PUBLIC HEALTH BILL GREEN PAPER
Consultation by Welsh Government
Response from BMA Cymru Wales

INTRODUCTION

The British Medical Association represents doctors from all branches of medicine all over the UK; and has a total membership of almost 150,000 including more than 3,000 members overseas and over 19,000 medical student members.

The BMA is the largest voluntary professional association of doctors in the UK, which speaks for doctors at home and abroad. It is also an independent trade union.

BMA Cymru Wales represents some 7,000 members in Wales from every branch of the medical profession.

RESPONSE

Question 1. If the Welsh Government were to introduce a health of the people Bill, what do you consider the most important and appropriate areas for further consideration to be?

BMA Cymru Wales supports the concept of a ‘Health of the People of Wales Bill’ similar in style to that of a declaration of human rights. (Reference: Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948)

Article 25

(1) Everyone has the right to a standard of living adequate for their health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection).

Rather than establishing a list of specific narrowly defined actions, we believe that the Bill should aim to be prefaced by overarching principles, as expounded in the UN declaration.
Question 2. In what ways do you think that making consideration of the impact of policies on health a mandatory legal requirement would be an effective way of meeting our main health challenges?

Initially, consideration should be given to the identification of which ‘policies’ are to be referenced – for example transport policies and planning policies could be subject to EIA & HIA.

It is existing BMA policy that the methods for health impact assessment are reviewed in relation to environmental projects, and that the BMA will press government to undertake HIA for all major projects affecting the environment. Most importantly it should be a requisite that any duty undertaken within this remit should have its impact on ‘human health’ and well-being evaluated. It should not be a tick-box based exercise.

Question 3. If we were to explore placing a statutory duty on bodies to consider health when developing new policies, which bodies should such a duty apply to?

It is presumed that guidance to regulatory bodies will be ‘common sense’ in approach. For example guidance for local authority planning departments would contain advice that applications by individuals to extend their home, would de minimis and have no impact on wider population health. Whereas major developments such as the St David’s II shopping centre would be assessed for the impact on human health, including prioritising pedestrian and bicycle access over vehicular access in certain public spaces for the wider public health benefit.

Many private and public limited companies already have corporate social responsibility (CSR) commitments which demonstrate the human health impact of their policies. As some companies have developed policies on a self regulatory basis it could be viewed that these companies have placed themselves at an economic disadvantage to those who have not self regulate in this way.

BMA Cymru Wales believes that CSRs need to be mainstreamed and adopted by all companies on a statutory footing as the only practical way to create equity.

The results of local evaluation should be made available to the public in each area of their operation. A significant example of the effectiveness of this process was undertaken by Dow Corning Ltd, Barry (Dow Corning Ltd is an American company who manufacture silicon-based products from their plant in Barry, Vale of Glamorgan). This undertaking demonstrated that such a process does not prevent profitable operation and that there is a role to play for Welsh local authorities and Welsh Government.

Question 4. Do you think it would be reasonable to limit any legislative requirements to ‘major’ policies, which would need to be defined by a new Bill?

No.

If statutory requirements are limited to ‘major’ policies this effectively encourages developers and the like to define their policy/plan as minor and numerous ‘minor’ changes at one level may potentially have major adverse impacts at a local population level. Although this may be a tacit understanding this creates challenges for the development of legislation that is efficient, cost effective and practical. For this reason BMA Cymru Wales believes the European Environmental Impact Assessment (EIA) directive provides the essential statutory point for any new legislation.


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Schedule 1 (Projects where an EIA is always necessitated): For example – chemical works, major power plants, major road schemes and waste disposal incineration.

Schedule 2 (Projects where EIA required of a significant impact is considered due to its size or nature): For example – Brewing, foundries and forges, golf courses, holiday homes, surface storage of fossil fuels, quarries and opencast mines).

Together for Health – a vision for the NHS where services and processes will be streamlined and integrated within a ‘framework for action’, offers significant opportunities for improving human health. Specific action under this vision – to improve human health as well as treating sickness is an important current strategy to cite within a proposed public health bill.

**Question 5. In what ways do you think that using legislation to make Health Impact Assessment a mandatory requirement would be an effective way of ensuring that the impact of policies on health is assessed in a consistent and effective way in Wales?**

BMA Cymru Wales regard Health Impact Assessment (HIA) as an essential component of any Health of the People of Wales Bill. This should go beyond the requirement that a HIA be undertaken and that the health outcomes of all policies be evaluated in an effective manner. The policy should also explain how this evaluation is to be funded and reviewed.

**Existing BMA (UK) Policy on Human Health and the Environment**

The medical profession has an important role to play in exploring risks to human health so that hazards can be controlled, diminished or eliminated. A key practical recommendation arose from the BMA’s 1991 work on hazardous waste and human health when the association called for doctors to “play an active part in managing the environment in the interests of public health.”

At the BMA (UK) Annual Representative Meeting in 1994, there was a debate on impact assessment in the UK. A resolution was passed calling upon the BMA Board of Science and education to review the methods of health impact assessment of environmental projects, and then press the government to undertake them for all major projects affecting the environment.

