

202X No. (W.)

PUBLIC HEALTH, WALES

**The Special Procedures Licensing
Committee (Wales) Regulations
202X**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations come into force on XXX and make provision about the procedures applicable to licensing committees and sub-committees (“relevant committees”) where they are required to hold a hearing in respect of special procedure licensing under Part 4 of the Public Health (Wales) Act 2017 (“the Act”).

Under Part 4 of the Act, individuals may make an application to a local authority for a special procedure licence and may also apply to vary or renew their special procedure licence. Section 61(1) of the Act allows a local authority to designate an individual as a person requiring a special procedure licence if they intend to perform a specified special procedure. Section 68 of the Act allows a local authority to revoke a special procedure licence in specified circumstances. Section 73 of the Act allows a local authority to revoke an approval certificate in specified circumstances.

Under Part 4 of the Act, a local authority has the power to issue a warning notice where it intends to:

- refuse an application for a special procedure licence;
- refuse an application to vary a special procedure licence;
- refuse an application to renew a special procedure licence;
- designate an individual as a person requiring a special procedure licence;
- revoke a special procedure licence;
- revoke an approval certificate.

A local authority is required to consider representations made after it has issued a warning notice in relation to those applications, proposed designations and proposed revocations.

Paragraph 21 of Schedule 3 to the 2017 Act delegates specified functions of a local authority to the licensing committee of the authority established under section 6 of the Licensing Act 2003 (“the 2003 Act”) which includes considering such representations.

Paragraph 21(2) of Schedule 3 to the 2017 Act applies sections 7(9) (referral back to authority) and section 10 (sub-delegation) of the 2003 Act in relation to the functions delegated to a licensing committee. By virtue of section 7(9) of the 2003 Act, if a licensing committee is unable to discharge any function delegated to it because of the number of its members who are unable to take part in the consideration or discussion of any matter, the licensing committee must refer the matter back to the local authority to discharge that function. Section 10(1) of the 2003 Act allows a licensing committee to delegate its functions to a sub-committee. Subject to these Regulations, the relevant committees may regulate their own procedure.

Regulation 4 requires relevant committees to hold hearings as soon as reasonably practicable after the deadline for making representations. These hearings may be held by remote means.

Regulation 5 requires relevant committees to give notice of any hearing to relevant persons listed in the Schedule to these Regulations, and for the notice to contain specified information.

Regulation 6 sets out further information and documents that must accompany the notice. Regulation 7 sets out the action that is required by a party following receipt of a notice of hearing.

Regulation 8 allows a relevant committee to postpone hearings either where it needs to consider information or documents, or if a party, witness or person representing a party, is unable to attend.

Regulation 9 allows a party to withdraw representations should they wish to do so.

Regulation 10 requires hearings to be held in public but allows relevant committees to hold them in private if they consider it necessary.

Regulation 11 sets out the procedure a relevant committee is required to follow when conducting the hearing, and the circumstances in which it may allow parties to attend, question and cross-examine persons at the hearing.

Regulation 11(7) allows relevant committees to exclude persons who are disrupting the hearing or set

conditions on their attendance; if a person is excluded, the relevant committee must allow them to make written submissions which it is obliged to take into account.

Regulation 12 makes provision in cases where a party does not attend the hearing, and allows relevant committees to adjourn the hearing or proceed in a party's absence.

Regulation 13 sets out the procedure where a hearing is not to take place for example when the parties have notified the relevant committee that they consent to the matter being determined without a hearing.

Under regulation 14 relevant committees are required to make their determination and issue a notice of decision within five working days after the last day of the hearing.

Regulation 15 requires relevant committees to ensure that a record of the hearing is taken and kept for six years after the hearing.

Regulations 16 and 17 allow relevant committees to disregard or remedy the consequences of any irregularities that result from a failure to comply with a procedural requirement, and to correct accidental slips or omissions in any record of their decision.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

202X No. (W.)

PUBLIC HEALTH, WALES

**The Special Procedures Licensing
Committee (Wales) Regulations
202X**

Made ***

Laid before Senedd Cymru ***

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred by paragraph 21(4) of Schedule 3 to the Public Health (Wales) Act 2017(1), make the following Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Special Procedures Licensing Committee (Wales) Regulations 202X.

