

Evidence from The City of Cardiff Council – PHB 17 / Tystiolaeth gan Gyngor Dinas Caerdydd – PHB 17

HEALTH AND SOCIAL CARE COMMITTEE CONSULTATION ON PRINCIPLES OF THE PUBLIC HEALTH (WALES) BILL

Submission of Evidence by the Health, Safety and Communicable Disease Team, Public Protection Shared Regulatory Services, Cardiff.

Introduction:

The Health, Safety and Communicable Disease Team, Cardiff are responsible for the enforcement of health and safety legislation in the workplace, local byelaws on matters relating to the business of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis and health protection legislation. In addition the team investigates sporadic and outbreak cases of notifiable communicable disease and takes all action required to contain, control and prevent onward transmission. We have therefore responded to sections pertinent to our responsibilities.

Part 3: Special Procedures Part 3 of the Bill includes provision to create a compulsory, national licensing system for practitioners of specified special procedures in Wales these procedures are acupuncture, body piercing, electrolysis and tattooing.

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?

We support WG proposals to regulate for special procedures including the creation of a direct offence of failing to register, a full set of enforcement powers including powers of entry, seizure, prohibition, etc to enable the effective regulation of illegal operators.

We are of the view that current legislation does not adequately protect the public. Environmental Health Officers are relying on legislation that is not made specifically for the purpose of tackling illegal operators.

We have the following concerns regarding existing provisions:

- *There is no requirement for a practitioner to have training or experience to set up a tattoo studio. 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.*

- *Currently, an unregistered tattooist 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.*
- *Current registration requirements rely on being able to prove that a person is carrying on a business and this can be difficult because most unregistered tattooists ('scratchers') work from home and deny that they receive payment.*
- *There is no facility to refuse registration unless a previous successful prosecution has been taken for breach of bye laws,*
- *Current regulation relies 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. We have used Request for cooperation letters and 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". In short current legislative provision hinders efficient use of officer resources and time*
- *All are Part 2A order investigations have related to the carrying out of unregistered tattooing from domestic premises. We do not enforce health and safety in domestic premises and where a risk to health cannot be categorically proven with have little effectively legislative options to apply.*
- *New procedures are being developed and becoming increasingly popular such as body modification, dermal implants, branding, tongue splitting and scarification all of which have potential to spread infection or cause permanent damage.*
- *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.*

We agree with 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 (CIEH, 2014). Our experiences concur with this statement

We would offer the following observations on the proposal regulations:

- *Level 3 fine (£1,000) is too low to act as a meaningful deterrent. The sunbed legislation, which is similar in nature, includes a fine of up to (£20,000); this would be a more appropriate sum.*
- *In determining whether to grant a license a Local Authority should be able to consider whether the applicant is a "fit and proper person" and such a test should be included (akin to our tried and tested procedures for taxi licensing). The test should permit the LA to take into account "any other information" (beyond the "relevant offences" listed in the draft bill) in determining that question. The current proposals do not offer sufficient safeguards.*
- *We would be opposed to grandfather rights for existing traders. In Cardiff we regularly investigate hygiene complaints in well established studio and a recent Myco bacterium chelonae cluster involved investigation of 2 registered studios in Cardiff and one registered tattooist based in Newport.*

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

Yes. We support the proposals to include Acupuncture, Tattooing, Body piercing and Electrolysis. These share a theme of preventing blood borne viruses and skin infections.

However, we strongly support the view that legislation should enable other body modification procedures to be addressed, some of which present significant risks. The aim must 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. We are concerned about a growing range of procedures including Botox, dermal fillers, sculpting, microdermabrasion, dermal rolling and dermal implants. We also recognise that new and novel procedures are continually being developed and WG should ensure that the register and any associated enforcement powers will be applicable to the widest range of circumstances and developing trends

However, we also acknowledge the need to take a considered and incremental approach to encompassing these matters over time. We therefore support framing the provisions in such a way that additional procedures might be added in the future in an efficient and timely manner.

We will be pleased to work with WG officials in relation to such matters.

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

We absolutely support that (see above) and also welcome the anticipated opportunity to be consulted upon and to work with WG officials in framing any proposals.

We feel that we need to get ahead of the game and be able to address the next body modification development to emerge. In a competitive market studios in Cardiff are always keen to expand into new and emerging body modifications including branding, dermal anchoring, scarification and tongue splitting. These procedures provide the potential for serious harm and infection. We feel it is absolutely essential that the provision to amend the list of special procedures reflects the need for amendments to be made expediently and without unnecessary delay. The list of special procedures will need to be dynamic to be able to incorporate new procedures as trends change. A lengthy amendment process will undoubtedly leave local authorities 'on the back foot', and having to rely on other legislation, for example, Health Protection Legislation 'Part 2A Orders' to tackle new and emerging procedures.

