



Llywodraeth Cymru  
Welsh Government

# INTIMATE PIERCING

## **Public Health (Wales) Act 2017**

Guidance for Enforcement Officers on the  
implementation of Part 5 – Intimate Piercing

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

## **1. Purpose of the guidance**

The purpose of this non-statutory guidance is to support local authorities and the police in successfully implementing Part 5 of the Public Health (Wales) Act 2017 (the Act) which came into force on 1 February 2018:

[www.legislation.gov.uk/anaw/2017/2/part/5/enacted](http://www.legislation.gov.uk/anaw/2017/2/part/5/enacted)

The main purpose of Part 5 of the Act is to prevent the intimate piercing of children and young people under the age of 18 years.

This guidance has been developed by the Welsh Government in consultation with Local Government, the Police, Public Health Wales, and the Chartered Institute of Environmental Health. It should be read alongside the 2017 Act. Copies of this guidance can be downloaded from the Welsh Government's website at:

<https://gov.wales/intimate-piercing-guidance-local-authority-enforcement-officers>

## **2. Background to the legislation**

The Public Health (Wales) Act 2017 received Royal Assent on 3 July 2017. The Act addresses a number of specific public health concerns: tobacco and nicotine products; 'special procedures' (acupuncture, body piercing, electrolysis and tattooing); intimate piercing; pharmaceutical services; and provision of toilets for public use.

Part 5 of the Act places a prohibition on the intimate piercing of children and young persons under the age of 18 and came into force on 1 February 2018.

While many piercing practitioners choose not to perform intimate piercings on children and young people, the provisions in the Act provide greater clarity and consistency in the law on this issue. The Act's prohibition on the intimate piercing of people under the age of 18 aims to protect children and young people from the potential health harms from an intimate piercing, and to avoid circumstances where children and young people are placed in a potentially vulnerable situation.

### **3. Overview of Part 5**

The Act defines an intimate piercing as the perforation of the skin or mucous membrane of the anus, breast, buttock, natal cleft, penis, perineum, pubic mound, scrotum, tongue or vulva.

The Act makes it an offence for someone to perform, or make arrangements to perform, an intimate piercing on a person who is under the age of 18. This means that a young person does not have to undergo an intimate piercing for an offence to be committed – arranging to intimately pierce a child or young person under 18 is also an offence.

These provisions do not apply retrospectively so intimate piercings performed on children and young people under the age of 18 prior to 1 February 2018 are not captured by this new law. However, the removal of a pre-existing intimate piercing, would be captured if its removal requires cutting or piercing of the skin or mucous membrane.

The Act does provide for a 'due diligence' defence for someone who offers to perform, or performs, the intimate piercing if they have taken reasonable steps to ensure that the person requesting an intimate piercing was aged 18 or over, such as checking their age. Consent is not a defence – the fact that a person under the age of 18 may have given their consent, or that a parent or guardian may have consented on their behalf, does not matter.

Local authorities have a duty to undertake enforcement action in relation to the provisions, including bringing forward prosecutions, investigating complaints and taking other steps. These steps may involve communicating with, and educating, body piercing practitioners, or undertaking 'test purchasing' inspections to assess compliance.

In undertaking enforcement action, a local authority must consult with the police as it considers appropriate.

## 4. Intimate Piercing

### 4.1 Key Definitions

The Act defines an intimate piercing as a body piercing performed on an ‘intimate body part’, where performed otherwise than in the course of a medical procedure.

“Body piercing” is the perforation of an individual’s skin or mucous membrane, with a view to enabling jewellery, or any object that is not jewellery as prescribed in regulations<sup>1</sup>, to be attached to, implanted in, or removed from the individual’s body.

Perforating an individual’s skin or mucous membrane includes breaching the integrity of the skin or mucous membrane in any way, including (among other things) by way of a puncture or an incision.

The ‘intimate body parts’ listed in the Act are applicable to all genders, and are the:

- anus
- breast (including the nipple and areola)
- buttock
- natal cleft
- penis (including the foreskin)
- perineum
- pubic mound
- scrotum
- tongue, and
- vulva.

A “medical procedure” is defined as a procedure carried out by a registered medical practitioner, registered nurse or registered midwife, for the purposes of, or in connection with the diagnosis, prevention, monitoring, treatment or alleviation of disease, ill-health, disability, or other physical or mental abnormality, or birth control.

### 4.2 Offences

**4.2.1** The Act makes it an offence for a person in Wales to perform an intimate piercing on a person who is under the age of 18, or make arrangements to perform an intimate piercing, in Wales, on a particular person who is under the age of 18.

