly marked as an area in which smoking is permitted by persons over 18 and those indicated by the manager. In the case of relevant school grounds, designated areas may only be located in grounds that adjoin the school. These conditions should minimise smoke-drift into other smoke-free areas, prevent large areas being used for smoking and prevent inappropriate use. A clearly marked designated area will ensure the public is well informed about where smoking is permitted within the grounds, therefore minimising the risk of non-smokers entering the area unawares.
18. Managers of relevant smoke-free grounds would be required to keep a record of all designated smoking areas. This will help to resolve any disputes about where smoking is permitted within the grounds. Managers may also vary the designated smoking area (for example, by reducing its size) or withdraw the designated smoking area entirely at any time.

No-smoking signs

19. The 2018 Regulations would relax the current provisions on no-smoking signs in smoke-free enclosed and substantially enclosed premises (Regulation 12) and smoke-free vehicles (Regulation 17). The current smoke-free law has high levels of compliance and this change would allow managers of premises to comply flexibly with their own signage providing it meets basic design principles. The proposed principles are that the sign includes a legible graphic representation of a lit cigarette within a circle with a line through it, with no specification on size, colour or location of the sign. There would be no specified written warning to accompany the graphic when used in enclosed and substantially enclosed premises. There would be no requirement to display no-smoking signs at all in dwellings.
20. For hospital grounds, school grounds and public playgrounds, the 2018 Regulations would require that, in addition to the graphic representation, these premises include a written warning specific to the premises type and at least one sign is displayed at or near the main entrance (or main entrances as the case may be) to the premises. For smoke-free public playgrounds with no clear boundary, it is proposed that the sign be placed in a prominent position near the playground. The additional requirements for no-smoking signs in hospital grounds, school grounds and public playgrounds would be reviewed after four years of coming into force with a view to relaxing them, should compliance with the smoking ban in these places be at satisfactory levels.
21. The requirements on no-smoking signs would not apply to outdoor care settings for childcare. We understand that many such settings are within premises that are used only intermittently or are shared with other premises and it would be unreasonable to expect all premises to erect or put up smoke-free signs each time they take the children to the outdoors area and take them down as they leave. Guidance would, however, cover the reasonable steps they should take to ensure they comply with the requirements regarding their duty to prevent smoking in a smoke-free place; this would include guidance on signage that could be used where circumstances make it appropriate (for example, in a childcare setting where the outdoor area is not shared with other premises).

Smoke-free vehicles

22. The 2007 Regulations require that enclosed vehicles used for work purposes by more than one person or to transport members of the public are smoke-free all of the time. The 2018 Regulations do not change this with the provisions provided at Regulation 14(2).

23. An addition to the 2007 Regulations is Regulation 14(3)(a) which makes enclosed vehicles smoke-free when being used in the course of paid or voluntary work whilst carrying a person who is receiving goods or services from another person also in the vehicle. Such vehicles are those not covered by Regulation 14(2) because they are not wholly or mainly used for work or public transport purposes. For example, a car that is used in the course of child-minding to take children to/from school but is otherwise used for private, social or domestic purposes; a car that is used only part-time to provide private hire services. The 2018 Regulations do not require these vehicles to be smoke-free all of the time but only when a person in the vehicle is receiving goods or services from the person using the vehicle. This would not require a private vehicle being used by the driver to transport a work colleague to a meeting to be smoke-free, unless that colleague is under the age of 18. Regulation 14(3)(b) retains The Smoke-free Premises etc. (Amendment) (Wales) Regulations 2015 provisions on smoking in private vehicles carrying persons under the age of 18.

Chapter 4: What will stay the same?

1. Whilst the 2018 Regulations would make a number of changes to the provisions of the 2007 Regulations, many provisions are the same. For clarity, these are outlined below.

Holiday or temporary accommodation

2. Regulation 5 exempts self-contained residential accommodation used for holiday or temporary purposes from the smoke-free requirements. This is no change from the 2007 Regulations which also exempt such types of premises but by including them within the meaning of 'private dwelling'.

