



British Association of Cosmetic Nurses

National Assembly for Wales / Cynulliad Cenedlaethol Cymru  
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Public Health \(Wales\) Bill / Bil Iechyd y Cyhoedd \(Cymru\)](#)

Evidence from the British Association of Cosmetic Nurses – PHB 33 / Tystiolaeth gan Gymdeithas Nyrsys Cosmetig Prydain – PHB 33

## **Consultation – Public Health (Wales Bill) – Submission by the British Association of Cosmetic Nurses (BACN).**

### **Introduction**

1. The BACN is delighted to have been invited to comment on the above Bill as it passes through the Committee stages of the National Assembly for Wales. The format of our response will follow the guidelines that were sent with the invitation to provide evidence. We have also sent confirmation of our willingness to attend a meeting of the Committee on 17<sup>th</sup> September 2015 if required.

### **The BACN – An Introduction**

2. The BACN was formed in 2009 by a small group of registered Nursing and Midwifery Council nurses who wanted to provide a forum for networking and mentoring in what was and still is the rapidly growing sector of non-surgical aesthetic treatments.
3. The BACN is now the largest Professional Association in the field of non-surgical aesthetic treatments and has over 600 members – a number of which practise in Wales. A detailed breakdown of our constitution, governance and activities can be found on our website at:

[www.bacn.org.uk](http://www.bacn.org.uk)

## **Regulation in the UK – Non- Surgical/Aesthetic Treatments**

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4. It is worth reiterating that there is no regulation at all in England, Wales, Scotland or Northern Ireland for non-surgical aesthetic treatments. There is regulation by governing councils and statutory legislation for prescription medication. The problem is interpretation of regulation, the difficulty of enforcing it and the maintenance of best practice standards under the legislation (and of course, fillers are not prescription drugs therefore not regulated).

## England

5. There is a lot of activity going on in England with regard to potential models of regulation following the publication of the Keogh Report on 'Non-Surgical Cosmetic Interventions' on 11<sup>th</sup> September 2014.
6. This report was commissioned by the Secretary of State for Health and looked in particular at the need for regulation in the non-surgical sector. The findings outlined a principle of self-regulation for England and initiated a consultative process amongst stakeholders led by Health Education England (HEE). The BACN was a member of the Expert Reference Group established by the HEE to review the findings of the Keogh Report.
7. The findings of the Expert Reference Group were published in December 2014 and final comments were provided to the Secretary of State for Health by 31<sup>st</sup> March 2015. The HEE is currently considering the responses prior to making recommendations to the Minister of Health.
8. The Keogh Report identified the absence of any regulation for dermal fillers. The Department of Health have expressed the desire to address this through the introduction of statutory legislation which focuses on dermal fillers and possibly other non-prescription treatments. This would have the effect of bringing these treatments under the jurisdiction of statutory regulated healthcare professionals which, we believe, is to be welcomed.

## Scotland

9. The Scottish Executive is about to announce a licensing system for aesthetic businesses. The BACN has contributed to the development process and been invited to sit on the Health Inspection Service (HIS) which will inspect premises. They are now looking at establishing standards and have looked towards the BACN Competency Framework as a guide in this area. At the moment there are no plans to establish an overarching body to oversee standards or to look

at the assessment of competence. This function will be performed by the Chief Medical Officer for Scotland and as yet there are no proposals for review.

## BACN Competency Framework

10. The BACN Competency Framework is the only set of standards published for the non-surgical aesthetic sector which is also accredited by the RCN. As part of the HEE process the Competency Framework was adapted to also include hair restoration and various laser treatments. We recommend the standards in the Competency Framework to the National Assembly for Wales as the basis for setting a national set of standards in this area either through primary or secondary legislation and to include non-surgical cosmetic interventions.

## Joint Council Model

11. The BACN in its final submission to the HEE also recommended the establishment of an over- arching body, a 'Joint Council' that would own and update standards and take a strategic view on regulation in the sector. It also suggested that there is an Accreditation Body established under the wing of the Joint Council to review training programmes that are outside the usual remit of academic institutions and OFQUAL.
12. Detailed discussions are now taking place on the format, remit and financing of a Joint Council between the HEE and some of the key Professional Associations that oversee activity in the non-surgical sector. However, without legislation this process is subject to the industry and professional bodies agreeing an acceptable way of working which is proving very difficult.
13. One option that has been suggested is the establishment of a 'Voluntary Register' in England. It is the view of the BACN that this is fraught with difficulties in terms of who is required to register, who keeps the register and who polices it. It is also open to misinterpretation by the public if it is not clear what the register has been established to do. An approval to be on a register that is just based on premises inspection, availability of policies and procedures for the activity or hygiene gives no guarantees in relation to the competence of the persons providing treatments.

## The Welsh Proposals – Comments

14. The BACN in this section respond to the key areas outlined in the 'Guidance Notes' for responders and the questions that are asked to be covered. The

single most important point to make here is that the proposals published in the Bill refer to licensing 'Special Procedures' and 'Cosmetic Procedures' but no reference is made to 'aesthetic procedures' (see para 107 in Guidance Notes). The BACN would support licensing however do not believe that a 'Public Health Bill' is the most appropriate route or vehicle to achieve the desired aims for the reasons set out below.

