

Equality Impact Assessments (EIA) for The Smoke-free Premises and Vehicles (Wales) Regulations 2018

Chapter 1 of Part 3 of the Public Health (Wales) Act 2017

Equality Impact Assessment (EIA) – Part 1

Policy title and purpose (brief outline):	The Smoke-free Premises and Vehicles (Wales) Regulations 2018
Department:	Public Health Division, Health and Social Services Group
Date:	May 2018

1. Brief description of the policy

The Smoke-free Premises and Vehicles (Wales) Regulations 2018 (“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 2017 Act restates certain provisions relating to smoking in section 1 of the Health Act 2006², in 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 Smoke-free Premises etc. (Wales) Regulations 2007³ (“the 2007 Regulations”) which came into force on 2 April 2007 and were amended in 2015⁴ to include smoking in private vehicles carrying persons under 18, and in 2016⁵ in relation to smoking in prisons.

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 the outdoor care settings for children. The 2018 Regulations will make a limited number of changes to the existing smoking ban established by the 2007 Regulations and introduce the new elements needed to implement the provisions on smoke-free hospital grounds, school grounds and public playgrounds in the 2017 Act.

Outdoor areas

The 2018 Regulations provide an exemption for persons with control of hospital grounds and grounds of school with residential accommodation for pupils to designate smoking areas in their grounds subject to certain conditions being met on size and location of any designated smoking area.

Hotels etc.

The 2007 Regulations provide an exemption for hotels, guesthouses, inns, hostels and members clubs (“hotels, etc.”) that permits managers there to designate bedrooms for smoking. The 2018 Regulations would replace that exemption with a time-limited one that would expire 12 months after the 2018 Regulations come into effect, if responses to the consultation support such a change. This would mean that hotels, etc. would not be able to designate any bedrooms for smoking once the exemption period expires.

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

² The Health Act 2006 <http://www.legislation.gov.uk/ukpga/2006/28/part/1/chapter/1>

³ The Smoke-free Premises etc. (Wales) Regulations 2007
<http://www.legislation.gov.uk/wsi/2007/787/contents/made>

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

⁵ The Smoke-free Premises etc. (Amendment) (Wales) Regulations 2016
<http://www.legislation.gov.uk/wsi/2015/1363/contents/made>

Workplace settings

The 2007 Regulations provide that dwellings that are workplaces are only smoke-free in those parts that are used solely for work and the Health Act 2006 requires that those parts are smoke-free all of the time. The 2017 Act changes the provisions on dwellings that are workplaces by requiring that they 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 provide an exemption from the smoke-free requirements for dwellings that are workplaces when all 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. Registered child minders, for example, would be required to be smoke-free in the parts of the dwelling used for the provision of child minding services for the duration of the service provision under the new Regulations.

Mental Health Units

The 2007 Regulations currently permit managers of residential mental health units to designate rooms for smoking. The 2018 Regulations would replace the exemption with a time-limited one that would expire 18 months after the 2018 Regulations come into effect. This would place mental health units on a par with the smoke-free requirements of hospitals generally and would help to address health inequalities in those with mental illness. For the duration of the time-limited exemption the designated room for smoking would be only for use by patients of the mental health unit.

No –smoking signs

The 2018 Regulations would relax the current provisions on no-smoking signs in enclosed and substantially enclosed smoke-free premises and smoke-free vehicles. The current smoke-free law has high levels of compliance and this change would allow managers of smoke-free premises and smoke-free vehicles 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 smoke-free premises.

Smoke-free vehicles

The 2018 Regulations would require that enclosed vehicles are smoke-free when being used in the course of paid or voluntary work purposes whilst carrying a person who is receiving goods or services from another person also in the vehicle. 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. Such vehicles are not covered by the requirements on smoke-free work and public transport vehicles because they are not wholly or mainly used for work or public transport purposes; they will also not be covered by the provisions on private vehicles carrying a person under the age of 18 at the time of being used to provide a paid service because they are no longer being used for social, domestic or other private purposes.

The draft Regulations aim to:

- further de-normalise smoking behaviours especially to children and young people;
- protect people from the harms associated with second-hand smoke;
- reduce health inequalities; and,
- support smoking cessation attempts.