(2) These Regulations come into force on XXX.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Public Health (Wales) Act 2017;

“applicant” (“*ceisydd*”) means a person who makes an application;

“application” (“*cais*”) means an application made pursuant to Schedule 3 to the Act for the issue, renewal or variation of a special procedure licence;

“approval certificate” (“*tystysgrif gymeradwyo*”) has the meaning given in section 70 of the Act; “designated individual” (“*unigolyn dynodedig*”) means a person who has been given notice by a local authority under section 61 of the Act;

(1) 2017 anaw 2. See section 124(1) of that Act for the definition of “regulations”.

“hearing” (“*gwrandawriad*”) means the hearing referred to in column 1 of the table in the Schedule to these Regulations as the case may be;

“licence holder” (“*deiliad trwydded*”) means a person who holds a special procedure licence;

“local authority” (“*awdurdod lleol*”) means a local authority as defined in section 124 of the Act;

“notice of decision” (“*hysbysiad o benderfyniad*”) is to be given in accordance with paragraph 16 or 17 of Schedule 3 to the Act (as applicable);

“notice of hearing” (“*hysbysiad o wrandawriad*”) means a notice given to a party in accordance with regulation 5;

“party” (“*parti*”) means a person to whom a notice of hearing is given in accordance with regulation 5(1);

“relevant committee” (“*pwylgor perthnasol*”) means a licensing committee to which functions are delegated by virtue of paragraph 21(1) of Schedule 3 to the Act or a licensing sub-committee empowered to discharge such functions by arrangement under paragraph 21(2)(b) of Schedule 3 to the Act;

“representations” (“*sylwadau*”) means representations made in accordance with paragraph 15 of Schedule 3 to the Act in relation to a warning notice issued by a local authority;

“revocation” (“*dirymu*”) is to be interpreted in accordance with section 68 or section 73 of the Act (as applicable);

“special procedure licence” (“*trwydded triniaeth arbennig*”) means a licence issued by a local authority in accordance with section 59(1) of the Act;

“warning notice” (“*hysbysiad rhybuddio*”) means a notice issued in accordance with paragraph 15(3) of Schedule 3 to the Act.

(2) In these Regulations, a reference to a section, or a paragraph of a Schedule is a reference to the section of, or the paragraph of the Schedule to, the Act.

(3) In these Regulations, a reference to a hearing of a relevant committee held through remote means is to a hearing held by means of any equipment or other facility which enables persons who are not in the same place to speak and be heard by each other (whether or not the equipment or facility enables those persons to see or be seen by each other).

(4) Except as otherwise provided, a requirement under these Regulations to give a notice (or to notify) is a requirement to give written notice.

(5) A document or notice required by virtue of these Regulations to be “written” includes an electronic

communication, as defined in section 15(1) of the Electronic Communications Act 2000⁽¹⁾.

Scope

3.—(1) These Regulations apply to the procedures of a relevant committee in relation to the exercise of its functions under paragraph 21 of Schedule 3 to the Act.

(2) Subject to the provisions of these Regulations, it is for the relevant committee to decide the procedure to be followed in relation to the functions specified in paragraph (1).

Period of time within which a hearing is to be held

4.—(1) Where a hearing is required in relation to a procedure listed in column 1 of the table in the Schedule to these Regulations, the relevant committee must arrange for the hearing to be commenced as soon as is reasonably practicable after the expiry of any period for representations set out in the warning notice.

(2) In any case where the hearing is to be held on more than one day, the relevant committee must arrange for the hearing to take place on consecutive working days.

Notice of hearing

5.—(1) A relevant committee must give notice of any hearing which is required to be held in relation to a procedure listed in column 1 of the table in the Schedule to these Regulations, to each of the persons listed in column 2 of that table.

