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Health Inequalities and Healthy Communities
Welsh Government

By email only

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Health Impact Assessment (Wales) Regulations consultation BMA Cymru Wales response

Introduction

BMA Cymru Wales is pleased to provide a response to the Welsh Government consultation on Health Impact Assessment (HIAs) regulations. We have been long-standing advocates for the introduction of HIAs on a statutory basis, as a means to identify the health impacts of any public policy decision and to minimise health inequalities affecting the general population and particular vulnerable groups.

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Response

1. Based on the provisions contained in Part 6 of the Public Health (Wales) Act 2017, to what extent do you agree that the draft Regulations address the obligation to mandate the use of Health Impact Assessments for the listed public bodies in Wales?
 - Strongly agree
 - Agree
 - Neither agree nor disagree
 - **Disagree**
 - Strongly disagree

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BMA Cymru Wales have been a long-term advocate for Health Impact Assessments, having lobbied extensively for the inclusion of mandatory HIAs within the Public Health Act 2017 and in previous iterations of the legislation.

We have maintained regular contact with Minister and officials during the intervening period, but we appreciate the reasons behind the delayed introduction of the regulations, namely the consequences of the Brexit referendum followed by the COVID pandemic.

Whilst the regulations as written create an obligation upon listed public bodies to undertake HIAs, we are not convinced that the regulations provide sufficient clarity regarding when and in which circumstances that HIAs would be required.

2. There will be a requirement for bodies listed under section 110 of the Public Health (Wales) 2017 Act to produce HIAs in line with the draft Regulations. Do you agree that the list of public bodies in section 110 of the Public Health (Wales) Act 2017 should mirror those bodies listed in section 6 of the WFG Act, including any future proposed additional public bodies that are added to section 6?
- Agree
 - Disagree

We agree with the list of bodies as set out in the regulations.

We support the inclusion of the eight listed public bodies within section 6 of the Wellbeing of Future Generations Act during 2024. Each of these bodies have wide ranging powers across a range of public sectors with significant socio-economic and health implications.

3. Do you agree with the policy intent to mandate the use of HIA for the listed public bodies when taking an action or making a decision of a strategic nature?
- Agree
 - Disagree

In our briefing to Assembly Members (as then titled) from August 2015 on the potential inclusion of HIAs within the nascent Public Health (Wales) Bill, we said that:

The principle for HIA to be a requirement in specific situations could be incorporated on the face of the Public Health (Wales) Bill, with the intention that regulations would subsequently be produced which could then specify in exactly which particular situations a mandatory HIA would be required. That way the requirement for mandatory HIA could initially be applied in a number of discrete areas where it is most apparent that this would be of benefit, with scope for this to be easily broadened to further areas in the future

It is therefore disappointing that these regulations do not detail the nature of situations in which mandatory HIAs will apply, instead relying upon the vague provision that they

are requirement when public bodies are “*taking an action or making a decision of a strategic nature*”.

The consultation document lists a number of examples where the obligation will be required. It would be beneficial if these examples were featured within the regulations as to provide a clearer illustration of the definition of strategic actions or decisions.

Limiting the decision making to that of a ‘strategic’ nature is somewhat restrictive, in part because the expertise and interest is more likely to be at a more tactical or operational level. For example, town planners in Local Authorities are likely to have a working knowledge of HIAs, whilst senior management may not. It would be appropriate for HIAs considered at all levels - strategic, tactical (if tactical exists for a given project) and operational.

It could be better emphasised in Regulation 3 that the requirement to undertake a HIA must be embedded in the planning phase of any decision making as to inform the public body’s choice. The draft wording is ambiguous as to the sequence of events: for instance, a body could settle upon a course of action without consideration of wider health impacts and then undertake a HIA after the decision has been made. It might only be through the undertaking of an HIA that an unforeseen negative impact on health might be identified, and this should be provided to bodies early on in the decision-making process.

The regulations are unclear about outsourced/commissioned decision making. For example, Local authorities may commission construction companies to undertake their school building programme. Would the obligation to undertake a HIA fall upon the private company that has successfully tendered for the contract or upon the authority prior to the tender process commencing? It is unlikely that private companies are to be subject to the HIA duty and therefore may not prioritise their undertaking or complete tokenistic returns.

4. Are there any additional circumstances in which you believe public bodies should be required to conduct a mandatory HIA?

Local Authorities are included as ‘public bodies’ within the remit of the legislation, and the illustrative list of strategic decisions/actions mentions development plans. We suggest that it may be insufficient to require a HIA upon the overarching local development plan (LDP) given that numerous individual development proposals will be brought forward under the scope of the LDP over a number of years. Each of these in turn may require consideration from a range of public policy perspectives, including the impact upon the local health economy and the health and wellbeing of prospective residents. The existing Welsh Health Impact Assessment Support Unit (WHIASU) toolkit on HIAs and Local Development plans¹ provides comprehensive guidance on how an

¹*Health Impact Assessment (HIA) and Local Development Plans (LDPs): A Toolkit for Practice* (August 2021) <https://phw.nhs.wales/publications/publications1/health-impact-assessment-hia-and-local-development-plans-ldps-a-toolkit-for-practice/>

overall HIA should be undertaken upon an LDP as a whole, however it could be applied at a more granular level for future developments.

The development of new transport infrastructure should also require a HIA as a means of furthering the goals of the Active Travel (Wales) Act 2013, in a holistic manner.

Similarly, we suggest that major NHS capital builds and wider service reconfiguration be listed as decisions that require a HIA. This is particularly important from not only a health outcomes perspective but also in seeking to tackle health inequalities and inequities.

