PHB 31
Bil Iechyd y Cyhoedd (Cymru)
Public Health (Wales) Bill
Ymateb gan: Cyngor Bwrdeistref Sirol Rhondda Cynon Taf
Response from: Rhondda Cynon Taf County Borough Council

CONSULTATION ON THE PUBLIC HEALTH (WALES) BILL

Response of Rhondda Cynon Taf County Borough Council

Contact: Louise Davies, Head of Environmental Health, Trading Standards & Community Safety [redacted]

- **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 Wales (PHW, 2012). 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.

1.3 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 effective deterrent.

1.4 Regarding proposals for public playgrounds, care is needed in framing definitions. In the absence of a boundary, a distance from play equipment (although arbitrary) seems sensible. However does 5m provide a sufficient separation to achieve the intended effect? 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 We support the proposal to create a register. We agree with submissions by DPPW that 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.

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. For example, whether a retailer been convicted for the sale of alcohol, solvents or other age restricted products to minors. The section 24 provision that an application to register will not be granted if an RPO or RSO is already in place goes some way towards this, but does not take account of the selling to minors of other age restricted products.

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 make provision about the form of an application, information to be included on it and the payment of fees. 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 are no provisions for the refusal of an application for registration. We feel that there is a case for including powers to refuse registration.

2.7 We support extending the arrangements to include those supplying via online, telephone and mail order channels.

- 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. It is hoped 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 We support the DPPW view that current legislation does not adequately protect the public. Environmental Health Officers find current legislation to be outdated, cumbersome and inadequate to control illegal practitioners. It doesn't offer the range of enforcement powers needed to deliver effective public protection.

5.3 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.

5.4 Our officers 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.

5.5 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. The aim should be a set of provisions that is to be one step ahead rather several behind.

5.6 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.

5.7 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.

5.8 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.

5.9 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.

5.10 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 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 prescribe competence which has not yet been developed.

5.11 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.

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

5.13 There is a loophole in current legislation enforced by the Health Inspectorate Wales in respect of the use of lasers. Class 3b and 4 lasers (4 being what is 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. We will 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. This needs to be addressed.

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

6.1 It is our view that these should be illegal on under 16s to protect this vulnerable group from potential risks. We recognise that aside from the need to protect young people from indecency, there may be increased risks of harm (from infections etc) for young people from the piercing of intimate parts.

6.2 For the same reasons, we would also support an age limit of 18. This would also bring the proposals into line with those for tattooing, which currently prohibit tattooing of persons under 18.

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. Rhondda Cynon Taf County Borough Council already has a number of Environmental Health Practitioners qualified to do "Rapid" and "Quality" Health Impact Assessments and we are giving on-going commitment to ensuring that there is a strong body of EHPs qualified to carry out HIAs within our local authority.

- **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 We recognise 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.

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