#### 4.2.2 Perform an intimate piercing

The Act makes it an offence for a person in Wales to perform an intimate piercing on a person under the age of 18 in Wales.

#### Scenario

A 14 year old boy A visits his local body piercing business and asks a piercer B to pierce his nipple. The body piercer does so. The incident is reported to the local authority by A’s parents. The piercer B who undertook the piercing at the business has committed an offence under the Act.

The definition of body piercing extends to the perforation of an individual’s skin or mucous membrane, with a view to enabling jewellery, or an object of a description prescribed in or under regulations, to be removed from the individual’s body.

<sup>1</sup> The Prescribed Objects for Intimate Piercing (Wales) Regulations 2019, which can be seen here: <http://www.legislation.gov.uk/wsi/2019/1120/contents/made>

### Scenario

D aged 17 asks a body piercer E to remove a barbell piercing that has become embedded in one side of his natal cleft. To successfully remove the barbell it is necessary for E to make an incision in D's skin. E does so. An offence has been committed by E as the incision (perforation) has been undertaken with a view to enabling jewellery to be removed from D's body. E should have advised D to see his GP.

A 'person' in Wales generally means a human being but can also include a body of persons such as a partnership and corporate or unincorporated associations. The Act also identifies that an offence can be committed by a body corporate. This is an organisation or group of persons that is identified by a particular name and that acts, or may act, as a recognised entity or legal person. This includes companies, associations, institutions, non-profit enterprises, and public bodies.

Under the Act, senior officials of companies and organisations, such as directors, company secretaries, and senior managers of businesses can be held accountable where an offence has been proven. This applies where it can be shown that the offence has been committed through their consent, connivance or neglect.

Senior officers of companies such as directors or company secretaries may be guilty of an offence where it can be shown that an offence has been committed through their neglect, i.e. where they have failed to put in place procedures to prevent the commission of the act, or have put procedures in place but failed to ensure that they are followed, or through active connivance, e.g. where a blind eye is turned at a management level to the underage piercing activities being carried out. In such cases action can be taken against the company/organisation citing the activity of the individual within it as the offending behaviour.

### Scenario

A body piercing business is owned by Company X. Director A of Company X says that staff should allow anyone to have an intimate piercing who is willing to pay. Customer B, aged 15, has his tongue pierced by a member of staff at Business C owned by Company X. The incident is reported to the local authority by B's parents. The piercer who undertook the piercing at Business C was proved to have committed an offence under the Act. Director A's approach had contributed to the offence and so Director A therefore had also committed an offence.

Further guidance when proceeding for an offence alleged to have been committed by bodies corporate etc. can be found at section 120 and 121 of the Act.

A person guilty of an offence under this section is liable on summary conviction to an unlimited fine.

### **4.2.3 Making arrangements to perform an intimate piercing**

As set out in paragraph 4.2.1 the Act makes it an offence for a person in Wales to make arrangements to perform an intimate piercing, in Wales, on a particular person who is under the age of 18.

#### **Scenario**

A, who is 17 years old, visits a body piercing studio in Cardiff and makes an appointment with B for a tongue piercing, at the studio, the following week. B does not ask A his age. An offence has been committed by B as he has made an arrangement to perform an intimate piercing, in Wales, on a particular person (A) who is under the age of 18.

The Act only applies in Wales. The person making the offer to perform an intimate piercing on a person under the age of 18 must be present in Wales when they make the offer. The place at which the piercing is to be performed must also be in Wales. The term 'particular person' means a specific individual.

#### **Scenario**

T, aged 22, from Bristol is arranging her best friend's hen weekend in a rented house in Powys. T doesn't know all 12 of the girls who are attending the weekend but, as part of the celebration, wants them all to enjoy a piercing party and have nipple piercings. T rings and makes a group booking directly with a peripatetic piercer (P) from Brecon to attend the party and pierce all 12 ladies' nipples.

T doesn't know how many of the 12 will go through with it so doesn't provide a list of names to the piercer. Three of the girls are under 18. The mother of one of the girls aged 13 is upset by the arrangements made and rings the local authority to complain.

P has not committed an offence as he has not made arrangements to perform an intimate piercing on a "particular person". The booking is for a group of unspecified people. It would have been sensible for P to warn T that those under 18 would not be pierced, particularly as T is from England and may not be aware of the law in Wales.

#### **Scenario**

C, who is a 15 year old resident in Wales, visits a tattoo and body piercing convention in Bristol and makes an appointment with a Cardiff based exhibitor 'B' for a nipple piercing, at their studio in Cardiff, the following week.

