

Public Health (Wales) Bill: Consultation questions

Tobacco and Nicotine Products

The Bill includes proposals to ban the use of nicotine inhaling devices, such as e-cigarettes, in enclosed spaces like restaurants, pubs and at work. Shops will also have to join a register for retailers of tobacco and nicotine products, and it will become an offence to “hand over” tobacco and e-cigarettes to anyone under the age of 18.

Question 1

Do you agree that the use of e-cigarettes should be banned in enclosed public and work places in Wales, as is currently the case for smoking tobacco?

YES.

The use of e-cigarettes, in particular those that have the appearance of traditional cigarettes, undermines enforcement of smoke-free legislation, not only by local authorities but also those that manage smoke-free places. Many business owners have banned them for that reason. Directors of Public Protection in Wales published its views on the availability and use of e-cigarettes in 2013, which included several examples where the enforcement of the ban on smoking in enclosed public places had been undermined by claims of the use of e-cigarettes. Local authorities have had legal actions fail because offenders claimed they were using e-cigarettes. However, whilst the following examples illustrate enforcement challenges, MTCBC feel it is important to underline that the ban on smoking in public places is almost entirely self-policing by the public... and has been highly successful. The use of E-cigarettes in smoke-free areas poses a threat to that self-policing. E-cigarettes also undermine the ability of managers of premises to enforce smoke free places, leading to many business banning them.*

Question 2

Do you believe the provisions in the Bill will achieve a balance between the potential benefits to smokers wishing to quit with any potential dis-benefits related to the use of e-cigarettes?

Yes.

Our key concerns are the potential for e-cigarettes to undermine the enforcement of smoke free legislation and their potential impact upon smoke free environments.

We are also concerned by reports that e-cigarettes may intentionally or inadvertently promote or normalise smoking and therefore promote smoking amongst those who currently do not smoke. In particular we feel there is a need to make every effort to deter young people from becoming smokers.

We note the cautionary words of England's Chief Medical Officer that e-cigarettes should only be used to help smokers quit.

Question 3

Do you have any views on whether the use of e-cigarettes re-normalises smoking behaviours in smoke-free areas, and whether, given their appearance in replicating cigarettes, inadvertently promote smoking?

Data relating to smoking behaviour in Wales leads us conclude that we cannot afford to step back from promoting smoke free behaviour and the health and societal benefits associated with that approach. We take the view that anything that has the appearance of smoking may help "normalise" smoking culture and behaviour and undermine this approach.

Question 4

Do you have any views on whether e-cigarettes are particularly appealing to young people and could lead to a greater uptake of their use among this age group, and which may ultimately lead to smoking tobacco products?

We feel every effort must be made to prevent young people developing nicotine addiction or smoking behaviours. We are therefore concerned by those reports that suggest that young people who are non-smokers may be attracted to e-cigarettes.

The use, marketing and sale of e-cigarettes should be controlled to reduce the risk of young people becoming addicted to nicotine. We have witnessed e-cigarettes being displayed for sale with sweets, at child height, at the checkout in some stores.

Some e-cigarettes utilise scented or flavoured refills that may be attractive to younger users, which is a particular concern if combined with the highly addictive properties of nicotine. Some of these are branded in ways that may be particularly attractive to younger users, such as "Gummy Bear", "Cherry Cola" and "Bubble Gum".

Some products are being packaged and marketed in a way that is closely associated with that of conventional cigarettes. For example, some e cigarettes glow and emit a vapour. We also note the nature of some e-cigarette advertising; e.g. consistent with the 1950's style marketing of tobacco products.

Question 5

Do you agree with the proposal to establish a national register of retailers of tobacco and nicotine products?

Yes. MTCBC supports the proposal. Our experience of implementing similar schemes leads us to conclude that such an approach, supported by suitable enforcement powers, can help control regulated activities.

Question 6

What are your views on creating a new offence for knowingly handing over tobacco and nicotine products to a person under 18, which is the legal age of sale in Wales?

MTCBC agrees with the proposal. It will align tobacco and alcohol which has already has a proxy supply offence.

Special Procedures

The Bill includes a proposal to create a compulsory licensing system for people who carry out special procedures in Wales. These special procedures are tattooing, body piercing, acupuncture and electrolysis. The places where these special procedures are carried out will also need to be approved.

Question 7

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.

MTCBC is 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.

MTCBC has the following concerns regarding existing provisions:

- There are no specific requirements for a practitioner to have training or experience relating to skin piercing prior to setting up such a business. This would only be covered under general H&S legislation. 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 Local Government (Miscellaneous Provisions) Act 1982. This may be viewed as a purely administrative offence when Courts are considering sentencing.
- Current registration requirements rely on Local Authorities being able to prove that a person is carrying on a business. As the majority of unregistered tattooists ('scratchers') work from domestic premises it is difficult to prove that it is a business and they 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 and the magistrate cancelled a previous registration. However, Local Authorities are still reliant on the applicant informing them that they have been prosecuted in another area.
- The current application process does not require any proof of identity, criminal records checks or "fit and proper person test", therefore, even if an applicant had been prosecuted in another LA then there would be no way of knowing.
- 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. Several local authorities in Wales have used 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”.

