

PHB 07

Bil Iechyd y Cyhoedd (Cymru)

Public Health (Wales) Bill

Ymateb gan: Cyfarwyddwyr Diogelu'r Cyhoedd Cymru

Response from: Directors of Public Protection Wales

PRINCIPLES OF THE PUBLIC HEALTH (WALES) BILL

Submission of Evidence by Directors of Public Protection Wales (DPPW) in advance of attendance at oral session.

Introduction:

Directors of Public Protection Wales (DPPW) represent a range of local authority services, including Environmental Health, Trading Standards and Licensing which collectively, are often referred to as Public Protection services.

Public Protection services are responsible for a wide range of legislation designed to protect public health and the rights of consumers. These services directly affect the health, safety and wellbeing of our communities in Wales.

- **Restrictions on smoking in enclosed and substantially enclosed public and work places, and give Welsh Ministers a regulation-making power to extend the restrictions on smoking to additional premises or vehicles;**
- **Restrictions on smoking in school grounds, hospital grounds and public playgrounds;**

1.1 Smoking remains the single greatest avoidable cause of death in Wales¹. The introduction of the ban on smoking in enclosed public spaces in 2007 has been hugely successful in reducing people's exposure to environmental tobacco smoke and in strengthening public awareness and attitudes towards it.

1.2 The quality of the air we breathe is fundamental to human health and smoke-free environments have made a significant contribution to that in recent years. We are of the opinion that smoking should be discouraged in all public places, in particular those locations where there are children or

vulnerable people. These include school grounds, hospital grounds and public playgrounds and we therefore welcome the proposals to make these smoke-free. Local authorities have done a great deal to promote smoke-free environments and many, if not all, have already put in place voluntary bans on smoking at children's playgrounds.

1.3 Our officers have several years' experience of advising on and enforcing smoke-free legislation and we are therefore well placed to advise on the development of future smoke-free provisions.

1.4 Our experience of smoke-free environments to date is that of widespread awareness, a high level of acceptance and significant self-policing. Self-policing has been an important element of successful enforcement of the legislation and the need for formal enforcement action has been relatively rare. However our regulatory experience underlines the importance of an effective suite of enforcement powers (and "enforceability") to the successful implementation of any legislation. We therefore welcome the full range of enforcement powers outlined in the Bill, including Fixed Penalty Notices as an effective means of dealing with minor offences and as an effective deterrent.

1.5 Regarding proposals for public playgrounds. In the absence of a boundary, a distance from play equipment (although arbitrary) seems sensible and 5m seems pragmatic. Care is needed in framing definitions. Interpreting "playground equipment" could be problematic and the definition might benefit from additional clarity. We wonder about, e.g., football goalposts; whether it should be relevant that equipment is fixed or moveable / temporary or permanent (such as children's football goals erected on a Saturday morning for the duration of football games). Does the "boundary" need to be permanent - such as a temporarily marked out play area? We wonder about a potential distinction between "sport" and "play".

- **The creation of a national register of retailers of tobacco and nicotine products;**

2.1 DPPW supports the proposal to create a register. DPPW believes Local Government is best placed to enforce the proposed provisions in Wales because Public Protection Services have considerable experience and expertise in the operation of registers and licensing regimes and our Trading

Standards and Environmental Health Officers are already enforcing associated legislation at many of the premises concerned.

2.2 The introduction of a register will provide an additional control on the availability of tobacco. We support requirements for detailed information on those people and premises from which tobacco can be sold legitimately. This will make it easier for enforcement officers to identify those premises where tobacco is permitted to be sold which will in turn assist with the enforcement of underage sales, other tobacco related legislation and assist the performance of enforcement functions.

2.3 We feel that success of such a measure will be strengthened by including provisions to control access to the register such as a “fit & proper persons” or “suitable persons” test.

2.4 We feel that a register should cover all those that manufacture, distribute and sell tobacco products. We feel that having a register only for the end retailers is not comprehensive and will not cover other parts of the tobacco chain that feed the habit including those under age. We hold the view that that an offence should be created where tobacco products can only be sold, distributed, etc. to those registered.