Exemptions

3. No additional premises types have been afforded exemptions in the 2018 Regulations and the changes to the existing exemptions are outlined above. The 2007 Regulation stipulated requirements for any designated room on ventilation, openings and being clearly marked as a room for smoking; these requirements have not been changed in the 2018 Regulations. The permission to designate a room for smoking-related research and tests in research and testing facilities is retained at Regulation 7.

Additional smoke-free premises

4. No additional smoke-free premises are proposed in these 2018 Regulations; however, suggestions on the future of smoke-free requirements in Wales are welcome in responses.

Smoke-free work vehicles and public transport

5. Regulation 14(2) retains the 2007 description of vehicles used for work and public transport that would need to be treated as smoke-free all of the time; such vehicles being:
 - for the transport of members of the public or a section of the public (whether or not for reward or hire); or
 - for work purposes by more than one person (even if the persons who use it for such purposes do so at different times, or only intermittently).
6. The duty to prevent smoking in smoke-free vehicles would remain the responsibility of the driver or operator, and any person who is concerned in the management of it.

Smoking in private vehicles carrying under 18s

7. Under Regulation 14(3)(b), it will remain an offence for:

- a person of any age to smoke in a private vehicle when someone under the age of 18 is present; and
- a driver (including a provisional driver) not to stop someone smoking in these circumstances.

8. Exemptions to this requirement for stationary caravans and motor caravans and those that are on the road but are used as a dwelling would continue (see Regulation 15). The police and local authority enforcement officers will continue to enforce these provisions (see Regulation 18 and section 18 of the 2017 Act).

Fixed penalties

9. The fixed penalty notice form and penalty amounts, including the discounted amounts, relating to the offences of smoking in a smoke-free place and failing to display signage would remain the same. There would be some technical changes to the content of the form; these relate solely to the change in the title of the relevant primary legislation, from the Health Act 2006 to the Public Health (Wales) Act 2017 and removing the question on the sex of the offender.

Enforcement

10. In accordance with Section 18 of the Public Health (Wales) Act 2017, each local authority is authorised to act as an enforcement authority in relation to the smoke-free premises, places and vehicles in their area. This Section of the 2017 Act retains the enforcement provisions contained in the 2007 Regulations.

Chapter 5: Consultation questions

1. Where you have particular evidence or practical experience to support your views, we would be grateful if you could provide such evidence and experience in your response to each question.

Question 1 – Do you agree with the overall approach that has been taken to implementing the smoke-free provisions in the Public Health (Wales) Act 2017?

Definition of substantially enclosed and not enclosed or substantially enclosed

Question 2 – Do you think the proposed amendment to the meaning of ‘substantially enclosed’ provides clarity as to whether other structures that form part of the perimeter of the premises should be included when assessing whether the premises is ‘substantially enclosed’? (Regulation 3(2))

Question 3 – Do you consider the proposed meaning of ‘not enclosed or substantially enclosed’ provides clarity to the types of premises that such a meaning would relate to (for example, hospital grounds, school grounds, or public playgrounds)? (Regulation 3(5))

Exemptions: dwellings

Question 4 – Do you agree with the proposal to exempt dwellings that are workplaces when all of the people who work there are members of the household and when no members of the public might attend the dwelling to receive goods and services? (Regulation 4(1)-(5))

Question 5 – Do you agree that the following activities should be excluded from the assessment of ‘work’ when considering whether a dwelling is a workplace under Section 7(2) of the 2017 Act? Please provide evidence to support your response. (Regulation 4(7))

- Providing personal or health care for a person living in the dwelling.
- Assisting with the domestic work of the household in the dwelling.
- Maintaining the structure or fabric of the dwelling.
- Installing, inspecting, maintaining or removing any service provided to the dwelling for the benefit of persons living in it.

Exemptions: holiday or temporary accommodation

Question 6 – Do you agree that self-contained holiday or temporary accommodation should **never** be smoke-free? If not, please describe the scenario(s) in which you consider such accommodation should be smoke-free. (Regulation 5)

Exemptions: care homes and adult hospices

Question 7 – Do you agree with the exemption that permits the managers of adult care homes or adult hospices to designate a room in the premises for smoking? (Regulation 6)

Question 8 – Do you agree that a room designated for smoking within an adult care home or adult hospice should be used by residents only? (Regulation 6(2)(a))

Exemptions: mental health units

Question 9 – Do you agree with the proposal to remove the exemption that permits the designation of smoking rooms in mental health units? (Regulation 8) (Please note that the removal of the exemption would not prevent the person in charge of the premises from designating outdoor areas as places where patients can smoke).

