



Llywodraeth Cymru
Welsh Government

OPEN CONSULTATION, DOCUMENT

Consultation on draft regulations and statutory guidance for a mandatory licensing scheme for special procedures in Wales

We want your views on draft regulations and statutory guidance. These will establish a mandatory licensing scheme for acupuncture, body piercing, electrolysis, and tattooing.

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Overview

This consultation seeks views on draft regulations and statutory guidance in relation to a mandatory licensing scheme for special procedures as set out in part 4 and schedule 3 of the Public Health (Wales) Act 2017. The intention is to commence part 4 and schedule 3 of the act and implement this licensing scheme.

The purpose of this consultation

We would like your views on the wording of draft regulations which will enact the provisions of Part 4 and Schedule 3 of the Public Health (Wales) Act 2017 ('the act'). These draft regulations provide the detail required to establish and operate a mandatory licensing scheme for practitioners of acupuncture, body piercing, electrolysis and tattooing and the approval of premises and vehicles in which these procedures are performed.

The previous consultation

A **consultation was held between 25 January and 19 April 2023** to seek views on proposals for a mandatory licensing scheme for practitioners of the four named special procedures in Wales. The proposals set out the details of how the scheme could work. Generally respondents agreed with the proposals presented in that document and **a summary response to the consultation** that sets out the responses received and our analysis of them was published in January 2024.

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Impact assessments

A draft Regulatory Impact Assessment (RIA) and an integrated impact assessment were published as part of the first consultation. A number of local authorities in their consultation responses identified an underestimation of the preparatory work that they would need to do to establish the scheme, but did not provide costings. This was followed up with the relevant local authorities, and they have provided their estimation of costs for activities, staff and time for this work for inclusion in the final version of the RIA. No responses were received in respect of the integrated impact assessment, although it has been updated to take into account the new duty of quality on the Welsh Ministers in respect of the NHS and will be further updated if any relevant issues are raised under this second consultation.

As part of the previous consultation, we sought advice from the Ministry of Justice as to the costs to the courts service in respect of our proposals which utilise the courts to hear appeals in relation to the scheme. In addition, we asked them to review the costings they provided to take account of our revised proposals. We have included the resulting justice impact assessment within the RIA. The RIA will also be updated to include some additional minor costs that were not included previously and an explanatory memorandum for the regulations. We will not be consulting again on the RIA and integrated impact assessment and they will be republished in their final versions as part of the legislative process.

This second consultation

This second consultation follows on from the one referred to above and presents the final drafts of the regulations to be made under part 4 and schedule 3 of the act. This consultation also includes draft statutory guidance for local authorities

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on how they are to determine a 'person's fitness to perform a special procedure' for the purpose of being granted a new licence or renewal of a licence or for the purpose of revoking a licence, where this has been called into question. As the proposals for the mandatory scheme have already been consulted upon, this second consultation is a technical consultation specifically on the wording of the draft regulations and draft statutory guidance. For this reason, the Minister for Health and Social Services has given her consent for the consultation to run for 8 weeks instead of the standard 12 week period.

This consultation applies to Wales only.

The draft regulations we would like your opinion on are:

- 'The special procedure licences (Wales) regulations 202X'
- 'The special procedures approved premises and vehicles (Wales) regulations 202X'
- 'The special procedures exempted individuals (Wales) regulations 202X'
- 'The special procedure licensing committees (Wales) regulations 202X'
- 'The prescribed objects for body piercing (Wales) regulations 202X'

The draft regulations themselves are published separately on the same web page as this document. As these are written in legal terms and are technical in nature, summaries of the purpose of each set of regulations are set out in annex B.

Most of the regulations referred to above will be subject to the draft affirmative procedure, which means that a draft of the legislation is put before the Senedd, which then has to debate them and vote to pass them. The exception is 'The special procedure licensing committees (Wales) regulations 202X', which will be subject to the negative procedure. This means that it will become law without a debate, and the Senedd has a fixed time in which to object. If they do object, they will table a motion to cancel the law and a debate will take place at that point. If this does not happen, the law will remain in place.

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Timings and transition period

We intend that the existing registration scheme under part 8 of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) will cease to apply in Wales once the new licensing scheme comes into force. There will be a transition period for those practitioners and premises / vehicle owners / operators who are currently registered under the 1982 Act who wish to continue trading whilst they make their applications under the new scheme. Further detailed consideration and engagement has been given to the detail of the transition period. A key deliberation was the continued assurance of public protection if the full range of offences under the Act are not introduced until 9 months after the coming into force date as originally proposed, balanced against the needs of applicants to obtain decisions on their applications, and local authorities to consider and process applications. Consequently, we consider it proportionate to make an adjustment to the transition period from 9 months to a period of 6 months.