15. The risks associated with aesthetic procedures include serious facial scarring and blindness, which require rapid and expert identification and intervention. The importance of and need to identify competence is reflected by the serious complications that can occur in aesthetic procedures. In its current form we would question the extent to which the Bill refers to such competence and the ability of it to be measured and verified by the arrangements suggested.
16. Experience tells us that the public are frequently not judicious in determining the true meaning of any licence, kite mark or title. Any such annotation is usually perceived, without question, as competence in the broadest sense. Any move to license practitioners to all but the fullest measure is likely to cause confusion at best and misplaced trust at worst.
17. By virtue of the prescription status of certain popular treatments, unregulated practitioners cannot work in isolation, but are subject to the overview of regulated healthcare prescribers. Any move to license those who are unregulated would have to entertain the complexities of this impinging upon those who are regulated from another source. e.g. NMC or GMC.
18. The draft proposals do appear to discuss providing exemptions to 'members of specific professions' (see para 120 in Guidance Notes) who are overseen by 'Governing Councils'. Our position on this is with regard to nurses in particular where we would agree that such exemptions are appropriate. The alternative would seem to be a layering of regulation upon regulation. We would question the benefits as set against the complexities of such a measure.
19. The emphasis of the Bill appears to be on 'Special Procedures' being carried out in 'an unhygienic fashion' (Para 108 of the Guidance Notes) and the need for practitioners to 'employ safe working practices' (Para 108 of the Guidance Notes). Para 115 of the Guidance Notes refers to the lack of a 'Competency Test' for practitioners and also to there being no requirement 'for consent forms, pre and post-procedure consultation, aftercare advice or record keeping' which are all critical points. However we refer to Para 14 in this submission which states that the suggested framework for licensing is inadequate to support the assessment of professional competence.
20. The principle of licensing individuals as well as premises (Para 117 of the Guidance Notes) is thoroughly endorsed by the BACN from its experience of the non-surgical sector in the UK. This is necessary to avoid large chains of

- clinics or bodies providing ‘Special Procedures’ registering on bloc under the licensing system and then having a number of individuals carrying out ‘Special Procedures’ without a licence and redress for the patient.
21. Recognition in the Bill of the need to update various ‘Special Procedures’ via secondary legislation is also welcomed by the BACN from its experience of the rapidly changing ‘non-surgical aesthetic sector’ in the UK.
  22. The BACN notes that it is local authorities in Wales who are being charged with the responsibility for licensing and enforcing the conditions of the licence (Para 122 of the Guidance Notes) and questions if they have the specialist expertise and resources to do this in respect of aesthetic treatments. If the area of ‘non-surgical aesthetic treatments’ did come under some kind of licensing procedure how would local authorities ensure that they have the relevant expertise to assess competence.
  23. The power of local authorities to issue ‘Stop Notices’ to practitioners (Para 123 of the Guidance Notes) who have contravened the licensing rules is good in theory but may be very difficult to implement in practice. It also places the Licensing Authority in a position where ‘loss of business income’ could be part of a major counter claim.
  24. It is suggested that the legislation will ‘institute a system of mandatory licensing for those practitioners who provide special procedures in Wales, to which national standards will be attached and enforced by local authorities’ (Para 125 of the Guidance Notes) however this is dependent on agreement being reached on national standards. It is our experience in the field of non-surgical aesthetic treatments that this is a major issue. As referred to earlier the BACN has developed its own ‘Framework of Standards and Competencies’ to meet this gap and this is now being incorporated into a broader framework by the HEE in England. It has taken over 18 months to agree this framework with numerous stakeholders participating.
  25. Reference in Para 127 of the Guidelines to ‘Public confidence and client understanding will be further enhanced by the requirement for practitioners to provide pre- and post - procedure consultations’ is definitely recognised by the BACN with regard to non-surgical aesthetic procedures but only if the regulations and enforcement procedures deliver an effective process for monitoring.
  26. The Bill talks about possible exemptions to the arrangements for persons carrying out ‘Special Procedures’. In England this matter has been discussed in great depth with a number of ‘Professional Bodies/Governing Councils’ making the case that existing arrangements are adequate to cover any negligence by a practitioner or to deal with a complaint from a member of the public.

## **BACN – Concluding Statement**

27. The BACN maintains that there is a need to regulate ‘non-surgical cosmetic interventions’ in Wales but does not believe it fits well within a ‘Public Health Bill’ that has not been designed for this purpose and concentrates on premises and hygiene regulation only. The extensive work done by the HEE in England provides an excellent backdrop to the issue of regulation in Wales. However the BACN is concerned about the length of time it has taken and the fact that there is still no clear set of proposals or structures agreed.
28. We consider that there are two options involved with regard to providing a regulatory framework for non-surgical cosmetic interventions in Wales:

### **Option 1**

Adopting the framework currently being developed in England where considerable work has been undertaken to define the area and the standards/competency involved. However this is subject to agreements being reached and final proposals published.

### **Option 2**

Reviewing what emerges from the process in England and then deciding if a more regulated framework via statute is necessary in Wales. This would enable Wales to make its own decision on regulation but could mean considerable delays which would not be in the interest of the general public or regulated medical professionals.

The BACN is happy to work with the Welsh Assembly whichever approach it decides to take with regard to the issue of regulating ‘non-surgical cosmetic interventions’ separately from this current Bill.

Sharon Bennett – Chair – on behalf of the BACN Board

Andrew Rankin – Vice Chair – on behalf of the BACN Board

Paul Burgess – CEO – BACN

29<sup>th</sup> August 2015.