PHB 28
Bil Iechyd y Cyhoedd (Cymru)
Public Health (Wales) Bill
Ymateb gan: Cyngor Sir Penfro
Response from: Pembrokeshire County Council

CONSULTATION ON PRINCIPLES OF THE PUBLIC HEALTH (WALES) BILL

Response by Pembrokeshire County Council
16th December 2016

Contact: Mark Elliott. Head of Public Protection.
[redacted]

1. **Introduction:**

Pembrokeshire County Council welcomes much of the new Public Health Bill and wishes to respond as follows.

2. **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;

Smoking remains the single greatest avoidable cause of death in Wales[1]. 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.

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, and Pembrokeshire County Council has already put in place voluntary bans on smoking at children's playgrounds and sports grounds controlled by the County Council.

Pembrokeshire County Council 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.

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.

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".

3. The creation of a national register of retailers of tobacco and nicotine products;

To provide Welsh Ministers with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales;
Prohibit the handing over of tobacco and/or nicotine products to a person under the age of 18;

Pembrokeshire County Council does not support WG proposals to introduce a register for tobacco retailers.

The Tobacco Retailers Register will penalise those that do not flout the law whilst doing very little for those that do and sell tobacco products in the black market. There is the whole process of keeping it up to date and relevant. How do you remove someone? It will become a distraction and utilise resources better used elsewhere.

We know who the legitimate sellers are already, and the people selling illicit / non-duty paid / counterfeit cigarettes and tobacco will be the ones who don't register. Should we find these illicit sellers then there are better sanctions under Trade Marks / Cigarette Labelling / HMRC offences. Also In 2008 Section 12A was introduced into the Children & Young Persons Act 1933 which created Restricted Premises Orders and Restricted Persons Orders for "persistent sellers of tobacco products" to under 18s. These Orders ban tobacco products from being sold from a premises for up to 12 months (or by a named individual for up to 12 months). In effect this is a negative licensing regime. Registration currently would not give many benefits and be cumbersome to administer. (Whether it becomes more appropriate from April 2015 when the Cigarette Display ban comes into force for smaller retailers too – is open to further debate. We will still be able to tell who the retailers of tobacco products are even when hidden away behind shutters or in drawers).

Until recently the use of RIPA and intelligence led to successful campaigns and prosecutions to prevent under age sales of both tobacco and let us not forget alcohol here. This useful tool has been all but taken away and RDO requirements have more or less neutered this successful approach. The supply of tobacco to those not registered will continue and will just become an underground/black market as we have now. In order to strengthen the

register and make it far more useful WG should consider an offence of suppliers selling tobacco products to a retailer etc. not on the register. The tobacco industry sell products to whomever will buy, whether on a register or not.

We need to strengthen the resource requirements to implement the register and to enforce it. There is a higher level debate to be had regarding lifting existing statutory burdens if we are expected to deliver new statutory functions.

If such a register is to be established it needs to cover all that manufacture, distribute and sell tobacco products, just having a register 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. An offence needs to be created where tobacco products can only be sold, distributed etc to those registered.

If a register is enacted Pembrokeshire County Council is of the opinion that these provisions would best be enforced by Local Government in Wales. Public Protection Services have considerable experience and expertise in the operation of registers and licensing regimes and our Trading Standards and Environmental Health Practitioners are already enforcing associated legislation at these premises.

Given the significant financial pressures being faced by Local Government in Wales, there will need to be careful consideration of how the implementation of a tobacco retail register and its enforcement are resourced.

In addition, we would encourage WG to not be prescriptive in allocating enforcement responsibilities to a particular functional area such as Trading Standards Officers or Environmental Health Practitioners but allow Local Authorities the discretion to determine how best these provisions may be implemented by their suitably qualified or competent enforcement officers. This will afford Local Government the opportunity and the flexibility to deploy their resources in the most effective manner to suit local circumstances.

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. Some registers are merely administrative or informative. This should not be the case with a tobacco retail register.

Pembrokeshire County Council would encourage Welsh Government to carefully consider what powers local authority enforcement officers will require to be able to ensure that the register has the desired effect. There will need to be a robust mechanism to restrict access to the register and to remove retailers from the register where there has been a relevant infringement of the law. This should not be limited in scope but should encompass a range of offences concerning underage sales. There should also be a provision to consider whether the retailer is a “fit & proper” person or a “suitability” test of the retailer. For example, if a retailer has a conviction for the sale of alcohol, solvents or other age restricted products to minors then he should not be permitted to sell tobacco. The proposed link to restricted sales orders (RSOs) and restricted premises orders (RPOs) under the Children & Young Persons Act 1933 are welcome but insufficient in scope themselves.