The intended timings and transition period will be as follows:

One month before coming into force date

Local authorities will be given the power to charge a fee for an application for a special procedure licence and an application for an approval certificate of a premises or vehicle.

Coming into force date

The offence of making a false or misleading statement (knowingly or recklessly) when applying for a licence or approval of a premises or vehicle comes into force.

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Existing practitioners and premises / vehicle owners / operators registered under the 1982 Act will qualify for a 'transitional licence' or 'transitional premises / vehicle approval certificate' if they submit their new applications within three months from the coming into force date. The purpose of this is to show members of the public that the individual or business had previously been part of a registration scheme and operated to a certain standard. This allows applicants and businesses to continue to trade whilst applications are processed.

Once the local authority has made a decision regarding the application the 'transitional' licence or approval certificate will no longer apply.

Local authorities have 6 months from the coming into force date to process all submitted transitional applications. Submitted applications should therefore be processed at the earliest opportunity.

Six months from coming into force date

The remainder of the offences under the act will come into force.

By this date, local authorities are expected to have processed applications from those previously registered under the 1982 act.

The transition period will be finished and the licensing scheme will be fully operational.

Please note:

Applicants who are not already registered under the 1982 act on the coming into force date will not qualify for the transition arrangements. These applicants will not be permitted to trade until they are licensed or their premises / vehicle has

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been approved. Local authorities will commence processing applications from these new applicants on receipt.

The statutory guidance

The Welsh Government can publish two different kinds of guidance for stakeholders, which have different status depending on whether legislation requires it to be provided.

Statutory guidance: this kind of guidance is set out in law as to who provides it, what issues it must contain, and who must follow it.

Non-statutory guidance: is not set out in any particular law, and therefore has no specific legal duties in respect of who issues it, what it must contain or who must follow it. As non-statutory guidance is issued for advice and information purposes, it can be more flexible in content and cover a wider range of issues. This includes the practical information that the intended audience needs to know to follow a particular course of action.

Statutory and non-statutory guidance cannot be published in the same document because of their differing legal status.

The statutory guidance on determining a person's fitness to perform a special procedure

Under the provisions of section 66(11) of the Act, the Welsh Ministers have a duty to 'give guidance to local authorities about matters to be taken into account in deciding whether, and, if so, to what extent, an applicant's fitness to perform a special procedure has been called into question'. This guidance therefore has the status of statutory guidance.

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We have therefore drafted appropriate statutory guidance in discharge of the duty on the Welsh Ministers, and this is attached at Annex C. The main audience for this statutory guidance is local authorities, to assist them in interpretation of section 66(11) in practical terms. However, we invite all stakeholders to comment on the draft document. We will publish a fully formatted version of the statutory guidance in Welsh and English following the conclusion of this consultation and consideration of any comments.

Non-statutory guidance for practitioners and local authorities

We intend to provide separate non-statutory guidance documents as follows:

- for practitioners and premises / vehicle operators as to what they need to do to apply for a special procedure licence or a premises / vehicle approval certificate and advice on how they can comply with the conditions of their licence or approval certificate
- for local authorities on how they are to administer and enforce the licensing scheme.

We are working with our different stakeholder groups to draft these documents to ensure they contain sufficient information to explain the operation of the licensing scheme and provide practical information. These documents will be published nearer to the coming into force date for the scheme.

What happens next?

We welcome comments on the draft regulations and the draft statutory guidance until 8 April 2024, after which date we will consider all the responses received.

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Your consultation responses will help inform the final versions of the regulations and statutory guidance. Our intention is to analyse the responses and consider whether any changes may be required before laying the final draft regulations before the Senedd, with the debate to take place shortly afterwards (currently proposed for May 2024).

We will also aim to publish the statutory guidance around the same time. It is our intention that the regulations if passed will come into force and the mandatory scheme to go live for applications on a date to be confirmed in October 2024. This date may be subject to change, depending on the legislative process and the approval of the Senedd.

We will publish the details of the responses received to this consultation and any revisions approved by the Minister for Health and Social Services in due course.

Consultation questions

Please note: this mandatory licensing scheme will be introduced on the terms set out in this document and the regulations. We cannot therefore revisit the subject of the scheme itself or the proposals put forward in the first consultation document.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please let us know. You can [respond via our online form or download a copy of the response form here](#).

Alternatively, you can email your response to us:
SpecialProceduresMailbox@gov.wales

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The special procedure licences (Wales) regulations 202X

Question 1. (a) Do you think these draft regulations adequately set out how individuals are to be licensed?

(b) Is there anything unclear, missing that should be included, or included that should not be?

The special procedures approved premises and vehicles (Wales) regulations 202X

Question 2. (a) Do you think these draft regulations adequately set out how premises and vehicles are to be approved?

(b) Is there anything unclear, missing that should be included, or included that should not be?

