

PUBLIC HEALTH (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5

Intimate Piercing

Section 95 - Offence of performing or making arrangements to perform an intimate piercing on a child

190. This section makes it an offence to perform an intimate piercing on a child in Wales. It also makes it an offence to make arrangements to perform an intimate piercing on a child in Wales. A child for the purposes of this Part of the Act is any person who is under the age of 18. A person convicted of either offence is liable on summary conviction to an unlimited fine.
191. A person charged with the offence of performing an intimate piercing on a child in Wales may put forward a defence that they believed the person was aged over 18. The accused would need to show that they either took reasonable steps to establish the person's age (for example by requesting proof of age and that the evidence provided would have convinced a reasonable person), or that nobody could reasonably have suspected that the person was under the age of 18 from their appearance. If a person is charged with an offence under this section due to the actions of another person, it will be a defence to show that the accused took reasonable precautions and exercised due diligence to avoid committing the offence, for example by providing training to staff or putting systems in place to avoid committing the offence.

Section 96 - What is an intimate piercing?

192. An intimate piercing is a body piercing performed on an intimate body part. The definition of "body piercing" is provided in section 94 and means the perforation (including puncture or incision) of an individual's skin or mucous membrane, with a view to enabling jewellery or another object to be attached to, implanted in or removed from the individual's body. Objects will be prescribed in regulations and may include, for example, a bead.
193. The intimate body parts are listed in subsection (2) and include the breast (including the nipple and areola), buttocks, genitals and tongue. The list captures parts of both the male and female anatomy. Mucous membranes are included in the definition as the surface of intimate body parts such as the vulva may comprise skin or mucous membranes.
194. The offences created by this section do not apply to intimate piercings of a person under the age of 18 if they occur in the course of a medical procedure carried out by a registered medical practitioner, a registered nurse or a registered midwife. A medical procedure is defined as any procedure carried out 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.

Section 97 - Enforcement action by local authorities

195. This section enables a local authority to undertake enforcement action in relation to this Part of the Act. A local authority may:
- bring prosecutions in respect of offences under section 95;
 - investigate complaints in relation to alleged offences under section 95;
 - 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 inspections to assess compliance.
196. Subsection (2) requires a local authority to consider at least once every 12 months a programme of enforcement action aimed at preventing the intimate piercing offences set out in section 95. A local authority must also, to the extent that it considers it appropriate to do so, carry out such a programme of enforcement action. This enforcement action may involve any or all of the steps referred to in subsection (1).
197. In undertaking its enforcement action, a local authority must carry out such consultation as it considers appropriate with the police.

Section 98 - Authorised officers

198. The section clarifies that any reference to authorised officers in this Part is to any person authorised by a local authority, whether or not they are an officer of the local authority.

Section 99 - Powers of entry

199. This section enables a constable or an authorised officer to enter premises (excluding premises used wholly or mainly as a dwelling, for which see section 100) at any reasonable time, if there are reasonable grounds to believe that an offence under section 95 has been committed and entry is necessary to ascertain whether or not such an offence has taken place. The references in these enforcement provisions to a constable reflect the sensitive nature of the offence, investigation of which could require photographic evidence and/or personal examinations. This power to enter premises does not enable the constable or authorised officer to enter by force. If required, an authorised officer must, before entering the premises, show evidence of their authorisation by the local authority. The power to enter premises (as provided by sections 100 to 103) covers any place and any vehicle (other than an aircraft and hovercraft), stall or moveable structure.
200. Section 67(9) of the Police and Criminal Evidence Act 1984 provides that, while acting in the course of their enforcement functions, authorised officers of the enforcement authority must have regard to the relevant code of practice made under that Act. Therefore, authorised officers must have regard to the PACE Code of Practice B in the exercise of their enforcement functions.

Section 100 - Warrant to enter dwelling

201. If access to premises used wholly or mainly as a dwelling is necessary because there are reasonable grounds to believe that an offence under section 95 has been committed, and entry is required to ascertain whether or not such an offence has taken place, a written application must be made to a justice of the peace. This section enables a justice of the peace to issue a warrant authorising a constable or authorised officer to enter the dwelling, if need be by force. A warrant can be issued in a format other than a hard copy document, such as an electronic version. The warrant will be in force for 28 days beginning on the date it was signed by the justice of the peace.