A formal BMA (UK) working party was established to examine the degree of emphasis given to the dynamic relationship between human and environmental health in the light of the then existing public health legislation, health care provision and formal environmental assessment procedures. The outcome of this study and recommendations formed the basis of the 1998 BMA report: ‘Health & Environmental Impact Assessment – an Integrated Approach’.

The BMA (UK) commissioned a review to examine coverage of impacts on human health in some 39 environmental impact assessments. The review examined a range of environmental statements for the level of coverage of human health issues. It was estimated that potential health effects had received adequate coverage in approximately 28% only of the environmental impact statements studied.

Although existing planning legislation gives scope for coverage of human environmental health issues, this was clearly not seen as a priority by developers or planning consultants. More importantly, the environmental statements examined in the review failed to provide the information necessary to assess the likely implications of new developments for human health, and the populations likely to be affected by developments were rarely identified.

Health organisations, including Health Boards, NHS Trusts and NHS Wales are not currently statutory ‘consultees’ in the planning process in Wales. To include Health Boards as statutory ‘consultees’ in the EIA process would mean that many health and public health issues can be raised earlier in the process, which will reduce future delays to the approvals process.
The inclusion of health impact assessment within Environmental Impact Assessment would be less burdensome to business be and a more cost effective approach to place Health Impact Assessment on a statutory basis as the wider determinants of health are already completed in the Environmental Impact Assessment. Considerable amount of time and cost arising from challenges to Environmental Impact Assessment could thereby be avoided by adopting an integrated approach.

**Question 6. If we were to consider making Health Impact Assessment a mandatory requirement, which bodies do you think should be required to use it and in what circumstances?**

Primarily corporate and statutory bodies making planning applications to local planning authorities in Wales.

It is acknowledged that for some minor actions a *de minimis* exemption would apply in principle (as indicated in Q 3 response) although this could be challenged if it was felt that the applicant was unreasonably claiming their ‘proposed change’ would be minimal. This would be for the courts to decide if the change was minimal or not. If the change was not considered minimal a HIA and evaluation would be required. BMA Cymru Wales do not believe that HIA is being considered under the existing system which includes Environmental Impact Assessment (EIA). The integration of HIA into the existing EIA has been BMA UK policy since 1994 and we are of the firm view that the time of this that the time is now right for HIA to be placed on a statutory footing in Wales.

The alternative of a voluntary, rather than a mandatory approach has been trialled in England. The statutory changes which will be necessary to affect placing HIA on a statutory footing have been well rehearsed in a paper produced by the NHS London Healthy Urban Development Unit (HUDU). In Wales, good practice in this area can be found in the case study of the Nant-y-Gwyddon landfill site in the Rhondda Valley. (Reference: The Effectiveness of Health Impact Assessment. Case Study 9, Citizen Involvement in a local HIA: Informing decisions on the future of a landfill site in Wales pg 177-188)

**Potential legislative options for putting HIA on a statutory basis within Wales**

There are a few examples from other common law jurisdictions where HIA has already been placed on a statutory footing. In addition at EU level, Article 152 of the Amsterdam Treaty provides that: ‘a high level of health protection shall be ensured with the formulation and implementation of all Community policies and all Community measures’.

Particular common law jurisdiction examples of legislation include:

**Tasmania** – Section 74(5) of the Environmental Management and Pollution Control Act 1994 (Tas) provides that if required by the Director of Public Health, an environmental impact assessment must include an assessment of the impact of the proposed environmentally relevant activity upon public health. The Director of Public Health in Tasmania has subsequently required that all EIA’s must include HIA.

**Quebec** – Section 54 of the Public Health Act 2001 requires government ministries and agencies proposing laws or regulations to first undertake an HIA. This obligation aims to ensure that legislation does not negatively impact population health, and, concomitantly, to allow Minister of Health and Social services the capacity to share health-related concerns with other government ministries as necessary. A 2012 assessment found, while initially there had been resistance to the measure from the affected ministries and agencies, there had been a consistent trend towards acceptance of the HIA process, with 519 requests for consultations between 2002 and 2012.

1 http://www.healthyurbandevelopment.nhs.uk/pages/contact_us/contact_us_the_team.html
Potential Benefits to Health Boards in engaging in the planning process through integrated health and environmental impact assessments

- Improvements in the health of the population through providing the right environment for healthier lifestyles
- Ensuring the wider determinants of health are considered by planners where relevant
- Reduction in health inequalities
- Reduction in the financial burden on the health boards in Wales – both by reducing the prevalence of ill health and by preventing illness at an earlier stage
- Aid in meeting Welsh Government public health targets;
- Other organisations will be encouraged to help the health board deliver its health targets;
- The opportunity to focus on longer-term objectives, tackling the causes of ill health rather than ‘fire fighting’ present problems
- Improved community engagement in local public health problems

Incorporating HIA within the existing EIA process in Wales

European Law (85/337/EEC) already requires EIA to include “the direct and indirect effects of a project on the following factors...human beings”. However, this does not achieve an integrated approach, by which health impact assessment is integrated explicitly into the machinery of development planning in Wales. If achieved, such an integrated approach would ensure that the individual and collective effects of development on human health are taken into account in its planning and regulation.