2. Steps taken to engage with stakeholders, both internally and externally

A series of proposals were initially consulted upon in the Public Health White Paper, between 2 April and 24 June 2014, including the need for restrictions on smoking in specified public places. The White Paper and consultation summary report are available at:

<http://www.wales.gov.uk/consultations/healthsocialcare/white-paper/?status=closed&lang=en>

In addition to detailed questions on each proposal, the White Paper included a specific question (number 46) asking for responses about the potential impacts of all of the proposals on human rights and the protected characteristics as prescribed within the Equality Act 2010. Only 2 respondents identified any negative impacts from this proposal on this group, and most other responses indicated that the proposals in the White Paper as a whole would be likely to have generally positive impacts.

There were 715 responses to the consultation, including 121 to the question on whether smoking should be banned in specific open spaces: of these 84 were supportive, 16 were undecided and 21 were against the proposal.

Key stakeholders also gave evidence to the Health and Social Care Committee of the fourth Assembly. The Committee noted that stakeholders were supportive of extending smoking restrictions to additional premises and had suggested that areas frequented by children and young people should be a priority for the legislation. Beyond these formal processes, further proactive work has taken place to engage groups representing people with protected characteristics. This additional work has not identified any significant negative impacts from this

proposal on these groups. Issues raised during these discussions are reflected in the relevant sections of this assessment.

The evidence and views of stakeholders helped inform consideration of this issue and as a result further provisions were added to the Bill in relation to smoking restrictions in school grounds, hospital grounds and public playgrounds. The consultation paper launched in May 2018 included questions on the removal of the exemption from the 2007 Regulations which allows persons in charge of hotels and residential mental health units to designate rooms in which smoking may take place. The consultation paper also included questions on private dwellings and smoke-free vehicles. Responses to the consultation will inform and update this impact assessment as appropriate.

3. Evidence Base

The policy to prohibit smoking on school grounds, hospital grounds and public playgrounds, is based on the desire to de-normalise smoking to children and young people and to protect them from the harms associated with smoking. The Smoke-free Premises etc. (Wales) Regulations 2007 have already demonstrated the effectiveness of smoke-free policies in enclosed and substantially enclosed spaces.

Smoking experimentation and uptake can begin as early as the primary school years, or can occur later in a young person's life. Two-thirds of smokers started before the age of 18, and almost 40% started smoking regularly before the age of 16⁶.

It is clear that young people can quickly develop a dependence on nicotine and may be unable to reduce their risks of dependence due to addiction. A study showed that smoking a single cigarette is a risk factor for children to become regular smokers up to three years later⁷. In addition, early uptake of smoking is associated with subsequent heavier smoking, higher levels of dependency, a lower chance of quitting, and higher mortality⁸. Interventions to reduce the uptake of smoking amongst young people are therefore crucial to meet the overall aim of reducing smoking prevalence rates.

⁶ Office for National Statistics. General Lifestyle Survey Overview: A report on the 2011 General Lifestyle Survey. 2013. <http://www.ons.gov.uk/ons/rel/ghs/general-lifestyle-survey/2011/rpt-chapter-1.html>

⁷ Fidler, JA et al. (2006) Vulnerability to smoking after trying a single can lie dormant for three years or more. Tobacco Control

⁸ Royal College of Physicians (2010) Passive smoking and children. London: Royal College of Physicians.

Nicotine has been found to be harmful for developing brains⁹. Nicotine is also addictive; the most susceptible youths lose autonomy over tobacco within a day or two of first inhaling from a conventional cigarette¹⁰. Adolescents also exhibit heightened sensitivity to the rewarding properties of nicotine compared to adults¹¹. Addiction can have a detrimental impact on health and relationships¹².

There is evidence¹³ that exposure to any level of second hand smoke is detrimental to health. Therefore, despite the non-enclosed nature of the specified places, the reduction in the scope and amount of second-hand smoke being inhaled is beneficial for public health.

4. Impact

This section shows how the policy could have an impact (either positive or negative) on the protected groups under the Equality Act 2010.