Section 101 - Warrant to enter other premises

202. If access to premises that are not used wholly or mainly as a dwelling is required because there are reasonable grounds to believe that an offence under section 95 has been committed, and entry is necessary to ascertain whether or not such an offence has taken place, section 101 enables a justice of the peace to issue a warrant authorising a constable or authorised officer to enter such premises, if needs be by force. The warrant can be obtained by making an application to a justice of the peace. The premises to which entry is being sought under this section must be used for business purposes, or for both business and as a dwelling. In the case of premises used wholly or mainly as a dwelling, a warrant must be sought under section 100.
203. In order for a warrant to be issued, one or more of the requirements set out in subsections (3) to (6) must be met. The requirements include that a request to enter the premises has been, or is likely to be, refused and notice of intention to apply for a warrant has been given; that requesting to enter, or giving notice of an intention to apply for a warrant, is likely to defeat the purpose of the entry; that the premises are unoccupied; or that the occupier is temporarily absent, and awaiting the occupier's return is likely to defeat the object of the entry. Once the warrant is issued, it will be in force for 28 days beginning on the date it was issued by the justice of the peace.

Section 102 - Supplementary provision about powers of entry

204. This section enables authorised officers or constables entering premises under sections 99, 100 and 101 to take with them any other persons or equipment as appropriate to ascertain whether an offence under section 95 has been committed, for example equipment used to examine electronic records. It also requires that if the occupier of premises that an authorised officer is authorised to enter under sections 100 or 101 is present at the time the authorised officer seeks to execute the warrant, the occupier must be told the officer's name; if not a constable in uniform the officer must produce documentary evidence that the officer is a constable or authorised officer; the officer must produce the warrant and supply the occupier with a copy of it. In addition, the section requires that if the premises are unoccupied or the occupier is temporarily absent, those authorised to enter the premises must leave it as effectively secured against unauthorised entry as they found them.

Section 103 - Powers of inspection etc.

205. Once a constable or an authorised officer has gained entry to premises, they may undertake inspections and examinations to ascertain whether an offence under section 95 has been committed. This may include inspecting and examining the premises, viewing closed-circuit television records and obtaining copies of documents, such as procedure records and consent documents. The constable or authorised officer may also take possession of anything on the premises, and retain it for as long as necessary. The constable or authorised officer may also require any person to provide them with information, or afford facilities and assistance within their control. This may include providing an account of events, or supplying information that is stored on a computer or other device. If a constable or authorised officer takes anything away from the premises, they must leave a statement at the premises containing the particulars of what has been taken and identifying the person to whom a request for the return of the property may be made. However, a person is not required to answer any question or produce any document which they would be entitled to refuse to answer or produce during proceedings in a court in England and Wales.

Section 104 - Obstruction etc. of constable or officer

206. This section provides that a person commits an offence if they intentionally obstruct a constable or an authorised officer from entering premises when they are authorised to do so. They will also commit an offence if, without reasonable cause, they fail to

provide facilities or comply with any requirements required of them under section 103 (i.e. to provide a constable or an authorised officer with anything on the premises or with facilities, assistance or information (for example access to electronic records) that the constable or authorised officer reasonably requires).

207. A person found guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982.

Section 105 - Power to make test purchases

208. An authorised officer may make purchases and arrangements, and secure the provision of services if the officer considers it necessary for the purpose of enforcement of the offences. This includes enlisting the assistance of a young person to ascertain if a person is offering and/or making arrangements to intimately pierce those under the age of 18.

Section 106 - Retained property: appeals

209. This section provides an additional safeguard relating to the powers of entry and inspection provisions. It enables a person with an interest in anything taken away from the premises by an authorised officer under section 103(1)(c) to apply to a magistrates' court for an order requesting the release of the property. Depending on the court's consideration of an application, it may make an order requiring the release of the retained property.

Section 107 - Appropriated property: compensation

210. This section provides a right for a person affected by the taking possession of property under section 103(1)(c) to apply to a magistrates' court for compensation. Where the circumstances set out in subsection (2) are satisfied (i.e. that the person has suffered loss or damage as a consequence of the property being taken and the loss or damage is not due to their neglect or failure to act), the court may order the local authority to pay compensation to the person.