2.5 We note the proposal that Regulations may set out requirements about the form of an application, information to be included on it and the payment of fees. We support this and will be pleased to work with officials to help work up proposals for such regulations. Regarding the payment of fees, we highlight the need to recognise the potential resource implications for Local Authorities / Registration Authority of enforcing the provisions.

2.6 Our experience of “Registers” introduced under other legal provisions suggest that their efficacy can be limited if they are not also accompanied by robust enforcement powers. We support the range of enforcement powers proposed but we note that there is no provision for the refusal of an application for registration. We feel that there is a case for including powers to refuse registration.

2.7 DPPW supports extending the arrangements to include those supplying via online, telephone and mail order channels. This is much needed to reflect the changing nature of society.

- **To provide Welsh Ministers with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales;**

3.1 The proposed link to restricted sales orders (RSOs) and restricted premises orders (RPOs) under the Children & Young Persons Act are welcome. However, we see it as essential that the range of offences triggering an RPO is extended to include all tobacco related breaches, for example the supply of illegal (counterfeit and non-duty paid) tobacco, tobacco labelling offences, non-compliance with the tobacco display ban; and not just underage sales. We hope that these matters will be addressed through the proposed power for Welsh Ministers to make regulations under section 12D of the Children and Young Persons Act and the range of offences triggering an RPO extended accordingly.

- **Prohibit the handing over of tobacco and/or nicotine products to a person under the age of 18;**

4.1 We support the proposals which would bring tobacco products into line with alcohol sales.

- **The creation of a mandatory licensing scheme for practitioners and businesses carrying out 'special procedures', namely acupuncture, body piercing, electrolysis and tattooing;**

5.1 We strongly support the proposal to regulate special procedures through licensing and associated provisions.

5.2 DPPW is of the view that current legislation does not adequately protect the public. Environmental Health Officers find current legislation to be outdated, cumbersome and inadequate. It doesn't offer the range of enforcement powers needed to deliver effective public protection. We have extensive experience of regulating practitioners of special procedures and seeking to protect the public from those that practice illegally. We will be pleased to share experiences such as those described in Exercise Seren1 and others and the lessons learned from these.

5.3 DPPW has the following concerns regarding existing provisions:

- Current provisions relating to "registration" are inappropriate. "Registration" may convey to the public a sense of *official approval* and *compliance with standards* whereas in reality registration (in almost all

cases) cannot be refused and results merely from the completion of a form.

- There are no pre-conditions to registration. So there is no requirement for a practitioner to have training or experience to set up as a skin piercer / tattooist, etc. However the need to understand the importance and practical application of hygienic practices and infection control procedures is essential to protect the public. The public need some assurance that a practitioner is competent to perform what they are doing without putting them at risk.
- Currently, an unregistered practitioner applying unsafe practices in unhygienic premises only commits the offence of being unregistered under the byelaws. This may be viewed as a purely administrative offence when Courts are considering sentencing.
- Current controls rely too heavily on the regulator being able to prove that a person is carrying on a “business”. This can be difficult because most unregistered tattooists (‘scratchers’) work from home and deny that they receive payment.
- Regulatory controls are cumbersome and attempts to tackle risks posed by illegal tattooists rely in part on the use of legislation not specifically intended for such use e.g. The Public Health (Control of Diseases) Act 1984 and The Health and Safety at Work etc. Act 1974. The Health and Safety at work Act gives rise to enforcement challenges, particularly in dealing with illegitimate practitioners. Several local authorities in Wales have used public health Part 2A Orders to seize equipment from unregistered and unhygienic premises, however these provisions do not always provide the appropriate enforcement tools to safeguard the public and to tackle “scratchers”.
- When we last gathered information on this, we found that between July 2012 and July 2013, ten applications for Part 2A Orders had been made by local authorities; all of which related to the carrying out of unregistered tattooing from domestic premises.
- Body modification trends have changed significantly. New procedures are being developed and becoming increasingly popular such as dermal implants, branding, tongue splitting and scarification all of which have potential to spread infection or cause permanent damage.