4.1 Impact on people because of their age

Age	Positive	Negative	None / Negligible	Reasons for your decision (including evidence) / How might it impact?
Younger people (Children and young people, up to 18)	x			The proposals aim to de-normalise smoking to this age group. They also seek to help to reduce the uptake of smoking in younger people and protect them from the harms associated with smoking.
People 18- 50	x			The proposals mean that smokers in this age group could not smoke in specified areas, thereby providing some benefit to themselves

⁹ <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/50-years-of-progress-by-section.html>

¹⁰ Di Franza J et al (2007). Symptoms of tobacco dependence after brief intermittent use: the development and assessment of nicotine dependence in youth, Archives of Paediatrics and Adolescent Medicine

¹¹ The dynamic effects of nicotine on the developing brain. Dwyer, J.B., McQuown, S.C., & Leslie, F.M. (2009) Pharmacology & Therapeutics

¹² <http://www.nhs.uk/Livewell/addiction/Pages/addictionwhatisit.aspx>

¹³ <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf>

				<p>from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke. The proposals limit where smokers in this age group can smoke but this is limited to specific settings. The proposals are justified in terms of protecting the health of people in Wales, and will have a positive impact.</p>
Older people (50+)	x			<p>The proposals mean that smokers in this age group could not smoke in specified areas thereby providing some benefit to themselves from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke.</p> <p>The proposals limit where smokers in this age group can smoke but this is limited to specific settings. The proposals are justified in terms of protecting the health of people in Wales, and will have a positive impact.</p>

4.2 Because they are disabled?

Impairment	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Visual impairment	x			<p>Smokers in this group will not be able to smoke in specified areas, thereby potentially providing some benefit to themselves from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke.</p> <p>However smokers with visual impairments may find it difficult to distinguish between areas where smoking is prohibited or not. A secondary means of communicating changes, beyond signage, may be required for those with visual impairment.</p>
Hearing impairment	x			<p>Smokers in this group will not be able to smoke in specified areas, thereby providing some benefit to themselves from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke.</p> <p>Signage will ensure that people are visually aware of the prohibitions.</p>
Physically disabled			x	<p>Smokers in this group will not be able to smoke in specified areas, thereby providing some benefit to</p>

				<p>themselves from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke. However, the proposals may impact in a situation where a smoker with a disability wants to smoke but has difficulty in reaching an area where smoking is permitted. The significance of this risk to an individual's health is felt to be low.</p>
Learning disability	x			<p>Smokers in this group will not be able to smoke in specified areas, thereby providing some benefit to themselves from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke. Signage will ensure that people are aware of the prohibitions.</p>
Mental health problem			x	<p>Smoking prevalence among people with mental illness is substantially higher than the general population. These proposals will mean that they will not be able to smoke in specified areas thereby providing some benefit to themselves from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke. However, it could result in raised anxiety levels for the individual who will not be able to smoke in the</p>

				specified area. For those who are patients of residential mental health units, this impact can be mitigated by means of a time-limited exemption of 18 months to the provisions. The risk can also be mitigated where possible for those attending hospital by the provision of smoking cessation services. Additionally, the person in charge of a hospital and the residential mental health unit has the option of designating a smoking area on their grounds.
Other impairments issues	x			Smokers in this group will not be able to smoke in specified areas, thereby providing some benefit to themselves from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke.

4.3 Because of their gender (man or woman)?

Gender	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Male	x			Data collated over time has shown that the percentage of males who smoke is consistently higher than that

				of females. The proposed restrictions may particularly benefit men if the proposal results in them smoking fewer cigarettes. This could also benefit others in their vicinity from any dangers associated with second-hand smoke.
Female	x			The 17% ¹⁴ of women who smoke will not be able to smoke in specified areas, thereby providing some benefit to them from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke.

4.4 Because they are transgender?

Transgender	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
	x			Research conducted by ASH Scotland ¹⁵ suggests that a relatively high proportion of the transgender community smoke. The proposed legislation may therefore be of benefit to this group if it encourages them to cut

¹⁴ <http://gov.wales/docs/statistics/2017/170629-national-survey-2016-17-population-health-lifestyle-en.pdf>

¹⁵ <http://www.ashscotland.org.uk/media/3383/PATH%20SC%20provision%20for%20LGBT%20communities%20in%20Scotland%20May%202010.pdf>

				down their smoking or quit. In these circumstances, it may also provide some benefit to others in their vicinity from the dangers of any second-hand smoke.
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4.5 Because of their marriage or civil partnership?

