

CITY OF
WOLVERHAMPTON
COUNCIL

Regulatory Committee

10 November 2021

Report title	The Botulinum Toxin and Cosmetic Fillers (Children) Act 2021	
Wards affected	All	
Accountable Director	Ross Cook, Director of City Housing and Environment	
Originating service	Licensing	
Accountable employee	Emma Caddick	Service Manager
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Report to be/has been considered by	None	

Recommendation for decision:

The Regulatory Committee is recommended to:

1. Approve the enforcement approach outlined in section 4.0 of the report.

Recommendation for noting:

The Regulatory Committee is asked to note:

1. The introduction of the Botulinum Toxin and Cosmetic Fillers (Children) Act 2021 on 1 October 2021 and associated legal implications.

1.0 Purpose

- 1.1 To update the Regulatory Committee of The Botulinum Toxin and Cosmetic Fillers (Children) Act 2021, which came into force on the 1 October 2021.

2.0 Background

- 2.1 The Botulinum Toxin and Cosmetic Fillers (Children) Act 2021 received Royal Assent on 29 April 2021 and came into force on 11 October 2021.
- 2.2 The Act aims to safeguard children from the potential health risks of botulinum toxin and cosmetic fillers. There are also ethical considerations about the extent to which people under 18 have the emotional and mental maturity to give informed consent to these invasive procedures when accessing them on the commercial market without a medical or psychological assessment.
- 2.3 The age restriction has been set at 18 years. This has been selected as it aligns with age restrictions in England on other comparable body modifications which carry health risks, such as tattooing, sunbed use and teeth whitening.
- 2.4 Research carried out by the government estimated that there may have been as many as 41,000 botulinum toxin procedures carried out for under-18s in 2020, and over 29,300 dermal filler procedures for under-18s may have been undertaken in 2017.

3.0 The Legislation

- 3.1 Under the Act, it is an offence for a person to administer, in England:
- botulinum toxin
 - subcutaneous, submucous or intradermal injection of a filler for a cosmetic purpose to a person under the age of 18.
- 3.2 It is also an offence to make arrangements to undertake, or arrange for another person to undertake, these procedures to a person under 18 in England. The exception to this is if the person administering the injections can show that they:
- were a registered medical practitioner (doctor)
 - were a registered health professional (nurse, dentist, or pharmacist) acting in accordance with the directions of a registered doctor
 - had taken reasonable steps to establish the person's age, and reasonably believed that they were aged 18 or over
- 3.3 The Act also provides a defence for a business owner to prove that they took all reasonable precautions and exercised all due diligence to avoid committing an offence.

- 3.4 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 is not a defence.
- 3.5 The police and local weights and measures authorities (Trading Standards) have powers 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, practitioners or undertaking 'test purchasing' inspections to assess compliance.

4.0 Enforcement Approach

- 4.1 To ensure businesses are aware of their legal obligations the service will undertake a publicity campaign informing businesses of the new legislation and highlighting that consent is not a defence.
- 4.2 All close contact premises will be written to directly to advise them of the new legal requirement and signpost them to the associated guidance, which will support them to comply with the legal requirements.
- 4.3 Any complaints of this nature will be investigated by the service and test purchases will be completed on an intelligence led basis. Due to the serious nature of the offences, it is likely that individuals who knowingly breach the legislation will be prosecuted.

5.0 Financial implications

- 5.1 The overall resource provision required to deliver the enforcement approach outlined in this report fall within the City Housing and Environment portfolio.
- 5.2 The cost of publicity materials will be met through the existing Trading Standards budget.
- 5.3 These costs can be met within current budgets and will be monitored as part of the Council's routine quarterly revenue monitoring.

[SB/21102021/E]

6.0 Legal implications

- 6.1 All regulatory activity is undertaken in accordance with the Black Country Regulators Operating Framework, previously approved by Cabinet. Any prosecutions will be taken in accordance with the Home Office Code for Crown Prosecutors, which includes an evidential and public interest test.

[SH/22102021/B]

7.0 Equalities implications

- 7.1 Enforcement of the Act will have no adverse equality implications as the same levels of advice and support are provided to all close contact business proprietors from all sections of the community.
- 7.2 All regulatory activity is undertaken in accordance with the Black Country Regulators Operating Framework, previously approved by Cabinet. In order to ensure a consistent and proportionate approach, all decisions are based solely on considerations of risk, public safety, evidence and public interest. All enforcement policies reflect this approach.
- 7.3 Any prosecutions are taken in accordance with the Home Office Code for Crown Prosecutors, which includes an evidential and public interest test. The evidential test is undertaken by Legal Services and final approval for prosecution is via the Head of Service.

8.0 All other Implications

- 8.1 This report poses no implications for Climate Change and Environmental, Human Resources, Corporate Landlord, Health and Wellbeing nor any implications that have arisen from the Covid-19 Pandemic.