



Chartered Institute of
Environmental
Health

Sefydliad Siartredig
Iechyd yr
Amgylchedd

Public Health (Wales) Bill

Response to the Health and Social Care Committee of
the National Assembly for Wales

June 2015

Sefydliad Siartredig Iechyd yr Amgylchedd

Fel **corff proffesiynol**, rydym yn gosod safonau ac yn achredu cyrsiau a chymwysterau ar gyfer addysg ein haelodau proffesiynol ac ymarferwyr iechyd yr amgylchedd eraill.

Fel **canolfan wybodaeth**, rydym yn darparu gwybodaeth, tystiolaeth a chyngor ar bolisiau i lywodraethau lleol a chenedlaethol, ymarferwyr iechyd yr amgylchedd ac iechyd y cyhoedd, diwydiant a rhanddeiliaid eraill. Rydym yn cyhoeddi llyfrau a chylchgronau, yn cynnal digwyddiadau addysgol ac yn comisiynu ymchwil.

Fel **corff dyfarnu**, rydym yn darparu cymwysterau, digwyddiadau a deunyddiau cefnogol i hyfforddwyr ac ymgeiswyr am bynciau sy'n berthnasol i iechyd, lles a diogelwch er mwyn datblygu arfer gorau a sgiliau yn y gweithle ar gyfer gwirfoddolwyr, gweithwyr, rheolwyr busnesau a pherchnogion busnesau.

Fel **mudiad ymgyrchu**, rydym yn gweithio i wthio iechyd yr amgylchedd yn uwch ar yr agenda cyhoeddus a hyrwyddo gwelliannau mewn polisi iechyd yr amgylchedd ac iechyd y cyhoedd.

Rydym yn **elusen gofrestredig** gyda dros 10,500 o aelodau ledled Cymru, Lloegr a Gogledd Iwerddon.

The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

The Chartered Institute of Environmental Health (CIEH) welcomes the Public Health (Wales) Bill as a mechanism for regulating and controlling discrete areas of activity that have the potential to have an adverse impact on individuals and on public health in Wales.

Our response addresses the consultation question in the order of raising. Where a question in the Consultation questions is not reproduced we have no comment to make.

Part 2: Tobacco and Nicotine Products

Comment. The CIEH wishes to preface our response to Part 2 of the Consultation with the following comments.

There is clear and incontrovertible evidence that tobacco products damage the health of those who use them and also those who inhale the smoke from them. There have been a number of studies into the risks posed by e-cigarette use, and to date the evidence of health risk is inconclusive. As the products have been on the market less than 10 years there is no evidence of long term health damage, the evidence of health risk from short term use is inconclusive.

With the exception of the study into Attitudes of the Independent Hospitality Industry to use of E-Cigarettes carried out in 2014, the CIEH has conducted no research into the use of or health effect of e-cigarettes.

- **Do you agree that the use of e-cigarettes should be banned in enclosed public places and workplaces, as is currently the case for smoking tobacco?**

The CIEH strongly supports the ban in smoking tobacco products in enclosed public places, our support being predicated on the recognised detrimental health effects on inhaling tobacco smoke and the harmful effect of passive exposure to it.

E-cigarettes do not generate the same harmful smoke as tobacco products, and although the exhaled aerosol contains nicotine and particulate matter, for which there is no safe level, the levels produced are very low and particularly compared to air borne particulates from road traffic etc. Based on the available evidence, the risk to the health posed by exposure to vapour from e-cigarettes is extremely low. It is therefore the view of the CIEH that a ban on the use of e-cigarettes in enclosed public places and workplaces would not be justified on the grounds of health risk from passive exposure.

We recognise that the use of e-cigarettes has the potential to undermine enforcement of the ban on smoking in enclosed public places (see answer below regarding enforcement).

Whilst it is the case that where owners or occupiers of premises feel that use of e-cigarettes by persons in their premises is an issue, whether by undermining their enforcement of the ban on smoking tobacco or for health reasons they can themselves ban their use, as some (BBC, Standard Life and JCB) have already done. The CIEH in partnership with ASH has produced a document providing advice and guidance for employers titled 'Will you permit or prohibit e-cigarette use in your premises?' (2014) to assist employers making local decisions in this respect.

The CIEH does not support the proposal that e-cigarettes should be banned in enclosed public places and work places, as is currently the case for smoking tobacco.