- Existing legislation does not prevent the sales of relatively cheap tattooing equipment over the internet. Anyone can purchase a kit and start operating, possessing no basic training, no knowledge of infection control and not using an autoclave or equivalent sterilisation procedure.

5.4 DPPW supports the concerns of the Chartered Institute of Environmental Health (CIEH) that many procedures are being done by people with little if any knowledge of anatomy, infection control or healing processes.

5.5 We support the proposals to include Acupuncture, Tattooing, Body piercing and Electrolysis. These share a theme of preventing blood borne viruses and other infections. There is clear evidence of harm to human health when these procedures are undertaken by persons who are not competent or when appropriate hygiene and infection control measures are not in place.

5.6 Our members have practical experiences of the shortcomings of existing controls. We strongly support the proposals for effective licensing as much needed control measures to help address the shortcomings identified above. We agree that there should be no grandfather rights – we feel this is important.

5.7 We strongly support the view that legislation should enable other body modification procedures to be addressed, some of which present significant risks. In our view, the aim should be to ensure that all procedures that involve piercing, body modification / enhancement or any invasive treatment or procedure where there is a risk of infection or injury are covered by some form of control or regulation. We are concerned about the growing range of body modification procedures coming to light and we recognise that new and novel procedures are continually being developed. The aim should be a set of provisions that is to be one step ahead rather several behind.

5.8 We acknowledge that in relation to novel procedures there is some confusion about what might be considered “medical”, “cosmetic” or “illegal”. We acknowledge that for a number of reasons there is a case for taking a considered and incremental approach to addressing this wider range of procedures. However we wish to emphasise the need to address the risks associated with these actual and potential practices and there may be a need to prioritise how that is taken forward to deal with the greatest risks first.

5.9 We therefore support the proposal that additional procedures can be added and we will be pleased to work with Welsh Government officials to support the development of proposals in relation to such matters.

5.10 Proposals contained in the Bill in relation to licensing criteria (such as requiring competency) will make a significant contribution to protecting health from risks associated with such procedures. The proposals would give enhanced enforcement powers and greater flexibility to deal with public health risks in relation to both those that operate legitimately and those that do not. We will be pleased to work with Officials to help develop proposed regulations.

5.11 We support proposals for mandatory licensing conditions which we see as much needed to address existing shortcomings identified by our officers. These include verification of age, infection control, standards of hygiene, consultation to be carried out, record keeping and not carrying out procedures on those that are intoxicated. Again we will be pleased to work with officials in their drafting of regulations.

5.12 We strongly hold the view that a “fit and proper person criteria” is a necessary safeguard. We feel that the list of “relevant offences” is too narrow and we are surprised that the list does not include, for example, sexual offences or assault.

5.13 We note that there is no power of entry to a dwelling and note that other powers, such as taking of equipment, from a dwelling will also rely on the gaining of a warrant from a JP.

5.14 We note the proposed exemptions for individuals. We note that the proposals suggest that the regulations will ensure that no one is exempt unless the Special Procedure is specified as within the scope of their professional competence. We would ask that the Committee seek appropriate assurances that any exemptions are based upon a sufficient degree of assurance that a professional so registered will have appropriate competence to deliver a special procedure. We note also the intention to establish prescribe competence which has not yet been developed.

5.15 We support the full range of enforcement powers proposed in the Bill. These appear comprehensive but are necessarily so if we are to have an effective licensing system to control the risks from special procedures. We believe that the enforcement powers are accompanied by adequate safeguards and appeal provisions which strike an appropriate balance between public protection and individual rights. For example we strongly

support the proposal that an appeal against a stop notice should not suspend the notice.

5.16 The establishment of a fee system enabling local authorities to recover their costs will ensure that finance is available to deliver and is absolutely necessary in the current financial climate.