The special procedures exempted individuals (Wales) regulations 202X

Question 3. (a) Do you think these draft regulations adequately set out how the specified individuals are to be exempt?

(b) Is there anything unclear, missing that should be included, or included that should not be?

The special procedure licensing committees (Wales) regulations 202X

Question 4. (a) Do you think these draft regulations adequately set out how licensing committees are to operate for the purposes of this mandatory licensing

scheme?

(b) Is there anything unclear, missing that should be included, or included that should not be?

The prescribed objects for body piercing (Wales) regulations 202X

Question 5. (a) Do you think these draft regulations provide an adequate definition of 'object' for the purposes of non-intimate body piercing within this licensing scheme?

(b) Is there anything unclear, missing that should be included, or included that should not be?

Statutory guidance

Question 6. (a) Do you think the draft statutory guidance adequately explains how a local authority should determine a 'person's fitness to perform a special procedure' for licensing purposes under the mandatory licensing scheme, where this has been called into question?

(b) Is there anything unclear in the draft statutory guidance that should be explained further?

(c) Is there anything in relation to determining a 'person's fitness to perform a special procedure' that is unclear or missing from the draft statutory guidance?

Statutory questions

Question 7. We would like to know your views on the effects that the mandatory licensing scheme for special procedures in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating

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the Welsh language no less favourably than English.

- What effects do you think there would be?
- How could positive effects be increased, or negative effects be mitigated?

Question 8. Please also explain how you believe the proposed mandatory licensing scheme for special procedures in Wales could be formulated or changed so as to have:

- positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language
- no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

Question 9. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Annex A: consultation distribution list

All who responded to the first consultation

Representative organisations

- British Acupuncture Council.
- British Medical Acupuncture Society.

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- Acupuncture Association of Chartered Physiotherapists.
- Chartered Society of Physiotherapists.
- National Hair and Beauty Federation.
- Federation of Holistic Therapists.
- Save Face.
- British Tattoo Artists Federation.
- Federation of Tattooing.
- Joint Council for Cosmetic Practitioners.
- British Association of Beauty Therapy and Cosmetology.
- British Beauty Council.
- British Institute and Association of Electrolysis.
- UK Association of Professional Piercers.
- Tattoo and Piercing Industry Union.
- Forum for Private Business.
- Welsh Retail Consortium.
- Equality and Human Rights Commission.
- WCVA.
- TUC Cymru.
- CBI Wales.
- British Federation of Small Businesses.
- Federation of Small Businesses, Wales.

Commissioner offices

- Welsh Language Commissioner.
- Children's Commissioner.
- Information Commissioner.

Government / local government

- Chief executives of local authorities in Wales.

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- Local Government Regulation.
- Welsh Local Government Association.

Health

- Chief executives, medical directors and nurse directors of:
 - Aneurin Bevan University Health Board.
 - Betsi Cadwaladr University Health Board.
 - Cardiff and Vale University Health Board.
 - Cwm Taf Morgannwg Health Board.
 - Hywel Dda University Health Board.
 - Powys Teaching Health Board.
 - Swansea Bay University Health Board.
 - Velindre NHS Trust.
 - Welsh Ambulance Service Trust.
 - Royal College of Nursing.
 - LHB Directors of Public Health.
 - Royal College of Physicians.
 - Royal College of GPs.
 - Regional Llais teams (formerly Community Health Councils).

Public health

- Public Health Wales.
- Association of Directors of Public Health.
- Faculty of Public Health.
- Chartered Institute of Environmental Health.
- Royal Society of Public Health.
- Local authority environmental health leads.
- Welsh Combined Centres for Public Health.
- Directors of Public Protection Wales.

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- All Wales Communicable Disease Expert Panel.
- All Wales Health and Safety Expert Panel.
- Wales Heads of Trading Standards.
- Chartered Trading Standards Institute.
- Public Service Ombudsman Wales.
- Environmental Health Wales.
- All Wales Licensing Expert Panel.

Annex B: summaries of the draft regulations under part 4 and schedule 3 of the act

The special procedure licences (Wales) regulations 202X

The new licensing scheme will require that the performance of a special procedure, in the course of a business, must be performed under the authority of a special procedure licence (unless that individual is exempt). If a local authority is satisfied that an application is to be granted, they must issue the applicant with a special procedure licence and the applicable mandatory licensing conditions to which the licence holder must adhere to. The licence holder will be authorised to perform the special procedure/s identified in their licence at the approved premises / vehicle specified in their licence.