Marriage and Civil Partnership	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Marriage Civil Partnership			x	It is unlikely that the proposals will impact on anyone either positively or negatively because they either are or are not married; or are or are not in a civil partnership.

4.6 Because of their pregnancy or maternity?

Pregnancy and Maternity	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Pregnancy	x			Smoking during pregnancy increases the risk of stillbirth, Sudden Infant Death Syndrome (cot death); premature birth; low birth-weight and miscarriage. Maternal smoking is also associated with a range of health problems throughout the baby's life including asthma, birth defects such as cleft lip, ADHD and learning difficulties. Pregnant smokers will not be able to smoke in

				<p>specified areas thereby providing some benefit to themselves and their unborn child from the harms associated with smoking and to others in their vicinity from the dangers of any second-hand smoke. One potential impact may be on those pregnant women who wish to smoke during their stay in hospital to give birth. This risk will be mitigated where possible by the provision of smoking cessation services for pregnant smokers. Additionally, the person in charge of a hospital has the option of designating a smoking area on their grounds.</p>
Maternity (the period after birth).	x			<p>Smokers in this group will not be able to smoke in specified areas, thereby providing some benefit to themselves from the harms associated with smoking and others in their vicinity from the dangers of any second-hand smoke. This is particularly important for children as their exposure to passive smoking can result in an increased risk of lower respiratory tract infection, middle ear disease, wheezing, asthma and bacterial meningitis.</p>

4.7 Because of their race?

Race	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?
Ethnic minority people e.g. Asian, Black			x	The proposals will not impact on anyone either positively or negatively because of their race. There may be differential impacts amongst ethnic groups because of the smoking levels in those ethnic groups.
National Origin (e.g. Welsh, English)			x	The proposals will not impact on anyone either positively or negatively because of their national origin.
Asylum Seeker and Refugees			x	The proposals will not impact on anyone either positively or negatively because of their status as either asylum seekers or refugees. .
Gypsies and Travellers	x			The 2012 Integrated Household Survey ¹⁶ suggests that adult smoking rates are relatively high among gypsies and travellers. The proposed legislation may therefore be of benefit to smokers from this group if it encourages them to cut down their smoking or quit. In these circumstances, it

¹⁶

<http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/guide-method/method-quality/specific/social-and-welfare-methodology/integrated-household-survey/index.html>

				may also provide some benefit to others in their vicinity from the dangers of any second-hand smoke.
Migrants			x	The proposals will not impact on migrants either positively or negatively.
Others			x	The proposals will not impact on anyone either positively or negatively because of their race.

4.8 Because of their religion and belief or non-belief?

Religion and belief or non – belief	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Different religious groups including Muslims, Jews, Christians, Sikhs, Buddhists, Hindus, Others (please specify)			x	The changes to the law would mean that adults, whatever their religion, could not smoke in specified spaces. The proposals will not impact on anyone either positively or negatively because of religion, belief or non-belief.
Belief e.g. Humanists and non-belief			x	As above.

4.9 Because of their sexual orientation?

Sexual Orientation	Positive	Negative	None / Negligible	Reason for your decision (including evidence)/ How might it impact?
Gay men Lesbians Bi-sexual	x			Research conducted by ASH Scotland ¹⁷ shows that high percentages of gay, lesbian or bi-sexual people smoke and are less likely to quit in comparison to the general population. The proposed legislation may therefore be of benefit to smokers from this group if it encourages them to cut down their smoking or quit. In these circumstances, it may also provide some benefit to others in their vicinity from the dangers of any second-hand smoke.

4.10 Do you think that this policy will have a positive or negative impact on people's human rights?

Human Rights	Positive	Negative	None / Negligible	Reason for your decision (including evidence) / How might it impact?

¹⁷

<http://www.ashscotland.org.uk/media/3383/PATH%20SC%20provision%20for%20LGBT%20communities%20in%20Scotland%20May%202010.pdf>

<p>Human Rights including Human Rights Act and UN Conventions</p>			<p>x</p>	<p>It is considered that the proposals will not have any substantial effect on the rights protected by the ECHR and HRA 1998.</p> <p>Any adverse impact on the rights of smokers will be minimal, proportionate to the public interest and in the pursuance of a legitimate aim, i.e. protecting people from some of the health harms outlined at section 3 above.</p>
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Equality Impact Assessment – Part 2

1. Building on the evidence you gathered and considered in Part 1, please consider the following:

1.1 How could, or does, the policy help advance / promote equality of opportunity?

These proposals protecting the health of children by:

- de-normalising smoking as an acceptable behaviour to under-18s;
- reducing the uptake of smoking to under-18s;
- protecting under-18s from exposure to second-hand smoke.