5.17 There is a loophole in current legislation enforced by the Health Inspectorate Wales (HIW) in respect of the use of lasers. Class 3b and 4 lasers (4 being those used in a hospital setting) only have to be registered with the HIW if used in certain circumstances. Where this class of laser is used on a mobile or ad hoc basis there is no requirement to register, therefore this highly dangerous equipment could be used unregulated. This is a shortcoming that needs to be addressed in our view. We could be facing an increase in the use of lasers when fashion dictates that tattoos are no longer "trendy" and the increase in poor artwork by illegal tattooists will see a demand in laser removal.

5.18 The definition of special Procedure. We have experience of significant problems relating to a lack of hygiene and infection control where the activities associated with the special procedure (e.g. sterilisation of equipment) were not undertaken by the practitioner but by others who did not have sufficient knowledge to do so effectively. We feel that detailed discussions are needed on how best to address this to ensure that the definitions contained within the Bill (or further regulations associated with the licensing of special procedure practitioners, such as knowledge requirements and other "duties") does not leave a gap in which only the specific act of puncturing the skin is covered rather than the "whole" procedure including hygiene controls.

- **Prohibition on the intimate piercing of persons under the age of 16 years;**

6.1 Local authority officers are aware that such procedures have been taking place and it is our view that an age limit is absolutely necessary to protect young people from the risks of harm. Aside from the need to protect young people from indecency, there are increased risks of harm (e.g. from infections) for young people from the piercing of intimate parts.

6.2 We believe there is a strong case for setting the age limit at 18 years and note, for example, the views of the Chartered Institute of Environmental

Health (in its submission of evidence to the Committee) which we would support. From an enforcement perspective, we are well-used to enforcing a range of legislative provisions associated with differing age limits, although this can sometimes be confusing for the public. Whilst we would support setting an age limit for intimate piercings at 18, in line with that for tattoos, we would strongly argue against reducing the current age limit of 18 for tattoos, which is proving an important control of potential risks to young people.

6.3 We support the proposal to create an offence “to enter into arrangements” along with the provisions relating to “test purchasing” by local authorities as important powers to aid investigation and control.

- **To require Welsh Ministers to make regulations to require public bodies to carry out health impact assessments in specified circumstances;**

7.1 We support the proposal. We believe that decisions that could impact on population health should be subject to appropriate and effective assessments. This can help maximise potential health benefits and minimise potential dis-benefits, of proposals, both generally and to particular groups. Already we have a number of Environmental Health Practitioners qualified to do “Rapid” Health Impact Assessments (HIAs) as well as Quality Assessing HIAs and we are giving on-going commitment to ensuring that there is a strong body of EHPs qualified to carry out HIAs at all levels.

- **To require local authorities to prepare a local strategy to plan how they will meet the needs of their communities for accessing toilet facilities for public use;**

8.1 DPPW recognises the potential health and environmental impact of a lack of public toilet facilities, some direct some indirect. Some groups of our population can be adversely affected to a greater extent than others. Examples include older people, people with disabilities, those with certain medical conditions, those with younger children and workers in some occupations.

8.2 We also recognise that the resource climate has put local authorities under significant pressure and point out that a strategy will have no impact if it is merely that.

8.3 We wonder whether there should be a review of existing legal provisions to include, for example, section 20 of the Local Government (Miscellaneous Provisions) Act 1976.

- **To enable a ‘food authority’ under the Food Hygiene Rating (Wales) Act 2013 to retain fixed penalty receipts resulting from offences under that Act, for the purpose of enforcing the food hygiene rating scheme.**

9.1 We fully support the proposal which will assist local authorities in recovering the costs associated with addressing cases of non-compliance thus helping to maintain the ongoing success of the Scheme.

General

10.1 DPPW warmly welcomes proposals to better protect public health and consumer rights but wishes to underline that the challenging financial environment within which we are currently managing our services means the need to ensure that any additional duties come with adequate funding or the ability to recover costs through fees.

Date: 5.12.16

References

1 Public Health Wales Observatory, 2012. *Tobacco and Health in Wales*.

Publisher: Public Health Wales NHS Trust / Welsh Government. ISBN: 978-0-9572759-0-4

2 Aneurin Bevan University Health Board, 2016. *Technical Report of a Blood-Borne Virus Look-Back Exercise related to a body piercing and tattooing*