These draft regulations relate to special procedure licences and include:

- the criteria that must be met in order for an application for a special procedure licence to be granted (“the licensing criteria”)
- the form and content of an application form for a special procedure licence
- the form and content of a special procedure licence
- the mandatory licensing conditions for all special procedure licences (regardless of whether a special procedure licence is granted for a period of

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three years or no more than 7 days)

- the mandatory licensing conditions relevant to the special procedure being performed
- the mandatory licensing conditions relevant to a special procedure being performed under supervision
- provision for fees in relation to special procedure licences

The special procedures approved premises and vehicles and fees (Wales) regulations 202X

The new licensing scheme will require special procedures to be performed at a premises or in a vehicle that has been approved by a local authority (unless that premises or vehicle is exempt). If a local authority is satisfied the premises or vehicle is to be approved, they will issue an approval certificate authorising that approval. These draft regulations relate to the approval of premises and vehicles and cover a number of themes.

The draft regulations firstly set out the circumstances when a premises or vehicle is exempt from being approved by a local authority.

The draft regulations also include the wider detail around approvals such as:

- the criteria that must be met for a new approval certificate to be granted
- the application form that is to be used when applying for a new approval certificate
- what an approval certificate will look like once an approval has been granted
- the mandatory conditions that an approval certificate will be subject to
- provision in relation to variations of an approval certificate
- the renewal of an approval certificate (for example what criteria must be met for an approval certificate to be renewed)
- provision around copies of an approval certificate

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- provision for fees in relation to approval certificates
- voluntarily terminating an approval certificate
- what a local authority is required to do if they intend to refuse an application and the right to make representations to the local authority
- the appeals process in respect of applications

The special procedures exempted individuals (Wales) regulations 202x

An individual who performs a special procedure on someone else, in the course of a business, must be licensed, unless they are exempt. These draft regulations detail the circumstances in which an individual is exempt or not exempt from the requirement to obtain a special procedure licence. The licensing scheme is in relation to special procedures being performed in the course of a business. Special procedures being performed as part of the NHS in an NHS setting (for example an NHS hospital) are not intended to fall within the scope of this licensing scheme.

Section 60(2) of the Public Health (Wales) Act 2017 provides that an individual who is a member of a profession mentioned in paragraphs (a) to (ga) of Section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 namely:

- the General Medical Council
- the General Dental Council
- the General Optical Council
- the General Osteopathic Council
- the General Chiropractic Council
- the General Pharmaceutical Council
- subject to Section 26(6), the Pharmaceutical Society of Northern Ireland
- the Nursing and Midwifery Council

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is exempt unless regulations specify that a licence is required in relation to a specific special procedure. The draft regulations require that:

- unlicensed medical practitioners, optometrists, dispensing opticians, pharmacists and pharmacy technicians are not exempt from requiring a special procedure licence; this means that these individuals will have to be licensed to perform acupuncture, body piercing, electrolysis, or tattooing
- licensed medical practitioners, dentists or dental care professionals, chiropractors, osteopaths and midwives, nurses or nursing associates are not exempt from requiring a special procedure licence unless certain conditions apply; those conditions are that the individual is performing the special procedure in a regulated independent healthcare establishment, and they are not subject to any conditions, restrictions or sanctions on their professional registration, in relation to their fitness to practise; if those conditions do not apply, then that individual is required to be licensed to perform acupuncture, body piercing, electrolysis or tattooing

Provision has also been made for members of certain professions, namely a chiropodist or podiatrist and a physiotherapist, to be treated as exempt from being licensed to perform the requirement to obtain a special procedure licence in relation to acupuncture. This exemption applies when acupuncture is being performed in a regulated independent healthcare establishment and the individual does not have any conditions, restrictions or sanctions on their professional registration, in relation to their fitness to practise.

The special procedures licensing committees (Wales) regulations 202x

These draft regulations deal with the procedures that apply to local authority licensing committees (and their sub-committees) in order to exercise the functions they have been given under part 4 of the act. Where the local authority intends to refuse an application for a special procedure licence, refuse a

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variation or renewal of a special procedure licence, designate an individual as a person requiring a special procedure licence or revoke a special procedure licence or approval certificate, it must issue a warning notice to that individual.

The local authority licensing committee is required to consider any representations made to it after a warning notice has been issued to an individual and a hearing may be held before a final decision is made by the committee (or sub-committee) to whom the application, designation or revocation applies. These functions have been delegated to the licensing committee (or sub-committee) of the local authority.

The draft special procedures licensing committee (Wales) regulations include matters relating to the procedures a licensing committee (or sub-committee) must follow, such as what process must be followed before a hearing is held, the procedure to follow at a hearing, and when a decision is to be made.

The prescribed objects for body piercing (Wales) regulations 202x

Under part 4 of the act, “body piercing” currently means ‘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 attached to, implanted in, or removed from the individual’s body’. Perforation means ‘breaching the integrity of the skin or mucous membrane in any way including (among other things) by way of puncture or incision’.