Question 10 – Do you agree that the proposed transition period of 18 months after the 2018 Regulations come into force is sufficient time to allow mental health units to implement indoor smoke-free conditions in a safe and secure way? (Regulation 8(6))

Question 11 – Is there anything else that should be taken into account in relation to smoking in residential mental health units?

Exemptions: hotels, guesthouses, inns, hostels and members' clubs

Question 12 – Do you agree with the proposal to remove the exemption that permits the designation of smoking bedrooms in hotels, guesthouses, inns, hostels and members' clubs? (Regulation 9)

Question 13 – Do you agree that the proposed transition period of 12 months after the 2018 Regulations come into force is sufficient time for hotels, guesthouses, inns, hostels and members' clubs to convert their smoking bedrooms to smoke-free rooms? (Regulation 9(5))

Smoke-free hospital grounds, school grounds and public playgrounds

Question 14 – Do you consider the proposed conditions that have to be met before areas can be designated as areas in which smoking is permitted in the grounds of schools with residential accommodation are appropriate? (Regulation 10)

Question 15 – Do you consider the proposed conditions that have to be met before areas can be designated as areas in which smoking is permitted for smoking in hospital grounds are appropriate? (Regulation 11)

Question 16 – Do you agree that the duty to prevent smoking should **not** be applied by these Regulations to hospital grounds, school grounds and public playgrounds?

No-smoking signs

Question 17 – Do you agree with the proposed reduced requirements for no-smoking signs for enclosed and substantially enclosed premises? (Regulation 12)

Question 18 – Do you agree with the proposed requirements for no-smoking signs in hospital grounds, school grounds and public playgrounds? (Regulation 13)

Smoke-free vehicles

Question 19 – Do you agree that vehicles should be smoke-free when being used by only one person for paid or voluntary work purposes whilst carrying a person who is receiving goods or services from another person also in the vehicle? (Regulation 14(3)(a))

Question 20 – Do you agree that vehicles being used by only one person for paid or voluntary work purposes whilst carrying a person who is receiving goods or services from another person also in the vehicle should be smoke-free only when being so used? (Regulation 14(5))

Fixed penalty amounts

Question 21 – Do you agree that the fixed penalty amount (£200) and discounted amount (£150) for the offence of failing to provide smoke-free signage that meets the specified requirements are appropriate and proportionate? (Regulations 19(a) and 20(a))

Question 22 – Do you agree that the fixed penalty (£50) and discounted amounts (£30) for the offence of smoking in smoke-free premises are appropriate and proportionate? (Regulations 19(b) and 20(b)).

Question 23 – Do you agree that the fixed penalty (£50) and discounted amounts (£30) for the offence of failing to prevent smoking in smoke-free private vehicle carrying a person(s) under the age of 18 are appropriate and proportionate? (Regulations 19(c) and 20(c)).

Additional smoke-free premises

Question 24 – There are no current proposals for additional smoke-free premises; however, we welcome your views on the types of premises that could be considered in future consultations on moving towards the ambition of a smoke-free Wales.

Any other comments

Question 25 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Impact Assessment

We have published a number of impact assessments alongside this consultation and would welcome your views on these.

Question 26 – Are you aware of any challenges or positive effects as a result of the proposed regulations that you believe to be missing from the Regulatory Impact Assessment, particular to your field of interest.

Question 27 - Do you have any comments on the draft impact assessments for Welsh Language, Children's Rights, or Equality and Human Rights? The Equality Act 2010 prescribes protected characteristics that include gender; age; religion; race; sexual orientation; transgender; marriage or civil partnership; pregnancy and maternity; and disability.

Question 28 – We would like to know your views on the effects the changes and the amendments to regulations would have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh
- ii) treating the Welsh language no less favourably than the English language.

What effects do you think there would be? How could the positive effects be increased, or negative effects be mitigated?

Question 29 – Please also explain how you believe the proposed policy could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Chapter 6: Next Steps

1. All responses received by midnight on the closing date of 17 August 2018 will be carefully considered. A summary report of consultation responses will be published on the Welsh Government website in due course after the completion of the consultation.

