

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 Under Age Sales Ltd – PHB 13 / Tystiolaeth gan Under Age Sales Ltd – PHB 13

24th July 2015
[REDACTED]



Health and Social Care Committee
National Assembly for Wales
Pierhead Street
Cardiff
CF99 1NA

Dear Committee,

Thank you for providing the opportunity for interested parties to comment on your call for written evidence relating to the Public Health (Wales) Bill.

We are a social enterprise that specialises in helping retailers to tackle under age sales. We provide support, training, point-of-sale materials and advice to retailers. We also provide the Law of Age Restricted Sales legal text book covering both England and Wales.

We are happy for our response to be published in full and we will also publish our response on our website at www.underagesales.co.uk. In addition, we would ask that any quotes taken from our response are used in the context in which they are intended and we would be happy to advise if the context is not clear.

Public Health (Wales) Bill

Part 2 – Tobacco and Nicotine Offences

We have no comments to make on Chapter One.

In relation to Chapter Two we welcome the proposals in this Bill to establish a national register for Wales of retailers of tobacco and nicotine products.

We have no comments to make on Chapter Three

Chapter Four, Clauses 41 – 44 - Despite reading these proposed clauses several times, we are struggling to understand them. That is rather worrying for how clear they would be to non-expert readers. We think the intention behind the proposal (to prohibit delivery drivers from handing over tobacco to unaccompanied children) is laudable, but we are concerned that it has become lost in overly complex and legalistic language. We recommend a complete redrafting of this Chapter to simplify the language and ensure that it meets the intended purpose.

Part 3 – Special Procedure Licensing

We welcome the creation of a licensing regime in Wales for special procedures.

Clause 46 – we recommend that ‘branding and scarification’ are included in the list of special procedures (as they are in the list of special treatments in the Greater London licensing regime). Branding and scarification are causing permanent scar tissue to be formed as a cosmetic or ritual procedure. They carry the same hygiene and public health risks as tattooing and piercing.

Clause 51(2) – we recommend that an additional licensing criteria be added here: “(d) the protection of children from harm caused by special procedures” – in our view the protection of children ought to be a core licensing criteria for the issuing of special procedure licences and will allow licensing authorities to take into account such matters as irresponsible marketing, proximity to schools, consideration of premises layouts and prior offences related to under age sales. In addition, we believe that the licensing authority ought to be able to impose conditions about the age at which certain special procedures can be performed where these are not covered elsewhere in legislation.

Clause 52(2) – similarly to clause 51(2) we recommend that an additional category of mandatory criteria be added here: (x) the appropriate age (of the customer) at which special procedures may be performed (where these are not covered elsewhere in legislation).

Clause 55(3) – we recommend the range of relevant offences be extended to include any offence relating to the underage sale or supply of a product or service. In particular we note that many premises of a type that would apply for a special procedure licence may also provide sunbed services and, increasingly, we find they supply nicotine products, such as e-cigarettes or liquids. We would therefore recommend that local authorities have the discretion to take into account, for instance, allowing a person under 18 years of age to use a sunbed, as a relevant offence.

Part 4 – Intimate Piercing

We are concerned about the juxtaposition of this new proposed offence and the existing much more serious offences of sexual assault.

We note the views in the Explanatory Memorandum about the potential limitations of the Sexual Offences Act 2003, but nevertheless consider that genital piercing of children would be covered by those provisions.

In addition, although not mentioned in the Explanatory Memorandum, we would draw the Committee’s attention to the Female Genital Mutilation Act 2003. In guidance under that Act, the piercing of a girl’s labia majora, labia minora or clitoris would constitute FGM and, therefore, be an offence. We recognise that the definition in proposed **Clause 79(2)(i)** of ‘vulva’ would cover a

broader intimate area than the narrower definition of FGM, but nevertheless, we feel that it is important that these much more serious offences are reflected on the face of this Bill.

We, therefore recommend that proposed **Clause 78** be qualified as follows:

(e) this section does not apply to any offences that may be committed under either the Sexual Offences Act 2003 or the Female Genital Mutilation Act 2003.

Clause 88 – we note the provision for test purchasing by local authority officers. We suggest that this is going to present some very serious problems for local authorities to enforce these provisions, not least of which the safeguarding and protection of children used in test purchasing operations. Whilst the ‘make arrangements’ aspect of the proposed offence in **Clause 78(1)(b)** may provide an opportunity for the local authority officer to step in during a test purchase before the procedure goes ahead, it is conceivable that it could be argued such ‘arrangements’ had not been concluded and, therefore, the offence had not been established.

We would recommend some specific protection for test purchasers on the face of the Bill, such that it would be difficult to argue that a test purchaser had not ‘made arrangements’ to have an intimate piercing without exposing themselves to the offender. Perhaps words along the lines of:

‘for the purposes of test purchasing under this Part, an offender is deemed to have ‘made arrangements’ for an intimate piercing of a test purchaser at the point when they agree to discuss an intimate piercing without having taken reasonable steps to verify the age of the test purchaser.’

We have no comments to make on the remainder of the Bill.

Declaration

We are happy to declare that our services, in providing training and support to retailers to prevent under age sales, are funded by those retailers (including tobacco retailers) and by trade associations and manufacturers (including the tobacco industry). However, our views are our own and we have not been funded, commissioned or otherwise encouraged to provide this response to you by the tobacco industry or any of their representatives.

We hope that the information that we have provided is useful and we would be happy to discuss any aspects of our response further. I can be contacted [REDACTED] or [REDACTED].

Yours sincerely,



Tony Allen
Managing Director