The purpose of these regulations is to prescribe an ‘object’ to further define what ‘body piercing’ means. Extensive consultation and engagement with stakeholders including local authorities and the body piercing sector confirmed that there is no standardisation to the names applied to objects that are attached to, implanted in, or removed from an individual’s body. Common descriptions of

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objects include ‘hooks’, ‘macro-dermals’, ‘micro-dermals’, ‘near-field communication chips’ and “silicone beads”. Also, the range of objects used continues to change as body piercing evolves. Any prescription of an ‘object’ therefore needs to be flexible enough to accommodate the diverse and creative nature of this procedure and the definition should be broad and all-encompassing.

The draft prescribed objects for body piercing (Wales) regulations proposes the broad prescription of an “object”. This will mean that the definition of body piercing under part 4 of the act will read as follows:

‘body piercing’ means ‘the perforation of an individual’s skin or mucous membrane, with a view to enabling jewellery, or any object that is not jewellery, to be attached to, implanted in, or removed from the individual’s body’.

This also aligns with the definition of an ‘object’ prescribed under the prescribed objects for intimate piercing (Wales) regulations 2019.

All of these draft regulations can be found on the Welsh Government’s consultation page here.

Annex C: draft statutory guidance

Statutory guidance on the assessment of a person's fitness to perform a special procedure in Wales

This statutory guidance is issued to local authorities in Wales under section 66 (11) of the Public Health (Wales) Act 2017

1. Introduction

1.1 The **Public Health (Wales) Act 2017** (“the act”) was passed by the National Assembly for Wales on 16 May 2017, and Royal Assent was received on 3 July 2017. **Part 4** of the act sets out the requirements for a mandatory licensing scheme for practitioners carrying out 'special procedures' in Wales. The four special procedures are specified in **section 57** of the act (and further defined in **section 94**), and these are:

- acupuncture (including dry needling)
- body piercing
- electrolysis
- tattooing (including semi-permanent make-up)

1.2 The intention of the licensing scheme is to improve and sustain standards of infection prevention and control in the special procedures industry and assure the safety and health of clients and practitioners alike.

1.3 The main features of **part 4** of the act are:

- persons who perform special procedures in Wales are required to be licensed to do so by a local authority (unless they are exempt)

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- licence holders can only perform special procedures in premises or vehicles that have been “approved” by a local authority
- specified criteria must be met when submitting an application for a special procedure licence, this includes submission of a basic disclosure certificate issued by the Disclosure and Barring Service
- licence holders must comply with the mandatory licensing conditions to ensure the retention of their licence for the duration of the period for which it is granted
- local authorities must maintain a publicly accessible register of approved premises and vehicles and those persons who are licensed to perform special procedures
- local authorities are permitted to charge fees for the administration of the special procedures licensing process and the monitoring and enforcement of the licensing scheme
- local authorities can take formal action against licence holders in cases where they have breached their licensing conditions or breached the requirements of the Act; this includes revoking a licence
- the Welsh Ministers are required to issue statutory guidance to local authorities for them to refer to when considering relevant offences declared by applicants as part of their application for a special procedure licence. This statutory guidance document fulfils this legal requirement.

2. Purpose of this statutory guidance

2.1 The Welsh Ministers have issued this statutory guidance (under [section 66\(11\)](#) of the act) to local authorities for them to refer to when an applicant or licence holder has been convicted of a relevant offence.

2.2 This statutory guidance document outlines how local authorities should determine the fitness of either an applicant or a licence holder. It sets out the matters a local authority will need to consider when deciding whether, and if so, to what extent, the person’s fitness to perform a special procedure has been

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called into question, and whether the granting, renewing or revoking of a special procedure licence is appropriate under the circumstances.

2.3 In summary the purpose of this statutory guidance is to:

- ensure that applicants (who are to be granted a special procedure licence) and licence holders are fit to perform the special procedure and present minimal risk to the safety and welfare of clients during the performance of a special procedure
- help ensure that the local authority's decision-making process is transparent, fair, and proportionate

3. To whom and when does this statutory guidance apply?

3.1 This statutory guidance applies to all local authorities in Wales.

3.2 It should be consulted by the local authority when:

(i) The local authority is satisfied that the licensing criteria and requirements for a special procedure licence application have been fulfilled, but the applicant has been convicted of a relevant offence. In these circumstances the local authority, following their full consideration, has the discretion whether to issue a special procedure licence.

The local authority must decide whether the applicant's fitness to perform a special procedure to which their application relates has been called into question to such an extent that it would be inappropriate to grant them a special procedure licence.