Whilst we feel there is a strong case that procedures such as tongue splitting, branding, dermal implants and scarification should be prohibited, we recognise that to do so may drive activities underground and cause further issues or potentially make it more appealing to some people.

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 are content with these because these professions should have the necessary understanding of good hygiene and infection control. However, we support the proposed provision that individual professions could be required to have a licence in relation to certain procedures that their regulating body feels do not fall within the scope of their competence.

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

We feel that the proposed licensing system would enable local authorities to undertake public protection duties more effectively and more readily. The establishment of a licensing scheme enabling local authorities to recover their costs will ensure that finance is available to deliver.

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 chose not to.

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.

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

Yes.

See <http://www.wales.nhs.uk/sitesplus/888/news/37472> (The recent Newport case)

Proposals contained in the Bill such as requiring a standard of competency will make a significant contribution to protecting health from risks associated with such procedures.

Evidence of public health risk in relation to such procedures is clear. We take the view that any procedure that involves the piercing of the skin poses a very real risk of infection and disease from blood born viruses many of which can be a serious risk to health and that anyone undertaking such procedures should be competent to do so without putting a person at risk.

Current controls are outdated and inadequate. We need to be able to protect the public to better prevent people from undertaking these procedures if they are not competent or are not fit and proper person to be undertaking such practices. We need also to ensure that the conditions in which such practices take place are hygienic and will prevent infection risks.

We are seeing in our day to day work evidence of a growing range of procedures that put the public at risk. These include: dermal implants, beading, ashing, scarring, dermal fillers, tongue splitting, and a range of other procedures that we might loosely describe as "body modification". We feel strongly that regulations should permit all such procedures to be controlled and that the regulations should allow the list of procedures to be extended to cover any form of body modification that may arise in the future.

Some procedures such as "ashing" might not fall within the regulations as proposed. Ashing may fall outside of the current definition of tattooing (which relies on the use of pigmentation) and care is needed that definitions do not inadvertently exclude procedures that are intended to be covered.

In relation to extending the list, we recognise from an enforcement perspective that we are familiar with the necessary controls and safeguards needed in relation to more traditional procedures. There is merit in a considered and stepped approach to extending the list of special procedures so that we are able to develop training, suitable competence

assessments and necessary guidance in relation to the more novel procedures. We are also aware that consideration is needed in distinguishing between a legal service that we might appropriately control and what might be considered an illegal act of assault. We feel some clarity will be required in relation to that question.

Part 4: Intimate Piercing Part 4 of the Bill includes provision to prohibit the intimate piercing of anyone under the age of 16 in Wales.

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?

Yes.

We share the view of the Chartered Institute of Environmental Health (CIEH) that 16 is not an appropriate age for an intimate piercing 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.*

Our experience of working with skin piercers and tattooists in Cardiff is that legislative requirements need to be simple and consistent. here 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.

We believe that the age restriction for intimate piercing should be 18 years.

Local authority officers are aware that such procedures are taking place and it is our view that such intimate procedures should be illegal on under 16s to protect this vulnerable group from potential risks.

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

Yes. However we also feel there is a case to add the tongue. In addition to the relatively higher risks of infections associated with tongue piercing, we are aware that there are sexual connotations with piercing of the tongue and for that reason consider there is a case to include in the list of intimate parts.

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?

We support such proposals including the proposal to make it an offence “to enter into arrangements”. This would support enforcement of the provisions including “test purchasing” by local authorities.

We recognise the need for police support in particular in relation to evidence gathering given the intimate nature of such offences and the provisions need to take account of that.

Any duties placed upon local authorities must be supported by adequate funding to enable them to be operated and enforced in an effective manner.

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

Yes, see above.

How accurate are the estimates of costs and benefits identified in the Regulatory Impact Assessment, and have any potential costs or benefits been missed out?

Potential costs and benefits have been considered but it is suspected that these are conservative.

What financial impact will the Bill's proposals have on you/your organisation? Are there any other ways that the aims of the Bill could be met in a more cost-effective way than the approaches taken in the Bill's proposals?

This appears to be the most cost effective approach to managing this public health risk

Do you consider that the additional costs of the Bill's proposals to businesses, local authorities, community councils and local health boards are reasonable and proportionate?

Delegated powers

The Bill contains powers for Welsh Ministers to make regulations and issue guidance.

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?

Yes

Other comments

Are there any other comments you wish to make about specific sections of the Bill?

No

Do you believe that the issues included in this Bill reflect the priorities for improving public health in Wales?

Yes