They will also help to benefit adult smokers, who disproportionately come from Wales' most deprived communities, if it encourages them to cut down their smoking or quit.

The proposals will also help to address high levels of smoking in patients receiving treatment in mental health units by the removal of the indoor smoking facility.

The particular needs of various groups within the local population have been and will continue to be an important consideration throughout the development of the legislation. Stakeholders will have an opportunity to submit their views and evidence during the consultation process.

1.2 How could / does the policy / decision help to eliminate unlawful discrimination, harassment or victimisation?

Tobacco continues to be the largest single preventable cause of ill health and death in Wales, causing around 5,450 deaths each year¹⁸. The Welsh Government is already pursuing a range of measures in the Tobacco Control Delivery Plan for Wales, with the overall target of reducing smoking prevalence levels to 16% by 2020.

It is clear that young people can quickly develop a dependence on nicotine and may be unable to reduce their risks due to addiction. In addition, the younger a person starts smoking the greater the risk of smoking related disease.¹⁹

Treating smoking-related diseases costs NHS Wales an estimated £302m per year. Smoking costs the Welsh economy millions of pounds per year, with sickness absence and smoking breaks amounting to just over £90m per year. Legislation to prohibit smoking in specified open spaces could prevent the uptake of smoking in young people and benefit those who are currently exposed to the harms associated with smoking. The proposals could also encourage some smokers to make a quit attempt. This would assist in reducing smoking prevalence levels (currently 19%), help to protect others from exposure to second-hand smoke and help reduce costs to treat smoking related diseases across the NHS.

These proposals are likely to have minimal impact on eliminating unlawful discrimination, harassment or victimisation.

1.3 How could/does the policy impact on advancing / promoting good relations and wider community cohesion?

Community cohesion is well served by an overall environment which encourages people's engagement and participation in communities. Although not directly impacting on community cohesion, these proposals aim to improve relations between communities and public bodies through a shared understanding of the provisions and how they can positively impact on children and young people's health.

¹⁸ Public Health Wales Observatory (2012) – 'Tobacco and health in Wales, 2012' <http://www.wales.nhs.uk/sitesplus/922/page/59800>

¹⁹ British Medical Association (2007). Breaking the cycle of children's exposure to tobacco smoke. British Medical Association.

2. Strengthening the policy

2.1 If the policy is likely to have a negative effect ('adverse impact') on any of the protected groups or good relations, what are the reasons for this?

What practical changes/actions could help reduce or remove any negative impacts identified in Part 1?

There are limited potential negative impacts identified in Part 1 above.

The main aim of these proposals is to de-normalise smoking to children and young people under the age of 18 through legislation, whilst supporting a wider programme of protecting everyone from the harms associated with it.

The negative impacts identified are therefore considered proportionate, justifiable and acceptable at this stage. All negative impacts will be further considered during the development of the legislation and will be mitigated where possible. Clear communication with key stakeholders can also help ensure the impacts on the groups identified are minimal.

2.2 If no action is to be taken to remove or mitigate negative / adverse impact, please justify why.

As outlined above, action will be taken to mitigate impacts where possible through the further development of the legislation and its communication to key stakeholders and the public.

3. Monitoring, evaluating and reviewing

How will you monitor the impact and effectiveness of the policy?

This is a live document which will be updated during the development of the legislation process.

The success of the legislation will be measured over time by means of surveys. Data collected during the 2017-18 National Survey for Wales, will provide a baseline for these measures and data from future years will inform their impact. The Health Behaviour in School-aged Children survey in Wales will measure smoking prevalence among 11 to 15 year olds.

4. Declaration

The above represents a fair assessment of the potential impacts of this policy issue upon equality issues

Department: Risk Behaviours (Tobacco, Alcohol and Gambling) Branch, Public Health Division, Health and Social Services Group

Date: 23 May 2018

Last reviewed: May 2018

Head of Division (Sign-off)

Job title and department:

Date:

Review Date: To be considered throughout the legislative process.