(ii) The local authority becomes aware that a licence holder has a conviction for a relevant offence which for example:

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- did not precede the issuing of the special procedure licence, or where the local authority was not made aware of the conviction at the time of granting the special procedure licence
- had they had regard to the nature and circumstances of that offence, as described in section 66, for the purposes of the issue of the licence, the licence would either not have been issued at all or would not have been issued in so far as it relates to the performance of a particular special procedure

3.3 Whilst this statutory guidance has not been produced for use by applicants for a special procedure licence and existing licence holders, it may be of assistance to them in helping their understanding of the matters local authorities are required to consider in determining a person's fitness to perform a special procedure where that person has either made a declaration of a conviction(s) for a relevant offence(s) or the local authority has become aware of their conviction for a relevant offence.

3.4 This statutory guidance does not apply when the applicant or licence holder:

- (a) has not been convicted of a relevant offence.
- (b) has been 'convicted of a relevant offence', but that conviction is 'spent'.
- (c) was "charged" with a 'relevant offence', but following their court case were not convicted of that offence
- (d) has been charged with a relevant offence but the court is yet to hear their case

4. Relevant offences and gathering evidence

4.1 A 'relevant offence' is defined under section 66(8)(a) and 8(b) of the act: section 66(8)(a) an offence under part 4 or under part 5 (intimate piercing) of the act.

Part 4 offences

Section 82 (offences relating to licensing and approval system)

- A person who contravenes **section 58** (licensing requirement).
- A person who contravenes a prohibition (under **section 61**(3)(c), in notice given under **section 61**(1) (designation of person **section 58**(3)).
- A person who, without reasonable cause, contravenes the requirement in **section 69**(2) (approval requirement).
- A person who, without reasonable cause, contravenes a notice under **section 77** (stop notices).
- A person who, without reasonable cause, contravenes a notice under **section 78** (licence holder remedial action notices).
- A person who, without reasonable cause, contravenes a notice under **section 79**) (premises remedial action notice).
- A person who, in an application for the issue, variation or renewal of a special procedure licence or for approval of premises or a vehicle under **section 70**:
 - (a) makes a statement that is false or misleading
 - (b) either knows, or is reckless as to whether, it is false or misleading.

If found guilty a person would be liable on summary conviction to a fine.

Section 89 (obstruction and so on of officers)

- A person who intentionally obstructs an authorised officer exercising functions under **section 84** to 88.
- A person who without reasonable cause fails to provide an authorised officer with facilities reasonably required for purposes of section 88(1).
- A person who without reasonable cause fails to comply with a requirement under **section 88**(1)(b) or (d).

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If found guilty, the person would be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Part 5 offences (intimate piercing)

Section 95 (offence of performing or making arrangements to perform an intimate piercing on a child)

- Performing an intimate piercing on a person in Wales who is under the age of 18.
- Making arrangements to perform an intimate piercing, in Wales, on a person who is under the age of 18.

If found guilty of such an offence liable on summary conviction to a fine.

Section 104 (obstruction and so on of constable or officer)

- Any person who intentionally obstructs a constable or authorised officer exercising functions under **section 99 to 103**.
- Any person who without reasonable cause fails to provide a constable or authorised officer with facilities reasonably required.
- Any person who without reasonable cause fails to comply with a requirement under **103(1)(b) or (d)**.

If guilty of such an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 66(8)(b) an offence (whether under the law of England and Wales or elsewhere) that:

- (i) involves violence
- (ii) is of a sexual nature, or relates to sexual material or images

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- (iii) consists of tattooing a child under the age of 18
- (iv) relates to health and safety at work
- (v) consists of a failure to comply with a requirement of a scheme for licensing or otherwise permitting or regulating the performance of an activity which is a special procedure for the purposes of this act

Gathering of evidence relating to relevant offences

4.2 A local authority will gather evidence and information relating to an applicant's relevant offences from:

- a) A Disclosure and Barring Service basic disclosure certificate submitted by the applicant as part of their application which is an official record of unspent convictions and conditional cautions held on the Police National Computer (PNC). This will include offences involving violence, offences of a sexual nature, or relating to sexual material or images and sometimes offences which consist of tattooing a child under the age of 18.
- b) If applicable, an overseas criminal record certificate submitted by the applicant as part of their application (for example where an applicant is not eligible for a basic disclosure certificate or who has spent more than 6 months living outside of the UK). The application process for criminal record checks from overseas varies from country to country. An applicant may need to apply in the country or to the relevant embassy in the UK.
- c) The local authority's own enforcement records or intelligence shared from other local authorities relating to health and safety at work or offences consisting of a failure to comply with a requirement of a scheme for licensing or otherwise permitting or regulating the performance of an activity which is a special procedure for the purposes of this act and sometimes offences relating to tattooing a child under the age of 18.

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d) Information contained in the applicant's application form.

5. Relevant offences, section 66(8)(b) of the act

5.1 This section gives further information to local authorities when considering 'unspent' convictions under section 66(8)(b) of the act. The act does not specifically list or define a particular offence, such as "assault" or "grievous bodily harm", rather it describes types or categories of offence. This less definitive specification provides more flexibility to local authorities.