(2) A relevant committee must ensure that the notice referred to in paragraph (1)—

- (a) where the hearing is held through remote means only, gives details of the date and time of the hearing and how to access it,
- (b) where the hearing is held partly through remote means or is not held through remote means, gives details of the date, time and place of the hearing and how to access it,
- (c) states that the relevant committee will make available the documents listed in the relevant entry in column 3 of the table in the Schedule to these Regulations, if those persons request them (unless the relevant committee considers that the representations are vexatious, frivolous or will certainly not influence the decision of the application, proposed designation or proposed revocation), and
- (d) is sent so that, in the ordinary course of events, it is received no later than 10 working days

(1) 2000 c. 7; section 15(1) was amended by the Communications Act 2003 (c. 21).

before the first day on which the hearing is to be held (as specified in the notice).

Information to accompany a notice of hearing

6.—(1) The notice of hearing must be accompanied by information in writing explaining the following—

- (a) the consequences provided for under regulation 11(1) where a party informs the relevant committee that they do not wish to attend or be represented at the hearing, or fails to inform the relevant committee whether the party wishes to attend or be represented at the hearing;
- (b) the time limit and method by which a party should inform the relevant committee that the party wishes to attend or address the hearing;
- (c) the time limit and method by which a party should inform the relevant committee that the party wishes to be assisted or represented by another person;
- (d) the time limit and method by which a party should inform the relevant committee that the party wishes to call a witness to give evidence at the hearing, and the matters in relation to which the party wishes the witness to give evidence;
- (e) the time limit and method by which a party should inform the relevant committee that the party wishes to withdraw any representations;
- (f) the consequences where a party has indicated that they wish to attend or be represented at the hearing, but fails to attend or be represented at the hearing;
- (g) the matters on which the relevant committee considers at the time that it will want clarification on at the hearing from a party;
- (h) the time limit and method, if any, by which a party should inform the relevant committee that they are willing to consent to the application, proposed revocation or proposed designation being determined without a hearing;
- (i) the procedure to be followed at the hearing.

(2) In relation to hearings under the provisions listed in column 1 of the table in the Schedule to these Regulations, the notice of hearing given to the persons listed in column 2 of the table must be accompanied by the documents listed in column 3 of the table.

Action following receipt of notice of hearing

7.—(1) A party must give to the relevant committee a notice no later than five working days before the day or the first day on which the hearing is to be held stating—

- (a) whether they intend to attend or be represented at the hearing;
- (b) whether they consider a hearing to be unnecessary.

(2) In a case where a party wishes any other person (other than the person they intend to represent them at the hearing) to appear at the hearing, the notice referred to in paragraph (1) must contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the relevant committee in relation to the application, representations or notice of the party making the request.

Power to postpone

8.—(1) A relevant committee may at any time—

- (a) postpone a hearing to a specified date, or
- (b) arrange for a hearing to be held on a date specified by the committee.

(2) A relevant committee may take the actions specified in paragraph (1), if it considers it necessary—

- (a) to enable it to consider any information or documents provided by any party in response to a notice under regulation 6, or at the hearing, or
- (b) having regard to the ability of any party, person representing a party or witness to attend the hearing.

(3) Where a relevant committee has adjourned a hearing to a specified date, it must, as soon as reasonably practicable, notify the parties—

- (a) in the case of a hearing held through remote means only, of the new date and time for the hearing and how to access it, or
- (b) in the case of a hearing held partly through remote means or not held through remote means, of the new date, time and place for the hearing and how to access it.

(4) Where a relevant committee has arranged for the hearing to be held on a specified additional date it must, as soon as reasonably practicable, notify the parties—

- (a) in the case of a hearing held through remote means only, of the additional date and time for the hearing and how to access it, or
- (b) in the case of a hearing held partly through remote means or not held through remote

means, of the additional date, time and place for the hearing and how to access it.

Withdrawal of representations

9. A party who wishes to withdraw any representations they have made may do so—

- (a) by giving notice to the relevant committee no later than 24 hours before the day or the first day on which the hearing is to be held, or
- (b) orally at the hearing.

Hearing to be public

10.—(1) Subject to paragraph (2), the hearing must take place in public.

(2) The relevant committee may exclude the public from all or part of the hearing if it is satisfied that it is necessary in all the circumstances of the case, having regard to—

- (a) any unfairness to a party that is likely to result from a hearing in public, and
- (b) the need to protect as far as possible, the commercial or other legitimate interests of a party.