An offence has not been committed by B as the arrangement to perform an intimate piercing was not made in Wales. However, if B performs the nipple piercing on C, at the Cardiff studio, an offence would be committed as B would have performed an intimate piercing on a person who is under the age of 18 in Wales.

### Scenario

D, who is 14 years old, visits a tattoo and body piercing convention in Cardiff and makes an appointment with a Bristol based exhibitor E for a tongue piercing, at their studio in Bristol, the following week.

An offence has not been committed by E as whilst the arrangement to perform an intimate piercing was made in Wales, the piercing was to take place outside of Wales. If E performs the tongue piercing on D in Bristol no offence would have been committed under the Public Health (Wales) Act 2017 as Part 5 of the Act does not apply outside Wales.

#### 4.2.4 Aiding and abetting

A person who aids, abets, counsels or procures the commission by another person of an intimate piercing on a person under the age of 18 is guilty of the offence committed by the principal and liable to the same penalties. It is the principal's offence for which the person who aids or abets is liable.

In determining whether any given act amounts to 'aiding, abetting, counselling or procuring', the words should be construed in their ordinary meaning and not in a technical sense. For example the ordinary meaning of 'to counsel' is 'to encourage' and most often covers advice, information, encouragement or the supply of equipment before the commission of a crime and implies agreement with the principal.

### Scenario

H a receptionist at a body piercing studio is approached by her friend J who is 14 years old and wants her tongue pierced. H is aware J is under 18 but regardless makes arrangements for J to have her tongue pierced by booking J an appointment with a body piercer K, who works at the studio. J's tongue is subsequently pierced by K.

Both K and H have committed an offence. H is also liable for K's crime even though H did not conduct the actual piercing on J.

### Scenario

L is 17 and wants to have her nipple pierced like other girls in her group at school. She asks M, her friend, who is 18 and has already had her nipple pierced, to help her. M goes to the piercer where she had her nipple pierced to make an appointment for L. The receptionist P asks M if L is over 18. M assures her she is saying that L is in the same year at school as she and all her friends are, all of whom have had piercings done at the studio. The receptionist P makes an appointment for L. L and her friend M turn up at the appointed time, and L is taken into the studio by P, where the piercing is carried out by the Piercer K.

M has committed the offence of procuring the piercing, as she makes all of the necessary arrangements, knowing that L is not 18. P is guilty of arranging to perform the piercing by making the booking without making appropriate checks – she has two opportunities to do so, at the time of booking and at the time of attendance and takes neither. K has committed an offence of performing the piercing as she makes no checks at all, relying instead on P.

### **4.3 Exemption for Medical procedure**

The Act defines an intimate piercing as a body piercing performed on an 'intimate body part', where performed otherwise than in the course of a medical procedure.

A medical procedure is a procedure carried out by a registered medical practitioner, registered nurse or registered midwife, for the purposes of, or in connection with:

- the diagnosis, prevention, monitoring, treatment or alleviation of disease, ill-health, disability, or other physical or mental abnormality, or
- birth control.

#### **Scenario**

F is 15 and has been refused a tongue piercing by her local body piercing studio. F is determined to have a piercing and asks her aunt G, a registered nurse, to perform the procedure. G complies and pierces the tongue of her niece F.

The medical procedure exemption does not apply as although the procedure was performed by a registered nurse, the piercing was not performed in the course of a medical procedure. G has committed an offence.

## 5. Defences

The strictness of the offence means that anyone in Wales who either performs an intimate piercing on a person under the age of 18, or makes arrangements to perform an intimate piercing, in Wales, on a particular person who is under the age of 18 commits an offence. However, the Act offers a defence if the person charged, by reason of their own conduct, shows that they believed that the person they pierced or made arrangements to pierce was aged over 18 and either:

- they had taken reasonable steps to establish the age of that person, or
- that nobody could reasonably have suspected from that person's appearance that the person was under the age of 18.

The person accused of performing an intimate piercing on a person under 18 is treated as having taken reasonable steps to establish the age of another person if they asked that person for evidence of that person's age, and the evidence would have convinced a reasonable person.

Guidance for piercing businesses sets out examples of reasonable steps that can be taken to establish the age of a client. Although not prescribed by the Act, the following documents could reasonably be used by a piercing business to check the age of their clients:

- a passport
- European Union photo card driving licence, or
- a photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram.

Where a person is charged with the offence of performing or arranging to perform an intimate piercing on a person who is under 18 by reason of the act or default of another person, or by virtue of the application of section 44 of the Magistrates' Courts Act 1980 (a person who aids, abets, counsels or procures), it is a defence to show that the accused took reasonable precautions and exercised due diligence to avoid committing the offence.