Offences under section 66(8)(b)(i) and (ii)

- Sale, supply, or importation of drugs / dealing drugs from premises or vehicles where special procedures are performed.
- Human trafficking.
- Modern day slavery.
- Grooming.
- Employing illegal workers.
- Dealing in firearms / dealing firearms from premises or vehicles where special procedures are performed.
- Non-compliance with any other licensing scheme requirements.

Applicants

5.3 If the applicant's unspent conviction for any apparent non-relevant offences also involved aspects of 'violence' or 'matters of a sexual nature' then as the offences of 'violence' and 'matters of a sexual nature' are classed as relevant offences, the local authority would not be able to automatically grant the special procedure licence. In this instance the local authority would need to consult this statutory guidance to determine whether the applicant's fitness to perform a

special procedure has been called into question.

Licence holders

5.4 If it comes to the local authority's attention during the 3 years of a licence's validity that a licence holder's undeclared unspent conviction for any apparent non-relevant offences also involved aspects of 'violence' or 'matters of a sexual nature' then as the offences of 'violence' and 'matters of a sexual nature' are classed as relevant offences, the local authority would need to consult this statutory guidance to determine whether or not the licence holder's fitness to perform a special procedure has been called into question. If the conditions set out in section 68(3) were fulfilled namely:

- the licence holder has been convicted of an offence that is a relevant offence (and which was a relevant offence as at the date on which the licence in question was issued)
- the licence was issued to the licence holder without regard having been had by the local authority to the nature and circumstances of that offence, as described in section 66, either because the local authority was unaware of the conviction, or because the conviction did not precede the issue of the licence
- had the local authority had regard to the nature and circumstances of that offence, as described in section 66, for the purposes of the issue of the licence, the licence would either not have been issued at all or would not have been issued in so far as it relates to the performance of a particular special procedure
- the local authority are of the opinion that the licence holder's fitness to perform a special procedure has been called into question then the process for revocation outlined in Section 68(5) to (7) of the act would apply and the local authority can give notice to the licence holder to revoke their licence

Examples:

5.5 (A) Employing illegal workers

If a person has an unspent conviction for an offence relating to the employment of illegal workers, then there would be no requirement for local authorities to consider the conviction because on the face of it this conviction relates to a non-relevant offence. However, if the person's unspent conviction involved violence for example, then this is likely to be captured as a relevant offence. The local authority would not be able to automatically grant the special procedure licence and they would need to consult this statutory guidance to better determine whether the person's fitness to perform a special procedure has been called into question.

(B) Human trafficking

This is not specifically captured as a relevant offence, but if an offence relating to human trafficking involved elements of a sexual or violent nature then a local authority would need to consider any sexual or violent nature elements of that unspent conviction as part of their assessment of the person's fitness to perform a special procedure.

(C) Sale, supply or importation of drugs

Local authorities should be aware that some unspent convictions relating to the sale, supply and importation of drugs could include violence.

(D) Grooming

Offences relating to grooming are not specifically identified as a relevant offence for the purpose of part 4 of the act. However, depending on the details and other matters involved in an unspent conviction relating to grooming, this could be considered a relevant offence if it included violence or matters of a sexual nature.

(E) Burglary

Whilst an unspent conviction for an offence relating to burglary is not specifically captured as a relevant offence a local authority may find that on closer examination the unspent conviction also involved violence. In these instances, a local authority would need to consider the violence aspect of that conviction as part of their assessment of the person's fitness to perform a special procedure. Offences relating to burglary are not commonly perceived as violent offences, but in some circumstances the offence may have resulted in violence.

Offences under section 66(8)(b)(iii), (iv) and (v)

5.6 A local authority may need to consider unspent convictions for relevant offences relating to:

(iii) tattooing a child under the age of 18

(iv) health and safety at work

(v) failure to comply with a requirement of a scheme for licensing or otherwise permitting or regulating the performance of an activity which is a special procedure for the purposes of this act

5.7 These offences are more prescriptive and where the conviction is unspent local authorities will need to consult this statutory guidance to determine whether the applicant's or licence holder's fitness to perform a special procedure has

been called into question.

5.8 In all cases, where a conviction for a relevant offence is spent or an applicant or licence holder has spent or unspent convictions for any offences which are not considered to be relevant offences there is no requirement for local authorities to consider the convictions any further, nor to consult this statutory guidance.

6. Matters to be taken into account when determining person's fitness to perform a special procedure

6.1 Once the local authority is aware that the applicant has an unspent criminal conviction for a relevant offence it must not automatically approve a special procedure licence, even if all other aspects of the applicant's application form are complete and in order. The local authority must consider the full details of that unspent conviction and decide whether the person's fitness to perform the special procedure to which their application or licence relates has been called into question to such an extent that it would be inappropriate to either grant them a special procedure licence or not give them notice to revoke their special procedure licence.

