

Government Response: *The Special Procedure Licences (Wales) Regulations 2024*

Technical Scrutiny point 1: The Welsh Government thinks the language used in regulation 4(1) is clear and does not consider that words are missing from the provision. The legal effect is clear.

Technical Scrutiny point 2: The Welsh Government acknowledges the point made but does not consider that a change to regulation 9(2) is required. The reference to section 76(4) of the Public Health (Wales) Act 2017 (“the 2017 Act”) is reference to the way in which a local authority is to determine the amount of the fee. Therefore, the reference to section 76(4) is correct.

Technical Scrutiny point 3: The Welsh Government acknowledges the point made but does not consider that a change to the application form is required as the law is sufficiently clear. Non-statutory guidance will be issued to give applicants further information about the process of making an application for a temporary special procedure licence.

Technical Scrutiny point 4: Applicants are not required to state the names of all local authorities in whose areas they expect to carry out the special procedure on the application form. The requirement under the 2017 Act is for an individual to be licensed and an application for a special procedure licence to be made to a local authority in Wales. The provision reflects this and provides that an application is to be made to one of those local authorities.

Technical Scrutiny point 5: The Welsh Government acknowledges the point made and will ensure the necessary documents are readily available and widely circulated when they are published. We will take the opportunity the next time the Regulations are amended to address this issue as necessary and consider including the relevant links.

Technical Scrutiny point 6: The Welsh Government believes the current wording and reference to section 66 of the 2017 Act within the application form provides legal certainty. The drafting decision to refer applicants to section 66 of the 2017 Act rather than copy out the full text of section 66 was to futureproof the application form as the drafting of section 66 may be subject to potential changes in the future.

Technical Scrutiny point 7: A policy decision was taken not to prescribe a specific period of time by which a replacement special procedure licence must be obtained. This decision was made to take into account the circumstances around when a special procedure licence may be mislaid, stolen or damaged which can vary considerably. Consideration may be given to whether details within the non-statutory guidance may assist licence holders in these circumstances. However, the approach taken when drafting this licensing condition was to ensure that the condition would not

be unduly burdensome on licence holders who may be inadvertently in breach of the condition if a specific time period was imposed.

Technical Scrutiny point 8: The Welsh Government considers that the licensing conditions in paragraph 4 of Schedule 3 to the Regulations are sufficiently clear. However, we will take the opportunity to provide assistance in the non-statutory guidance to address this issue as necessary.

Technical Scrutiny point 9: The Welsh Government notes the point raised by the Committee regarding accessibility. We consider that the terms are easily understood in the context of the mandatory licensing conditions. Therefore, we consider that the conditions would be understood and that by including the terms in a Schedule the legal effect is clear and correct. A drafting decision was taken to aid clarity by placing the definitions at the end of the Schedules and to include the operative provisions first.

Merit Scrutiny point 1: The requirement for an applicant to provide evidence of a criminal record check (by way of a basic disclosure certificate) was considered necessary and proportionate when applying for a special procedure licence, as a means of safeguarding the public. Providing a basic disclosure certificate is a way of independently verifying an individual's criminal record background. The alternative would be to rely solely on an applicant to make a declaration about their unspent convictions in an application for a special procedure licence, which is not required to be independently verified. Advice from local authority officers with considerable experience and proficiency in operating licensing schemes was that evidence should be independently verified as not all applicants will make truthful or complete declarations in application forms.

Other options, such as Police Certificates issued by the ACRO Criminal Records Office, were initially considered. A Police Certificate provides information held on the Police National Computer about an individual and the purpose of a Police Certificate is for individuals who want to emigrate, obtain citizenship/residency in another country, travel or obtain a visa to live and/or work abroad. Police Certificates cannot be used to gain employment in the UK, therefore, a Police Certificate was not a viable option for applicants for a special procedure licence. Consideration was also given to whether applicants should be required to submit an enhanced disclosure certificate instead of a basic disclosure certificate. This was not considered proportionate or necessary, given that a basic disclosure certificate shows an individual's unspent convictions for relevant offences (as set out in section 66 of the 2017 Act) and is a cost-effective way of independently verifying an individual's past criminal record history.

The requirement for an applicant to provide independent verification of their criminal record history is comparable to other licensing schemes currently in force. The Welsh Government is not aware of a way of "filtering" unspent convictions that appear on an individual's basic disclosure certificate which are not considered relevant offences for the purposes of the 2017 Act. However, whilst an individual's unspent convictions will

appear on a basic disclosure certificate, the Statutory Guidance being issued under section 66(11) of the 2017 Act is very clear that only unspent convictions for a relevant offence are to be considered by a local authority.

Merit Scrutiny point 2: The draft instrument was withdrawn, amended and laid again on 15 October 2024 to address seven of the technical reporting points raised in the Committee's previous report (as well as one informal point raised by the Committee's adviser). Those reporting points related to the formatting of the instrument and inconsistencies between the English and Welsh text. The Government considered that withdrawing, amending and relaying the instrument was the appropriate approach to take in these particular circumstances. We accept, on reflection, it could have been helpful to the Committee to have explained this in a response to the Committee's initial draft report rather than simply withdrawing and relaying the instrument.

The failure to include a reference to the earlier withdrawal of the draft instrument in section 2 of the Explanatory Memorandum was an administrative oversight, for which we apologise. The Explanatory Memorandum will be amended to rectify this.