Declaration of direct or indirect links to the tobacco industry by respondents

2. As a Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), the United Kingdom has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To meet this obligation, **we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.** We will still carefully consider all consultation responses from the tobacco industry and from those with links to the tobacco industry and include them in the published summary of consultation responses.

The Smoke-free Premises and Vehicles (Wales) Regulations 2018

Consultation response form

Your name:

Organisation (if applicable):

e-mail/telephone number:

Your address:

Responses should be returned by **17 August 2018** to:

Risk Behaviours (Tobacco, Alcohol, Gambling)
 Public Health Division
 Directorate of Health Policy
 Welsh Government
 Cathays Park
 Cardiff
 CF10 3NQ

or completed electronically and sent to: tobaccopolicy@gov.wales

Category of respondent	Primary school	<input type="checkbox"/>
	Secondary school	<input type="checkbox"/>
	Special school	<input type="checkbox"/>
	Maintained school	<input type="checkbox"/>
	Independent school	<input type="checkbox"/>
	Higher education sector	<input type="checkbox"/>
	Further education sector	<input type="checkbox"/>
	Pre-school organisation	<input type="checkbox"/>
	Other childcare setting	<input type="checkbox"/>
	Registered child-minder	<input type="checkbox"/>
	NHS hospital	<input type="checkbox"/>
	Private hospital	<input type="checkbox"/>
	Public health professional	<input type="checkbox"/>
	Local government	<input type="checkbox"/>
	Mental health unit	<input type="checkbox"/>
	Hospitality sector	<input type="checkbox"/>
	Enforcement officer	<input type="checkbox"/>
	Police	<input type="checkbox"/>
	Representative group	<input type="checkbox"/>
	Other public sector organisation	<input type="checkbox"/>

	Third sector organisation	<input type="checkbox"/>
	Private individual	<input type="checkbox"/>
	Other	<input type="checkbox"/>

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

Questions

The Smoke-free Premises and Vehicles (Wales) Regulations 2018

Question 1 – Do you agree with the overall approach that has been taken to implementing the smoke-free provisions in the Public Health (Wales) Act 2017?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Definition of substantially enclosed and not enclosed or substantially enclosed

Question 2 – Do you think the proposed amendment to the meaning of ‘substantially enclosed’ provides clarity as to whether other structures that form part of the perimeter of the premises should be included when assessing whether the premises is ‘substantially enclosed’? (Regulation 3(2))

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Question 3 – Do you consider the proposed meaning of ‘not enclosed or substantially enclosed’ provides clarity to the types of premises that such a meaning would relate to? (For example, hospital grounds, school grounds, or public playgrounds.) (Regulation 3(5))

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Exemptions: dwellings

Question 4 – Do you agree with the proposal to exempt dwellings that are workplaces when all of the people who work there are members of the household and when no members of the public might attend the dwelling to receive goods and services? (Regulation 4(1)-(5))

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Question 5 – Do you agree that the following activities should be excluded from the assessment of work when considering whether a dwelling is a workplace under Section 7(2) of the 2017 Act? Please provide evidence to support your response. (Regulation 4(7))

- Providing personal or health care for a person living in the dwelling.
- Assisting with the domestic work of the household in the dwelling.
- Maintaining the structure or fabric of the dwelling.
- Installing, inspecting, maintaining or removing any service provided to the dwelling for the benefit of persons living in it.

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Exemptions: holiday or temporary accommodation

Question 6 – Do you agree that self-contained holiday or temporary accommodation should **never** be smoke-free? If not, please describe the scenario(s) in which you consider such accommodation should be smoke-free. (Regulation 5)

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Exemptions: adult care homes and adult hospices

Question 7 – Do you agree with the exemption that permits the managers of adult care homes or adult hospices to designate a room in the premises for smoking? (Regulation 6)

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Question 8 – Do you agree that a room designated for smoking within an adult care home or adult hospice should be used by residents only? (Regulation 6(2)(a))

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Exemptions: mental health units

Question 9 – Do you agree with the proposal to remove the exemption that permits the designation of smoking rooms in mental health units? (Regulation 8) (Please note that the removal of the exemption would not prevent the person in charge of the premises from designating outdoor areas as places where patients can smoke).