The following procedures may be used to assist with compliance with the Act and demonstrate due diligence:

- train and advise staff on what intimate piercings are and how to check the age of users, including the types of documents that can be used to prove age
- ensure a dual process for checking age – by establishing the age of client before booking/making arrangements to perform the piercing, and then verifying when actually performing the intimate piercing, even if checks have been made by other members of staff
- have written procedures for staff for dealing with people who may be under 18 – train staff in these procedures and keep records of this training
- keep a written record of any incident (and outcome) where a member of staff challenges a potential customer about their age
- take photocopies (with their permission) of documents provided by customers to prove they are 18 or over
- maintain written records for each user for each procedure and retain copies of relevant documents
- use till prompts for intimate piercing transactions, if the facility is available
- display prominent and clear notices that no under 18s are permitted to make arrangements to have, or have, an intimate piercing
- provide information on the restrictions on intimate piercings in brochures, service directories, internet sites etc.

## **6. Enforcement**

### **6.1 Local Authorities**

Local authorities are responsible for enforcing the Act. A local authority means the council of a county or county borough in Wales. A local authority may:

- bring prosecutions in respect of offences in its area
- investigate complaints in relation to alleged offences in its area
- take other steps with a view to reducing the incidence of offences in its area. These may include actions such as communicating with and educating body piercing practitioners, or undertaking test purchasing and inspections to assess compliance.

Local authorities are required by the Act to consider a programme of enforcement for their areas, at least once every twelve months. They must also consider the extent to which it is appropriate for them to carry out the programme of enforcement action in their area.

The programme of enforcement should cover all or any of the enforcement powers including taking prosecutions, investigating complaints and taking steps to reduce the incidence of offences in its area. Local authorities will need to decide how they deal with complaints and intelligence they receive from various sources as part of their programme of enforcement. When they are developing their enforcement programme local authorities must also carry out appropriate consultation with the Chief Officer of Police for their police area.

### **6.2 Authorised officers**

Local authorities will need to identify appropriate authorised officers (whether or not an officer of the local authority) to carry out duties to secure compliance with the Act.

An “authorised officer” means all those officers who have been authorised by a local authority to undertake the work of securing compliance with Part 5 of the Act.

Existing officers who are experienced in carrying out enforcement duties in relation to businesses, such as Environmental Health and Trading Standards Officers, could carry out this work and could incorporate this work into their other inspection activities.

Officers will need to be authorised under the Public Health (Wales) Act 2017 in accordance with their normal local authority procedures.

### **6.3 Powers of entry to premises other than dwellings**

Police constables and local authority authorised officers have the right to enter premises at any reasonable time providing they have reasonable grounds for believing that an offence has been committed, and it is necessary to enter for the purpose of ascertaining whether such an offence has been committed.

Premises may include any place, any vehicle (other than an aircraft or hovercraft), stall or moveable structure but does not include domestic premises.

Constables and authorised officers have the right to carry out inspections and examinations on the premises. They can also require the production of anything on the premises, inspect it and take and retain samples of or extracts from it as appropriate. They can also take possession of anything and retain it for as long as they consider necessary.

Constables and authorised officers have the power to copy documents found on the premises and impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents found on the premises that are stored electronically). “Documents” includes information recorded in any form and stored on computers or other electronic devices as well as documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.

Constables and authorised officers have the right to require any person to give information, facilities and provide such assistance as they consider necessary.

If anything is taken away from the premises, the constable or authorised officer must leave on the premises a statement giving particulars of what has been taken and identifying the person to whom a request for the return of the property may be made.

Authorised officers will be expected to produce their written authority, on the request of a business, before they enter any premises.

If access to premises that are not used wholly or mainly as a dwelling place is required because there are reasonable grounds to believe that an offence has been committed, and entry is required to ascertain whether or not such an offence has taken place, a warrant can be sought from a justice of the peace to provide the authorisation needed by the constable or authorised officer to enter such premises, if needs be by force.

#### **6.4 Powers of entry to dwellings**

The Act requires an authorised officer, or constable, to obtain a warrant from a justice of the peace in order to enter premises used wholly or mainly as a dwelling. Sworn information in writing must be provided to a justice of the peace setting out reasonable grounds for believing that an offence has been committed and why entry is required to ascertain whether or not such an offence has taken place. Such warrants would normally be required where an occupier’s consent to enter was sought but was not forthcoming, or where pre-notification of a visit would defeat the purpose of exercising powers. When considering entry under a warrant, authorised persons need to consider all available intelligence before applying for a warrant, such as taking reasonable steps (as practicable) to verify that the information is accurate, recent and not provided maliciously.