6.2 When deciding a person's fitness to perform a special procedure, the local authority must have regard to:

- the evidence contained in the applicant's basic disclosure certificate, an overseas criminal record certificate (if applicable), local authority records and the application form for a special procedure licence
- the evidence contained in the information submitted by the licence holder and any other information provided by relevant parties and in local authority records

6.3 The local authority must be satisfied that it has sufficient information from the

person in relation to unspent convictions in respect of relevant offences and if they are not satisfied, they can require further information from the applicant or licence holder. If necessary, this could be achieved by meeting with the person to discuss the matters of the unspent conviction in more detail.

6.4 Each applicant or licence holder, along with all the relevant information and supporting evidence, should be considered on their own merits. If consequently an application is to be refused or a licence is to be revoked on the grounds that the person is not fit to perform a special procedure, the local authority must be able to justify its decision with clear reasons.

6.5 In deciding whether the applicant or licence holder's fitness to perform a special procedure has been called into question, the local authority must consider:

1. the nature and circumstances of the offence
2. the type and relevance of the conviction in relation to the person's fitness to perform the special procedure(s)
3. the seriousness of the conviction/s, in terms of impact or potential impact on a client's health, safety and well-being
4. the number of convictions and the cumulative impact of those convictions
5. the length of time elapsed since the conviction/s
6. the age of the person at the time of the offence/conviction
7. any mitigating circumstances

6.6 Local authorities should also have due regard to the applicant's or licence holder's failure to disclose details of a relevant offence. Local authorities may have reasonable grounds to suspect that the person has committed an offence or has been convicted of that offence, which is relevant to the determination of whether they are fit to perform special procedures.

6.7 Where a local authority is of the opinion that an applicant or licence holder has been evasive or untruthful, the local authority may wish to consider whether

an offence has been committed under [section 82\(7\)](#) in that the person has:

- (i) made a statement that is false or misleading
- (ii) either knows, or is reckless as to whether, it is false or misleading

6.8 The local authority may also conclude that such behaviour on the part of the applicant or licence holder is a clear indication of that person being unfit to perform a special procedure/s.

6.9 In considering past convictions for any relevant offences the local authority should consider whether there is a likelihood of future convictions, and the likelihood of those convictions affecting the applicant's fitness to perform special procedures. It is possible to conclude that if the applicant represents a low risk, it is appropriate to grant a special procedure licence.

Outcome of decision

For new or renewal applications

6.10 If the local authority decides the applicant's fitness has been called into question then it must not issue the licence (section 66(6)(a)) and must give notice to the applicant (section 66(6)(b)) that their application is refused, setting out the reasons for their refusal and provide all necessary details in respect of representations the applicant is entitled to make to the local authority and further options of appeal against the local authority's decision. (See schedule 3 of the act). A local authority must have clear, proportionate, and sufficient grounds when looking to convey a decision of refusal.

6.11 If, after full consideration, the local authority is satisfied, despite the conviction for a relevant offence, that the applicant's fitness has not been called into question for the purpose of being granted a special procedure licence to

perform the special procedure(s) to which their application relates, then the local authority must issue the special procedure licence (section 66(5)).

For revocation of a special procedure licence

6.12 The local authority will need to decide if the conditions set out in Section 68(3) of the Act are met before they consider whether to give notice to a licence holder to revoke their special procedure licence.

6.13 If the local authority decides the licence holder's fitness has been called into question, then it should give notice to the licence holder to revoke the licence. The revocation will come into effect following the expiry of the period for bringing an appeal or further appeal in respect of the revocation, or the withdrawal of any appeal or further appeal. Further detail on the procedure for revocations is provided in section 68 and schedule 3 to the act).

6.14 During the time of that appeal, the notice given by the local authority continues to have effect. Therefore, if it is the local authority's decision to revoke a licence under section 68, the decision will remain in force until either the licensing committee has upheld or not upheld the local authority's decision, or the court makes its determination.

6.15 If, after full consideration, the local authority is satisfied, despite the unspent conviction for a relevant offence, that the licence holder's fitness has not been called into question for the purpose of performing the special procedure(s), then the local authority should not give notice to the licence holder of its intention to revoke the special procedure licence.

How to respond

It is requested that responses to this consultation are submitted using the response form. [The response form can be completed online or be downloaded here.](#)

Responses should be submitted to:

By post: Licensing of Special Procedures Consultation
Public Health Protection Priorities Division
Welsh Government
2nd Floor South
Cathays Park
Cardiff
CF10 3NQ

By email: SpecialProceduresMailbox@gov.wales.

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