- **What are your views on extending restrictions on smoking and e-cigarettes to some non-enclosed spaces (examples – hospital grounds and children’s playgrounds)?**

CIEH believes that smoking should be discouraged in all public places, particularly those where children are present, and in hospital grounds where health and the promotion of health should be a primary driver. Wales should move progressively towards a position where smoking is not the norm, and to environments where children and vulnerable individuals are not exposed to tobacco smoke.

In our view the ban on smoking in enclosed public places should be extended to cover sites such as play grounds and play areas, school grounds (including preschool playgroups) and their immediate vicinity and the grounds of hospitals and medical facilities such as clinics.

As noted we do not accept that there is a health case to be made for banning to use of e-cigarettes in non-enclosed spaces. Since the health risks of using e-cigarettes are significantly less than those of smoking tobacco we consider that the use of e-cigarettes should be facilitated to make the choice not to smoke tobacco easier.

- **Do you believe the provisions in the Bill will achieve a balance between the positive benefits to smokers wishing to quit with any potential dis-benefits related to use of e-cigarettes?**

The Bill does not propose to ban the use of e-cigarettes *per se*, but to limit their use in enclosed and some non-enclosed public places. Where e-cigarettes are actively being used a quitting device we believe that the Bill does not achieve a balance, as it acts as a positive disincentive to use e-cigarettes, there being no benefit to the user from doing so.

We believe that it is extremely important that those who are using e-cigarettes as a quitting device should not be subjected to the same restrictions as smokers and subjected to second hand tobacco smoke, which may undermine their quitting efforts.

We recognise however that not all users of e-cigarettes use them as a quitting device and that there is no way to readily distinguish between users who use them as a quitting device and those who do not.

- **Do you have any views on whether the use of e-cigarettes re-normalises smoking behaviours in smoke free areas, and whether, given their appearance in replicating cigarettes, inadvertently promote smoking?**

There is no evidence to suggest that use of e-cigarettes re-normalises smoking behaviour in smoke free areas.

It is the case that second and third generation e-cigarettes do not resemble conventional cigarettes at all, in which case the counter argument, that their use normalises tobacco avoidance can be made, but it is accepted that there is no evidence to support this point.

Given that CIEH does not accept that use of e-cigarettes re-normalises smoking behaviour in smoke free areas we do not accept that it inadvertently promotes smoking.

- **Do you have any view on whether e-cigarettes are particularly appealing to young people and could lead to greater uptake of their use among this age group, and which may ultimately lead to smoking tobacco products?**

The available evidence does not suggest that either of the propositions advanced is correct.

Research published in 2013 shows that experimentation with e-cigarettes by 1-16 years old was low, being 1% and that very few of the experimenting group moved on to sustained use of the products (Use of e-cigarettes in Great Britain amongst adults and young people. Action on Smoking and Health 2013). This data must be balanced against data for young people trying tobacco products which is significantly higher. The ONS survey reporting in on 2013 found that 15% of 16-19 year olds had experimented with cigarettes. (ONS Opinion and Life Style Survey – Smoking habits amongst adults 2012).

- **Do you have any views on whether restricting the use of e-cigarettes in current smoke free areas will aid managers of premises to enforce the current non-smoking regime?**

The ban on smoking in enclosed public places in Wales has been extremely successful. There is now an embedded understanding that smoking tobacco in enclosed public places is not permitted which may be undermined by the increasing use of products that replicate closely the appearance of cigarettes in appearance and in the way they respond to being used. We accept that whilst the design of some brands of e-cigarettes do not replicate the appearance of conventional cigarettes there are others that clearly do, being the same size and colour as a conventional cigarette and having a glowing end, the glow from which intensifies when the user 'draws' on the device, and vapour that is exhaled by the user although there is no smell of tobacco smoke from these e-cigarettes when used. They are also packed in a similar way to conventional cigarettes and appear to all intents and purposes to be the same.

We contend that this is recognised by companies such as Wetherspoons and other national chains, JCB and a number of train companies and airlines where use of e-cigarettes has been banned because their use makes enforcement by staff of the ban on smoking more difficult.

Research by CIEH looked at attitudes to use of e-cigarettes in the independent hospitality sector in Wales carried out in 2014 showed that the majority of owners of small hotels, B&BS and cafes had banned the use of e-cigarettes, applying to them the same rules as are applied to conventional tobacco products. The reasons for applying the same rules were that (1) it was easier and less confusing for staff trying to enforce the ban on smoking tobacco if e-cigarettes were also banned, and (2) allowing use of e-cigarettes encouraged smokers of conventional tobacco products to believe that they could smoke in enclosed public places.