For further guidance on the use of warrants generally please refer to the Home Office Code of Practice on Powers of Entry:

<https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

## 6.5 'Test purchasing'

The Act indicates that authorised officers may make such purchases and secure the provision of such services that they consider necessary. This would allow authorised officers to use the services of a suitable person under the age of 18 to attempt to enter into arrangements to have an intimate piercing (test purchase). It would not be appropriate or necessary for an authorised officer to ask an under 18 year old to attempt to undergo, or undergo, an intimate piercing.

It is envisaged that enforcement of the Act can be achieved without the use of test purchasing but that in a minority of cases it may be appropriate.

### Scenario

A local authority receives a complaint that a body piercer in Wales is piercing under 18 year olds at his business. The authorised officer undertakes a risk assessment and asks a suitable 16 year old volunteer to enter the business under their power to secure the provision of services. The 16 year old is not asked to provide proof of their age by the piercer and is able to make a future appointment to have a nipple piercing.

The body piercer has made an arrangement to perform an intimate piercing, on a particular person, under the age of 18. An offence has been committed. The 16 year old does not undergo the piercing.

Further guidance on the wider application of test purchasing and requirements under the Regulation of Investigatory Powers Act 2000 (RIPA) can be found in 'Age Restricted Products and Services: A Code of Practice for Regulatory Delivery and available at:

<https://www.gov.uk/government/publications/code-of-practice-age-restricted-products>

It is to be noted that test purchasing in relation to Part 5 of the Public Health (Wales) Act 2017 provisions is a service.

## **7. Further Offences**

When inspections and investigations are taking place, it is expected that the majority of people will cooperate with the authorised officer or constable.

However, where the authorised officer or constable is intentionally prevented from fulfilling the necessary tasks to complete the inspection or investigation through obstruction, this is an offence under the Act, unless there is a reasonable cause.

There is no specific definition of reasonable cause, and what is reasonable may vary from person to person, and depend on the particular circumstances of a case.

The offence of obstruction is committed if any person fails to:

- provide any facilities reasonably required – this might include an area to sit and check records, or to have access to equipment to view CCTV etc.
- provide assistance – such as showing where information is held, demonstrating how equipment operates
- give information – such as responding to questions, providing requested information.

The offence of obstruction, if found guilty, carries a fine not exceeding Level 3 on the standard scale.

Offence	Defence
<p><b>Section 95.</b></p> <p><b>Offence of performing or making arrangements to perform an intimate piercing on a child</b></p> <p>(1) It is an offence for a person in Wales to:</p> <ul style="list-style-type: none"> <li>(a) perform an intimate piercing on a person who is under the age of 18;</li> <li>(b) make arrangements to perform an intimate piercing, in Wales, on a particular person who is under the age of 18.</li> </ul>	<p>Where a person (“the accused”) is charged with an offence under this section by reason of the accused’s own conduct it is a defence for the accused to show:</p> <ul style="list-style-type: none"> <li>• that the accused believed that the person on whom the piercing was performed, or in respect of whom arrangements were made, was aged 18 or over, and</li> <li>• either: <ul style="list-style-type: none"> <li>(i) that the accused had taken reasonable steps to establish the age of that person, or</li> <li>(ii) that nobody could reasonably have suspected from that person’s appearance that the person was under the age of 18.</li> </ul> </li> </ul> <p>In the case of an offence relating to performing an intimate piercing on a person who is under the age of 18, the accused is to be treated as having taken reasonable steps to establish the age of another person if:</p> <ul style="list-style-type: none"> <li>• the accused asked that person for evidence of that person’s age, and</li> <li>• the evidence would have convinced a reasonable person.</li> </ul> <p>Where a person is charged with an offence under this section by reason of the act or default of another person, or by virtue of the application of section 44 of the Magistrates’ Courts Act 1980 (aiders and abettors), it is a defence to show that the person took reasonable precautions and exercised due diligence to avoid committing the offence.</p>
<p><b>Fine: Unlimited</b></p>	
<p><b>Section 104 Obstruction etc. of constable or officer</b></p> <p>Any person who intentionally obstructs a constable or authorised officer exercising functions under sections 99 to 103 of the Act commits an offence.</p> <p>Any person who without reasonable cause fails:</p> <ul style="list-style-type: none"> <li>(a) to provide a constable or authorised officer with facilities that the constable or authorised officer reasonably requires for the purpose of a requirement under section 103(1), or</li> <li>(b) to comply with a requirement under section 103(1)(b) or (d),</li> </ul> <p>commits an offence.</p>	<p><b>No statutory defence (i.e. none specified on the face of the Act other than ‘without reasonable cause’)</b></p>
<p><b>Fine: A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. (Currently £1000)</b></p>	