The illicit supply and sale of tobacco has been identified as a growing concern by Trading Standards in Wales. The register must not inadvertently add to the problem of illicit trade in cigarettes. There will need to be a robust and proportionate penalty associated with the offence of failing to register. In addition the definition of “retailer” will need to be carefully considered to encompass legitimate traders from retail premises and those persons who are trading illegally in tobacco from domestic premises. It will also need to include online suppliers based in Wales. Effectively the provisions must apply to anyone who is *selling* tobacco products in Wales. There will need to be a robust and proportionate penalty for offences and powers of entry (to retail premises) or the ability to seek a warrant (for domestic premises). The WG may also wish to consider the provision of powers to seize tobacco goods in premises that are not registered.

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

We strongly support the proposal to regulate special procedures through licensing and associated provisions. Persons carrying out these procedures are already required to be registered by the local authority however Semi-permanent skin colouring appears to have been omitted from the list.

It is disappointing to note that the new Bill has not incorporated any of the other high risk procedures which fall outside of the current registration scheme ie: body modifications, scarification, branding and dermal implants.

Current legislation does not adequately protect the public from the risks associated with these procedures. 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. Our officers have extensive experience and expertise in this area and are ideally placed to offer insight to the issues associated with regulating such practices and protecting the public from those that practice illegally. We will be pleased to share experiences such as those described in Exercise Seren[1] and the lessons learned from these.

We have the following key concerns regarding existing provisions:

i. 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.
ii. 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. What type of training will be considered suitable or acceptable as currently most

practitioners have little or no formal qualifications to demonstrate competency.

iii. 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.

iv. 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.

v. 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".

vi. 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.

vii. 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.

viii. 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.

ix. The Bill talks about a relevant offences and refusal of special procedure licenses but there does not appear to be any reference in

the licensing criteria for applicants to undergo a DBS (Disclosure and Barring Service check)

We support 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.

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.

Our Officers are aware of the shortcomings of existing controls. To help address the existing shortcomings we believe that these should include:

i. A fit and proper person test which must include a standard of competence
ii. Requirements on record keeping
iii. Placing much clearer responsibility on practitioners to verify ages (the Newport Look Back exercise demonstrated that 48% of the 15 year olds involved had inflated their age.
iv. The ability for LAs to take action to deal with those that pose a risk through undertaking such procedures without having to prove whether they are doing it as a *business* or not (through "designating")

We welcome the proposals to develop regulations addressing issues such as hygiene, infection control, duties on practitioners etc and will be pleased to contribute to any working groups established to take these forward.

In all of this it is important in our view that there should be no "grandfather rights".

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, injury or other harm 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 to be one step ahead rather several behind.

However, we acknowledge that in relation to novel procedures there is some confusion about what might be considered “medical”, “cosmetic” or perhaps “illegal” e.g. assault. 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. Whilst we would wish that the scope to extend the list of procedures be considered without undue delay, we would suggest that this needs to be done in a considered, informed and prioritised manner on the basis of good evidence, consultation and effective engagement with stakeholders

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.

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.

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.

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.

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 wish to see robust measures to ensure 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 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.

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.

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.

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.

5. Prohibition on the intimate piercing of persons under the age of 16 years;

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.

We acknowledge that there is some debate about whether that age limit should be 16 or 18. We note, for example, the views of the Chartered Institute of Environmental Health (in its submission of evidence to the Committee) advocating an age limit of 18. From an enforcement perspective, we are well-used to enforcing a range of legislative provisions associated with differing age limits. Our overriding concern is that young people should be protected from harm and whilst we would support setting an age limit for intimate piercings at 18, 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.

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.

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

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.

7. 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;

We don't believe a duty should be placed on local authorities to develop a strategy for the provision of and access to toilets for public use. We aim to provide facilities for the public to use based on tourism trends, for the benefit of public health, and their contribution to the local economy within realistic budgets.
It is our understanding that the Welsh Government ceased providing local authorities with a Community Toilet Grant Scheme at the end of the financial year 2013/14. This puts extra pressure on local authorities to continue with this scheme of providing local businesses with a grant in exchange for them allowing the general public to use their toilets, especially with budget reductions.

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.

8. 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.

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.

9. General

Pembrokeshire County Council 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 and/or the ability to recover costs through fees.

Date: 16Th December 2016

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 studio in Newport, South Wales - Exercise Seren.* ISBN 978-0-992932978