The evidence suggests that restricting use of e-cigarettes in public places does assist managers in enforcing smoke free legislation.

- **Do you have any views on the levels of fines to be imposed on a person guilty of offences under this section?**

Yes. We consider that the levels proposed are reasonable and proportionate and are consistent with offences of a similar type.

- **Do you agree with the proposal to establish a national register of retailers of tobacco and nicotine products?**

The CIEH supports the proposal to create a tobacco retailers register for Wales. Smoking remains the single greatest avoidable cause of death in Wales. The CIEH supports the introduction of measures that will reduce access to or prevalence of smoking. We are of the view that the creation of the register proposed would allow enforcement agencies to identify those premises from which tobacco and /or nicotine products are sold lawfully, and to target for enforcement purposes those that are not included on the register.

Access to tobacco and tobacco products remains an issue particular in respect of sales to young people. The CIEH believes that it is important for effective enforcement of the legislation around sales to young persons that enforcement officers be able to identify those premises from which tobacco is lawfully sold. We further believe that the requirement for retailers to be on such a register would ensure that sales of tobacco and tobacco products within the trade, i.e. from wholesalers to retailers will remain visible within the legitimate trade.

- **Do you believe that a strengthened Restricted Premises Order regime, with a national register, will aid local authorities in enforcing tobacco and nicotine offences?**

Yes.

- **What are your views on creating a new offence for knowingly handing over tobacco and nicotine products to a person under 18, the legal age of sale in Wales?**

This is a useful additional tool in preventing the uptake of smoking/addiction to nicotine in young people. Internet sales of tobacco have the potential to circumvent the age of sale restrictions currently in place and any steps that assist in controlling them are welcomed.

- **Do you believe the proposals relating to tobacco and nicotine products contained in the Bill will contribute to improving public health in Wales?**

Yes. Any actions that have the effect of reducing smoking or reducing addiction to nicotine will contribute to improving public health.

Part 3: Special Procedures

- **What are your views on creating a compulsory, national licensing system for practitioners of specified special procedures in Wales, and that the premises or vehicle from which the practitioners operate must be approved?**

The CIEH strongly supports the proposal to create a compulsory national licensing system for practitioners of specified procedures in Wales. By their nature special procedures are invasive and have the potential to transmit life threatening and life changing infections between the parties to the procedure. Procedures carried out improperly or unhygienically can have an adverse impact on an individual's physical and mental health in the short and the long term. In addition, in the event that a special procedure carried out improperly causes infection, the implications for those individuals connected to the practitioner and the public health bodies investigating the incident are

significant. We cite the recent outbreak associated with a tattooist in Newport by way of example of the number of individuals involved and the cost to the investigation and enforcement teams.

The CIEH considers that a compulsory national licensing system would be beneficial. The proposed licence could contain a number of requirements that would compel the practitioner to demonstrate that they are competent to practice and have the necessary skills to practice safely, without posing a risk to their clients or themselves. It would also give potential clients confidence as they would know that the practitioner they propose to use satisfied the requirements to be a licenced practitioner.

We are further of the view that any premises or vehicle from which a licensed practitioners proposes to practice should be approved prior to use and should be subject to an ongoing inspection regime. It is essential that any premises or vehicle from which special procedure are practised is hygienic and capable of being maintained in a safe and hygienic condition. Even the most capable and competent practitioner cannot practise safely from an unhygienic premises or vehicle and it is the combination of safe and competent practitioners practising from safe and hygienic premises that will protect the health of individuals and wider public health.

- **Do you agree with the types of special procedures defined in the Bill?**

The special procedures in s47 (a)-(d) of the Bill are those procedures currently registered by local authorities in Wales. We consider it appropriate that they should be controlled as suggested as each has the potential to cause life changing or life limiting infection if carried out in an unsafe or unhygienic manner.

We however believe that there are procedures that are similarly invasive with the same potential consequences that should be controlled in the same manner. Examples of such procedures are dermarolling, the injection of dermal fillers and plumpers and cosmetic skin peeling.

We are however satisfied that those procedures outlined in s 47(a)-(d) should properly be controlled as proposed, but that consideration should be given to the addition of other procedures, such as those named.

- **What are your views on the provision which gives Welsh Ministers the power to amend the list of special procedures through secondary legislation?**

Following on from our response to the question above we consider that this provision is essential. The Aesthetic Body Modification industry moves very quickly as new procedures and practises are introduced and become popular. It is critical that Ministers have the power and the ability to respond swiftly to address risks that may be posed to public health by new and emerging practises in this field.