(3) For the purposes of paragraph (2), a party and any person assisting or representing a party may be treated as a member of the public.

Procedure at hearing

11.—(1) Subject to regulation 10 and paragraph (7), a relevant committee must permit a party to attend a hearing and be assisted or represented by any person whether or not that person is legally qualified.

(2) At the beginning of the hearing, the relevant committee must—

- (a) explain to the parties the procedure which it proposes to follow at the hearing, and
- (b) consider any request made by a party under regulation 7(2) for permission for another person to appear at the hearing, and such permission must not be unreasonably withheld.

(3) In conducting a hearing, the relevant committee must ensure that each party is given the opportunity to—

- (a) address the relevant committee on any matter that is relevant to the warning notice or to any representations made on the warning notice;
- (b) call witnesses to give evidence on any matter that is relevant to the warning notice or any representations made on the warning notice;

- (c) provide further information on, or explanation of, any matter on which the relevant committee has indicated that it will want further clarification under regulation 6(1)(g).

(4) In conducting a hearing, the relevant committee must also—

- (a) permit any party to question any other party or person representing a party on any matter that is relevant to the warning notice, or any representations made on the warning notice, where the relevant committee considers that in all the circumstances it is appropriate to do so, and
- (b) take into consideration documentary or other information in support of the warning notice or representations made by a party—

- (i) before the hearing, or

- (ii) at the hearing,

with the consent of all the other parties attending the hearing.

(5) Without prejudice to paragraphs (3) and (4), a hearing must be conducted so that it takes the form of a discussion led by the relevant committee, and the committee must not permit any cross-examination unless it considers that cross-examination is required for it properly to consider the warning notice or representations made by any party.

(6) The relevant committee must allow the parties an equal maximum period of time in which to exercise their rights provided for in paragraphs (3) and (4)(a).

(7) The relevant committee may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the hearing, and may—

- (a) refuse to permit that person to return, or

- (b) permit them to return only on such conditions as the committee may specify.

(8) The relevant committee may allow a person who is attending the hearing and in their opinion is behaving in a disruptive manner, or in breach of conditions specified under paragraph (7) to remain at the hearing only on such conditions as the committee may specify.

(9) Where a person is required to leave the hearing in accordance with paragraph (7), the relevant committee must—

- (a) permit them to submit in writing to the relevant committee, before the end of the hearing, any information which they would have been entitled to give orally had they not been required to leave, and

- (b) take into account that information in reaching its determination.

Failure of parties to attend the hearing

12.—(1) A relevant committee may proceed with a hearing in the absence of a party or a party's representative if the party has—

- (a) informed the committee that they do not intend to attend or be represented at the hearing (and has not subsequently advised the committee otherwise),
- (b) failed to inform the committee whether they intend to attend or be represented at the hearing, or
- (c) left the hearing in circumstances enabling the committee reasonably to conclude that the party does not intend to participate further.

(2) If a party has indicated that they do intend to attend or be represented at the hearing, but fails to so attend or be so represented, the relevant committee may—

- (a) adjourn the hearing to a specified date if it considers it to be in the public interest, or
- (b) proceed with the hearing in the party's absence.

(3) Where the hearing proceeds in the absence of a party, the relevant committee must consider at the hearing the warning notice or representations made by that party.

(4) Where, under this regulation, the relevant committee adjourns the hearing to a specified date it must, as soon as reasonably practicable, notify the parties—

- (a) in the case of a hearing held through remote means only, of the date and time to which the hearing has been adjourned and how to access it, or
- (b) in the case of hearing held partly through remote means or not held through remote means, of the date, time and place to which the hearing has been adjourned and how to access it.

Procedure where a hearing is not to take place

13. Where the parties have notified the relevant committee that they consent to the matter being determined without a hearing, the relevant committee must, as soon as reasonably practicable—

- (a) notify all the parties that the hearing has been dispensed with, and
- (b) make a determination and issue a notice of decision.

Notice of decision

14. The relevant committee must make its determination and issue its notice of decision before the end of the period of five working days starting with the day after the last day of the hearing.