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Question 10 – Do you agree that the proposed transition period of 18 months after the 2018 Regulations come into force is sufficient time to allow mental health units to implement indoor smoke-free conditions in a safe and secure way? (Regulation 8(6))

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Question 11 – Is there anything else that should be taken into account in relation to smoking in residential mental health treatment establishments?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Exemptions: hotels, guesthouses, inns, hostels and members' clubs

Question 12 – Do you agree with the proposal to remove the exemption that permits the designation of smoking bedrooms in hotels, guesthouses, inns, hostels and members' clubs? (Regulation 9)

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Question 13 – Do you agree that the proposed transition period of 12 months after the 2018 Regulations come into force is sufficient transition time for hotels, guesthouses, inns, hostels and members' clubs to remove their smoking bedrooms? (Regulation 9(5))

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Smoke-free hospital grounds, school grounds and public playgrounds

Question 14 – Do you consider the proposed conditions that have to be met before areas can be designated as areas in which smoking is permitted in the grounds of schools with residential accommodation are appropriate? (Regulation 10)

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Question 15 – Do you consider the proposed conditions that have to be met before areas can be designated as areas in which smoking is permitted in hospital grounds are appropriate? (Regulation 11)

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Question 16 – Do you agree that the duty to prevent smoking should **not** be applied by these Regulations to hospital grounds, school grounds and public playgrounds?

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

No-smoking signs

Question 17 – Do you agree with the proposed reduced requirements for no-smoking signs for enclosed and substantially enclosed premises? (Regulation 12)

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

Question 18 – Do you agree with the proposed requirements for no-smoking signs in hospital grounds, school grounds and public playgrounds? (Regulation 13)

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Smoke-free vehicles

Question 19 – Do you agree that vehicles should be smoke-free when being used by only one person for paid or voluntary work purposes whilst carrying a person who is receiving goods or services from another person also in the vehicle? (Regulation 14(3)(a))

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Question 20 – Do you agree that vehicles being used by only one person for paid or voluntary work purposes whilst carrying a person who is receiving goods or services from another person also in the vehicle should be smoke-free only when being so used? (Regulation 14(5))

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Fixed penalty amounts

Question 21 – Do you agree that the fixed penalty amount (£200) and discounted amount (£150) for the offence of failing to provide smoke-free signage that meets the specified requirements are appropriate and proportionate? (Regulations 19(a) and 20(a))

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Question 22 – Do you agree that the fixed penalty (£50) and discounted amounts (£30) for the offence of smoking in smoke-free premises are appropriate and proportionate? (Regulations 19(b) and 20(b)).

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Question 23 – Do you agree that the fixed penalty (£50) and discounted amounts (£30) for the offence of failing to prevent smoking in smoke-free private vehicle carrying a person(s) under the age of 18 are appropriate and proportionate? (Regulations 19(c) and 20(c)).

Agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>	Neither agree nor disagree	<input type="checkbox"/>
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Supporting comments

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Additional smoke-free premises

Question 24 – There are no current proposals for additional smoke-free premises; however, we welcome your views on the types of premises that could be considered in future consultations on moving towards the ambition of a smoke-free Wales.

Comments

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Any other comments

Question 25 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Impact Assessment

We have published a number of impact assessments alongside this consultation and would welcome your views on these.

Question 26 – Are you aware of any challenges or positive effects as a result of the proposed regulations that you believe to be missing from the Regulatory Impact Assessment, particular to your field of interest?

Supporting comments

Question 27 - Do you have any comments on the draft impact assessments for Welsh Language, Children’s Rights, or Equality and Human Rights? The Equality Act 2010 prescribes protected characteristics that include gender; age; religion; race; sexual orientation; transgender; marriage or civil partnership; pregnancy and maternity; and disability.

Supporting comments

Question 28 – We would like to know your views on the effects the changes and the amendments to regulations would have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh
- ii) treating the Welsh language no less favourably than the English language.

What effects do you think there would be? How could the positive effects be increased, or negative effects be mitigated?

Supporting comments

Question 29 – Please also explain how you believe the proposed policy could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Supporting comments