- 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.
- A domestic premises can be registered to carry out skin piercing and comply initially with the byelaws. However, unless there is a separate entrance, the Health and Safety Executive are responsible for the enforcement of H&S legislation within that premises. Our experience in Newport is that the HSE have previously been reluctant to transfer enforcement responsibility to local authorities in such a situation. Therefore, if there is a serious risk such as lack of sterilisation, Officers are unable to serve prohibition notices as they would in a commercial setting. The only option would be to simply prosecute for non-compliance with the byelaws or to apply to the courts for a Part 2A order- both being a time consuming process.
- 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 would offer the following observations on the proposal regulations:

- Level 3 fine (£1,000) is perhaps a little low. This should be worded more strongly – we understand that the experience of Caerphilly and BG is that multiple convictions of an individual resulting in low fines have not deterred the individual from illegal tattooing.
- 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. Our officers have only recently dealt with a high profile public health incident in South Wales which related to a long-standing operator.

Question 8

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.

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.

Question 9

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

We 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. Other procedures are already becoming more popular e.g. branding, dermal implants, microdermabrasion. All these procedures provide the potential for serious harm and infection.

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.

Question 10

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.

Intimate piercings

The Bill includes a proposal to ban intimate body piercings for anyone under the age of 16 in Wales.

Question 11

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. Local authority officers are aware that such procedures are taking place and it is our view that such intimate procedures on under 16s should be illegal to protect this vulnerable group from potential risks. It is also agreed that even with parental consent these procedures should not be permitted.

Because of the higher risks associated with intimate piercings, coupled with the relative vulnerability and immaturity of some 16 and 17 year olds, MTCBC considers there is a strong case for setting the age limit at 18. This would offer further protection to a greater number of young people.

Question 12

Do you agree with the list of intimate body parts defined in the Bill? Whether any other types of piercings (for example naval piercing, tongue piercing) should be prohibited on young people under the age of 16.

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.

Public toilets

The Bill includes a proposal that will require local authorities to prepare a local strategy to plan how they will meet the needs of their communities for accessing public toilet facilities. However, the Bill does not require local authorities to actually provide toilet facilities.

Question 15

What are your views on the proposal that each local authority in Wales will be under a duty to prepare and publish a local toilets strategy for its area?

We recognise all too clearly the current financial pressures on local authorities. We question whether placing a duty on local authorities to develop a strategy is appropriate, acknowledging firstly the difficult financial climate within which any duty would consume resource and secondly that a strategy will not of itself bring about enhanced provision. Care is needed that WG does not merely impose an administrative and financial burden that delivers no real benefit to the public.

Question 16

Do you believe that preparing a local toilet strategy will ultimately lead to improved provision of public toilets?

See response to q15

Question 17

Do you believe the provision in the Bill to ensure appropriate engagement with communities is sufficient to guarantee the views of local people are taken into account in the development of local toilet strategies?

The consultation requirements set in para 92 are too vague to be meaningful.

Other comments

Question 19

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

Yes

Question 20

Are there any other areas of public health which you believe require legislation to help improve the health of people in Wales?

Through our licensing teams and through a broad range of officers working closely with local residents in our communities, we are all too familiar with the problems caused by alcohol. However, we understand that Minimum Unit Pricing is a proposal to be taken forward in a future draft bill – something that we would welcome and will be pleased to work with officials working towards that.

We are also aware of public health concerns around obesity, nutrition and exercise – and we have an interest in this area through our vital role in relation to the regulation of food standards and food labelling and our general contribution to the wider public health agenda. We acknowledge the potential contribution of the Future Generations Act and Active Travel Act for example in this area but note also the potential for planning controls and licensing arrangements to play a greater part. We also recognise that some of these issues may need action at the level of UK Government.

In our submission in advance of the White Paper we also raised the possibility of considering an overarching general offence of prejudicing public health enabling appropriate bodies to protect public health in situations which fall outside existing legislation.

We are increasingly concerned by the supply of products known as “legal highs”.

Question 21

Are there any other comments you would like to make on any aspect of the Bill?

Special Procedures

- The consideration of ‘fit and proper’ should extend the relevant offences to cover assault, sexual offences and possibly drugs. The issue here is that many of the special treatments are intimate and carried out in privacy which could lead to customers being placed in a very vulnerable situation. This is aligned to consideration of ‘relevant offences’ of licensed vehicle drivers.
- Concerns regarding the 3 year licensing regime particularly with regards to the requirement of the register. Customers will see the register as an assurance. In reality, Local Authorities may not be aware of any convictions or relevant offences in the 3 year period. Therefore, it would be more appropriate to introduce annual licensing to provide a more robust assurance.
- In light of the recent case law *Westminster vs Hemmings*, LA can charge for enforcement contrary to the wording in para 603. Additionally, it could be argued that the fees could cover the cost for the central register (para 628)

Special Procedures – if the offence deterrent includes the possibility of a custodial sentence in excess of 6 months that will enable local authorities to apply for RIPA authorisation from the Magistrates Court when necessary. This would enable us to be able to undertake surveillance on a private dwelling where illegal tattooing may be taking place for example, which we may need in order to provide sufficient evidence for the Magistrates to issue a warrant for Power of Entry when we subsequently apply for this