Record of hearing

15.—(1) The relevant committee must ensure that a record of the hearing is taken in a permanent and intelligible form.

(2) The relevant committee must ensure that any such record is kept for a period of six years from the date of the determination of the relevant committee or, where an appeal is brought against the determination of the relevant committee, the date of the disposal of the appeal.

Irregularities

16.—(1) Subject to paragraph (2), a relevant committee may disregard any irregularity resulting from a failure to comply with a provision of these Regulations, or with a procedure otherwise decided by the relevant committee in accordance with regulation 3(2), where that irregularity comes to its attention prior to it issuing a notice of decision.

(2) If the relevant committee considers that any person may have been prejudiced by any such irregularity, it must take such steps that it considers necessary to remedy the consequences of the irregularity, before reaching its decision.

Clerical mistakes

17. A relevant committee may correct clerical mistakes in any document recording a decision of the committee, or errors arising in such a document from an accidental slip or omission.

Name

Date

SCHEDULE Regulations 4 and 5

Column 1	Column 2	Column 3
Procedure in relation to which a hearing is required to be held	Person to whom notice of hearing must be given	Copies of documents to accompany the notice of hearing
Notice of intention to designate an individual as a person requiring a special procedure licence pursuant to section 61(1)	(1) The designated individual (2) Any person who has made (and not withdrawn) representations about the proposed designation	(1) The warning notice that has been given under paragraph 15(3) of Schedule 3 to the Act (2) Representations made in relation to the proposed designation
Notice of a refusal to grant an application for a special procedure licence due to not all the applicable licensing criteria being met pursuant to section 65(2)	(1) The applicant (2) Any person who has made (and not withdrawn) representations about the application	(1) The warning notice that has been given under paragraph 15(3) of Schedule 3 to the Act (2) Representations made in relation to the application
Notice of refusal to grant an application for a special procedure licence due to a conviction for a relevant offence pursuant to section 66(3)	(1) The applicant (2) Any person who has made (and not withdrawn) representations about the application	(1) The warning notice that has been given under paragraph 15(3) of Schedule 3 to the Act (2) Representations made in relation to the application
Notice of refusal to grant an application to renew a special procedure licence due to not all the applicable licensing criteria being met pursuant to section 67	(1) The licence holder who has applied for the renewal (2) Any person who has made (and not withdrawn) representations about the application	(1) The warning notice that has been given under paragraph 15(3) of Schedule 3 to the Act (2) Representations made in relation to the application to renew
Notice of refusal to grant an application to renew a special procedure licence due to a conviction for a relevant offence pursuant to section 67	(1) The licence holder who has applied for the renewal (2) Any person who has made (and not withdrawn) representations about the application	(1) The warning notice that has been given under paragraph 15(3) of Schedule 3 to the Act (2) Representations made in relation to the application to renew
Notice of intention to revoke a special procedure licence pursuant to section 68	(1) The licence holder (2) Any person who has made (and not withdrawn) representations about the intention to revoke	(1) The warning notice that has been given under paragraph 15(3) of Schedule 3 to the Act (2) Representations made in relation to the intention to revoke
Notice of intention to revoke an approval certificate pursuant to section 73	(1) The holder of an approval certificate (2) Any person who has made (and not withdrawn) representations about the intention to revoke	(1) The warning notice that has been given under paragraph 15(3) of Schedule 3 to the Act (2) Representations made in relation to the intention to revoke
Notice of refusal to grant an application to vary a special procedure licence pursuant to	(1) The licence holder who has applied for the variation	(1) The warning notice that has been given under paragraph 15(3) of Schedule 3 to the Act

paragraph 13(1)(b) of Schedule 3	(2) Any person who has made (and not withdrawn) representations about the application to vary	(2) Representations made in relation to the application to vary
Notice of refusal to grant an application to vary a special procedure licence due to a conviction for a relevant offence pursuant to paragraph 13(1)(b) of Schedule 3	(1) The licence holder who has applied for the variation (2) Any person who has made (and not withdrawn) representations about the application to vary	(1) The warning notice that has been given under paragraph 15(3) of Schedule 3 to the Act (2) Representations made in relation to the application to vary

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