- **The Bill includes a list of specific professions that are exempt from needing a licence to practice special procedures. Do you have any views on the list?**

We consider that the list is appropriate. Practitioners being subject to control by a specified regulatory body are independently assessed as having a suitable and sufficient degree of knowledge and competence.

- **Do you have any views on whether enforcing the licencing system would result in any particular difficulties for local authorities?**

At present local authorities are required to use legislative provision which were not designed to deal with risks posed by special procedure, being the Health and Safety at Work etc. Act 1974 and the Public Health (Control of Disease) Act 1984 as am. By the Health Protection (Part 2A Orders)(Wales) Regulations 2010. Neither piece of legislation was intended to control special procedures, in consequence they are of limited

effectiveness, requiring evidential leaps of faith to be made and failing to prevent those individuals against whom action has been taken from continuing to practise should they chose to do so. Neither prevent those who trade other than in the course of a business from doing so, meaning that action to control 'hobby' practitioners is impossible.

The proposed enforcement regime takes precautionary approach, permitting as it does action to be taken where there is evidence of risk of infection, it addresses practitioners who are operating other than in the course of a business and gives local authorities powers to stop activities immediately. We consider that the provisions of s62- 66 inc. allied with the requirement for licensing of practitioners and approval of premises and vehicles are a significant step forward in controlling the way in special procedures are carried out. We note however that the regime proposed, whilst welcome is an additional burden for local authorities and that finance must follow this new function to ensure that local authority environmental health departments have adequate resources to deliver it.

- **Do you believe the proposals relating to special procedures contained in the Bill will contribute to improving public health in Wales?**

The CIEH believes that the proposals will make a contribution to improving public health in Wales. As noted we believe that there are omissions from the list of special procedures, the inclusion of which would be beneficial, however we believe that the power to amend the list of special procedures to include procedures currently not on the list and new and emerging procedures will address this concern. We further believe that the new enforcement powers given to local authorities will ensure that any risks to public health identified from Aesthetic Body Modification practitioners can be addressed quickly and effectively thereby reducing or eliminating risk to public health.

Delegated powers

- **In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?**

The CIEH believes that an appropriate balance has been achieved.

Finance questions

We believe the estimates of costs and benefits identified are accurate, and endorse the selection of option 3A as being the most appropriate at the present time. The potential cost of treating mental health issues arising from special procedures that have been improperly carried out or from illnesses or scarring resulting therefrom have not been quantified. We accept that these costs will not arise in all cases, but that where they do they may be considerable. It is hard to quantify such costs, however they should not be wholly disregarded.

Other comments

The CIEH wishes to make a number of specific comments regarding the proposed provisions, which are raised in the order they arise.

Sec 50(2)(b) – reference appears to '*significant risk of harm to human health*'; this comment is repeated in a number of other section (s60(2)(b), s63(b)). The interpretation section (s77(4)) makes reference only to 'harm to human health'. In the view of the CIEH this means that the question of whether harm is significant or not will be a question for the

individual officers in the case to determine, which may lead to inconsistency. We believe further clarification would be helpful both to enforcement officers and to Magistrates.

Sec 55 - Offences are listed that may lead to refusal of a practitioners licence. The listed offences do not include offences under the Offences Against the Person Act 1861 (OATPA 1861). These offences include assault and assault occasioning actual bodily harm. We believe that these offences should be included in the prescribed list, as they directly relate to the manner in which an individual has responded to another when under pressure, s may be the case in the carrying out of a special procedure. The CIEH recommends that unexpired convictions under the OATPA 1861 be included.

Sec 77 (1) definition of '*body piercing*' - defined as the perforation of an individual's skin.... with a view to inserting jewellery. We consider it would be helpful to provide further guidance in this regard, since perforation can, without further guidance be of any size or shape provided it is made to enable jewellery to be attached or inserted.

Sec77 (1) definition of '*tattooing*' – the definition is the insertion of any colouring material into punctures in the skin. We are away of a process known as 'Tashing', in which the ashes of a person or animal are mixed with ink and used in the tattoo process, effectively becoming incorporated into the tattoo. The ashes are not ink or a constituent of it and have no pigmentation effect. It cannot be argued that the ashes are 'jewellery' as defined in 77(2), and even if that argument could be made the reference to jewellery relates to insertion through body piercing not tattooing. We know that 'Tashing' is carried out widely in Wales and whilst we have reservation about the practise from a public health standpoint (ashes may not be sterile, may be contaminated with heavy metals etc.) it is our view that it should either be specifically included and controlled within the legislation or specifically precluded by it. This is not a practice the lawfulness of which should be determined in a magistrate's court.