Accordingly, BMA Cymru Wales believes that existing planning legislation within Wales should be amended to include an explicit and formal requirement for an assessment of the potential impacts on human health of all proposed developments requiring an environmental impact assessment (EIA) for planning purposes. No EIA should be deemed to be adequate unless it shows evidence that possible implications for human health have been properly addressed.

Health impact assessment should thus be considered a statutory component of Environmental Impact Assessment, not a separate and parallel activity. The planning machinery for environmental impact assessment is already in place and it would be inappropriate to duplicate or replace it.

Accordingly, BMA Cymru Wales now calls for both processes of health impact assessment (HIA) and environmental impact assessment (EIA) to be integrated and placed on a statutory basis within Wales.

Question 7. Do you think a new Bill could provide an effective platform for reducing health inequalities in Wales, and if so how?

An effective universal HIA requirement would provide an effective platform to help reduce inequity in Wales, promote a social inclusion remit and empower hard to reach groups. The early ‘flagging’ of HIA for proposed developments will create an integrated dialogue where ‘health’ rather than sickness is being discussed. Thus if the aim is give further consideration to reducing health inequalities the bill must contain an evaluation of population health, both prior to and after any change. It must provide a participative approach, with all actions having demonstrable consideration of the impact on human health. It is important that when local environments are altered by a rule change that there is a disproportional improvement for those disadvantaged by this change. The positive impact on people’s health from health and safety legislation, through the reduction of passive smoking for hospitality staff due to the banning of smoking in public buildings are testament to the power of a legislative approach.

Question 8. In what ways do you think a new Bill could be an effective way of promoting the importance of preventative action to overall health and wellbeing in Wales?

If continuing evaluation of the health of the local population was undertaken then this in itself would help to promote health and wellbeing. It is important that such an evaluation is not simply a count of diagnosed
illnesses, but rather a positive measurement of health and wellbeing. Preventative healthcare is a field that is far too diverse to be covered by a single bill and some preventative measures have successfully been implemented by legislation such as the smoking in public places ban, food labelling laws and the control of drugs legislation.

Question 9. How do you think an increased focus on empowering local people to influence their health and wellbeing would best be achieved through legislation?

BMA Cymru Wales support the Community Health Council (CHC) in Wales and the opportunity they provide for local people to be empowered to influence the policies of health providers in their local area.

It is unclear how legislation enacted centrally will affect local empowerment, as the forces that seek to disempower the socially excluded are numerous and well connected. The perception of a ‘nanny-state’ is often counter-productive in some communities. However, Welsh Government can set a good example by evaluating all its own policies and measures for their health impact before and after implementation. If they demonstrate that despite the intention of helping to improve human health, measures have harmed health and wellbeing, then the measure can be reversed or repealed; or at least reviewed and amended. Empowerment through a participative approach which is integrated as a consultative element of an HIA (see Q 6 response) would best achieve a positive outcome.

Question 10. Do you think it is preferable for us to progress our efforts to improve the health of people in Wales in a way other than introducing a new Bill? If so, why?

No.

Legislation is clearly needed to ensure that change occurs, however this must be part of a wider strategy as the nature of the threats to public health are ever-changing, so this bill needs to be part of a wider strategy to improve health in population of Wales together. Sustained health education and home economics education throughout school life, would also be an effective method of improving health – particularly for the younger generation currently seeing record levels of child obesity.

Welsh Government should also continue with other plans such as those to be delivered as part of the Active Travel Bill and amendments to the Town and Country Planning Act.

Question 11. If you think we should do something different to introducing a new Bill, what do you think would be a more effective approach?

Whilst not suggesting a different approach to the Public Health (Wales) Bill, BMA Cymru Wales believe the bill is an essential part of an overall approach by the public and its leaders to reducing health inequalities and improving human health as a significant role of government. Developing health measures to economically and reliably measure the effectiveness of an overall strategy would prioritise an effective approach.

Question 12. Please let us have any further comments you wish to make about the issues raised in this Green Paper.

BMA Cymru Wales advocates that Welsh Government should enhance its investment in health surveillance (information for action on health). Wales is uniquely placed to undertake such activity thanks to the foresight of NWIS and the General Medical Practitioners in Wales, in developing allowing data collection system where data is collected in a manner that protects patient confidentiality, for example, through a properly funded Public Health Observatory. This together with the SAIL project in Swansea (if enhanced) and participation made national policy would enable Wales to gain both improved health and economic benefit. This would be policy that is locally developed and would support a sustainable economy in a resilient manner.
The Public Health (Wales) Bill is a ‘once in a generation’ opportunity to challenge the pattern of poor health and health inequalities that has been the hallmark of life in Wales for too long. BMA Cymru Wales believe that this Bill has the real potential to make Wales an exemplar in the international field of public health.