5. Are there any additional circumstances in which you believe public bodies should be exempt from complying with the draft Regulations?

We do not believe there should be any exemptions to the duty.

HIAs should be default practice with clear reasons and justifications within a governance process for not undertaking them. There may be situations e.g. a very similar project to a prior one that had a HIA, where the preexisting HIA would be reasonable to apply - however, the decision to do this should have a clear governance process with accountability.

6. Do you agree that the outputs required as a minimum for a HIA under regulation 4 are appropriate?
- **Agree**
 - Disagree

We would also suggest that it be required to consult with representatives of workers/employees (as appropriate) in social partnership during the undertaking of a HIA.

7. Do you agree that the factors set out in regulations 4(8) - 4(11) of the draft Regulations should be considered whilst conducting a HIA? For ease, these factors are the wider determinants of health, and the factors relevant to health inequity.

Yes, we agree that these factors are appropriate, and that they are in alignment with the defined wellbeing goals within the Wellbeing of Future Generations Act 2015. We also suggest that the commercial determinants of health could be an additional consideration.

8. Are there any potential issues you can foresee about the way in which a HIA will need to be carried out under regulation 4 of the draft Regulations?

No.

9. To what extent do you agree that publishing guidance is the best way for Public Health Wales to assist public bodies with carrying out Health Impact Assessments?

- **Agree**
- Neither agree nor disagree
- Disagree

10. If you answered “agree” to question 9, what information would be most beneficial to include within the supporting guidance?

Provided the requirements on the face of the regulations are sufficiently strong to specify which circumstances HIA will be required, then guidance will be appropriate as this can be updated and distributed as appropriate. WHIASU is well established and respect unit within the WHO Collaborating Centre on ‘Investment for Health and Well-being’, Policy and International Health Directorate, Public Health Wales, and already publish a range of guidelines, toolkits and FAQs relating to HIAs.

A further step could be to align training in the field alongside higher education, particularly in Public Health disciplines, with students undertaking HIAs whilst being supervised in public sector organisations. This would also develop a talent pool that may be recruited by the public sector down the line to embed HIA practice.

11. Do you agree that the option to publish a HIA in a manner it considers most appropriate provides public bodies with enough flexibility to conduct the assessment in the most appropriate way?

- Agree
- Neither agree nor disagree
- **Disagree**

12. Do you foresee any issues with the requirement for publishing the HIA output as soon as is reasonably practicable?

No.

13. Do you have any additional suggestions for how, where and when HIA should be published?

HIAs should be published in the similar manner to planning decisions and available for future scrutiny and not only for ‘*as long as the proposed action/decision remains relevant*’. Public bodies should be required to maintain an archive of HIAs on their websites of public bodies – or in a central repository on the Public Health Wales website. Also, for a period of time, current HIAs could be made available in specified easily accessible locations for those who are not digitally literate. HIAs should be published in a range of formats including in an executive summary or easy read format to enhanced wider accessibility to all sectors of the population.

14. In addition to guidance, what other methods and ongoing resource could support public bodies to realise the benefits of HIAs?

An ongoing suite of education packages and webinars will be necessary to educate public body decision-makers, at all levels from boards down, and those involved in strategy and planning. WHIASU is a small unit in terms of resource and fulfilling an enhanced educational role across a wide range of public sector bodies may prove difficult, but such a campaign will be necessary to embed HIAs as intended.

Ideally, there should also be an obligation to seek public health specialist advice as/when appropriate when conducting an HIA – this could be centrally via PHW but also the local health board public health teams.

We would support some form of requirement or encouragement to undertake evaluation (in guidance or regulations) to monitor the effectiveness of particular HIAs, i.e. whether impacts identified were successfully mitigated against and if not what lessons could be learned.

15. The draft Regulations will affect the listed public bodies differently. For us to gain a better understanding of these impacts can you tell us what are the costs and benefits, if any, you envisage will arise from the draft Regulations coming into effect?

In this time of overstretched public services and limited resources, public bodies may see HIAs as an additional burden upon their officials. However, the first stage in the process should be a screening exercise which can determine whether an HIA would both be valuable and feasible within a particular decision-making context.

Undertaking HIA alongside other assessments, as part of a wider integrated assessment, could be seen as a worthwhile adjunct to the Well-being of Future Generations (Wales) Act 2015 which seeks to promote a healthier Wales as one of its seven identified well-being goals. Whilst this Act requires public bodies in Wales to set objectives that will further each of these well-being goals, it does not however establish a specific requirement for Welsh public bodies to consider the impact on health of other decisions they may make, or of new policies they may adopt, when these are outside of those which are specifically being brought forward to further the aims of the Act. A mandatory application of HIA by Welsh public bodies could therefore ensure that the impact on health and wellbeing is considered more widely across the board, thereby more effectively delivering the intention of a health-in-all-policies approach.

16. Do you think the proposals in this consultation document might have an effect on the following?

- Those living in rural areas
- Specific socio-economic groups
- Children and young people
- Equality in relation to; - Age - Sex - Race - Religion - Sexual orientation - Pregnancy and maternity - Disability - Gender reassignment - Marriage/civil partnership

We do not foresee any differential impacts upon these groups. HIAs do not remove the need for any other impact assessments, and these will continue as is currently the case.

- 17.** We would like to know your views on the effects the consultation would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

We do not foresee any differential impacts upon the Welsh Language

- 18.** Are there any other groups within society not already referenced you think any of the proposals would have an impact on?

No.

- 19.** We have asked a number of specific questions. If you have any additional feedback on the draft Regulations that we have not specifically addressed, please use this space to report them:

We have no further comments.