Part 4: Intimate Piercing

- **Do you believe an age restriction is required for intimate body piercing? What are your views on prohibiting the intimate piercing of anyone under the age of 16 in Wales?**

The CIEH strongly agrees that there should be an age restriction on intimate body piercings. Intimate body piercing is a non-essential invasive procedure with potential health consequences, and should not in our view be available to those who are not capable of making a fully informed choice as to whether or not to accept the risks inherent in the procedure. We consider that an age restriction is the most appropriate way of restricting the decision to engage in the procedure to those most able and capable of making that decision.

Intimate body piercing is analogous to tattooing, as it is an aesthetic body modification. We are cognisant with the argument that a piercing can be removed whilst a tattoo is intended to be permanent, however we do not accept this as a justification for a lower age restriction for intimate piercings. We do not consider 16 to be the appropriate age because:

- The decision to have an intimate body piercing should be made by a mature individual, we believe that 16 years of age is not sufficiently mature.
- Intimate body piercings require a higher standard of aftercare than tattoos, as they are potentially more susceptible to infection. This level of aftercare requires a mature approach to which a 16 year may not be capable of fully committing.

- Whilst the jewellery inserted into an intimate body piercing may be removed any scarring or damage inflicted by the procedure will be permanent. This is particularly important when the skin the subject of the piercing is still growing and its function may be compromised by scarring or thickening. At 16 years an individual is still growing and therefore the risk of damage to skin is greater.

The CIEH also notes that there is considerable potential for confusion to arise if there is a different age restriction for body piercing and for tattooing. We consider that it would be easier for practitioners, enforcement agencies and individuals if the age restriction for both was to be the same. We further consider that an age restriction of 16 years for intimate body piercing is likely to give rise to call for the age restriction for tattooing to be reduced to 16 years.

The CIEH believes that the age restriction for intimate piercing should be 18 years.

- **Do you agree with the list of intimate body parts defined in the Bill?**

Yes.

- **Do you have any views on the proposals to place a duty on local authorities to enforce the provisions, and to provide local authorities with the power to enter premises, as set out in the Bill?**

The CIEH considers that the enforcement powers proposed are appropriate and proportionate. We note however that enforcement of this provision is an additional burden for local authorities and that finance must follow this new function to ensure that local authority environmental health departments have adequate resources to deliver it

- **Do you believe the proposals relating to intimate piercings contained in the Bill will contribute to improving public health in Wales?**

Yes. We accept that there is little evidence of which we are aware to suggest that large numbers of individuals are being adversely affected by the consequences of intimate piercing we are of the view that all of the vulnerable population should be afforded protection and that these legislative provisions achieve that protection. We are also aware that new techniques and practises in body modification and body art develop quickly and are not generally subject to any form of testing or control. This is a precautionary and preventative measure in addition to being a protective measure.

Part 5: Pharmaceutical Services

This is not a core area of activity for the CIEH, we therefore make no comment.

Part 6: Provision of Toilets

Toilet provision is a basic public health need. The CIEH believes that the provision of readily accessible public toilets is essential to good public health in Wales. Specific groups of the population such as the elderly, pregnant women, those with young families and people with specific health conditions require access to toilets, and where provision is limited or absent these groups are disadvantaged and may be deterred from visiting.

It is also the case that lack of adequate toilet provision encourages antisocial behaviour and may potential spread of infectious disease.

The provision of Part 6 are addressed to local authorities. CIEH had not part in the proposed delivery mechanism. We do however wish to record our support for the provisions are being essential to public health in Wales

Other comments

- **Are there other areas of public health which you believe require regulation to help improve the health of the people of Wales?**

The Public Health Wales report 'Alcohol and health in Wales 2014' demonstrates quite clearly the enormous impact that misuse of alcohol has on the health and wellbeing of individuals, on increasing pressure on the NHS and on the economy of Wales. The CIEH a proposed minimum unit price (MUP) for alcohol during the original consultation for this Bill and is disappointed to see that the proposal did not proceed. Whilst we accept that there is an argument for awaiting the outcome of the current challenge to the Scottish Government proposed MUP we wish to put on record our view that Welsh Government must take steps, which may include regulation to address the issue is the use and misuse of alcohol in Wales in order to improve the health of individual and the public health of the nation. This is an imperative and must be given urgent priority.

We would be happy to provide further expansion of or clarification of our comments should this be required.

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