

SL(6)524 – The Special Procedure Licences (Wales) Regulations 2024

Background and Purpose

Part 4 of the Public Health (Wales) Act 2017 (“the Act”) provides that certain individuals who perform special procedures (as listed in section 57 of the Act) in Wales must be licensed by a local authority. The special procedures are:

- acupuncture,
- body piercing,
- electrolysis,
- tattooing.

Part 2 of the Regulations makes provision about applications for special procedure licences including the criteria that must be met in order for an application for a special procedure licence to be granted. Part 2 also makes provision about the form and content of an application form, which is set out in Schedule 1 to the Regulations.

Part 3 of the Regulations makes provision about the form and content of a special procedure licence (as set out in Schedule 2 to the Regulations).

Part 4 of the Regulations makes provision about the mandatory licensing conditions which apply to a special procedure licence (as set out in Schedules 3 to 7 to the Regulations).

Part 5 of these Regulations makes provision about fees in relation to special procedure licences.

Procedure

Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following 16 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

- 1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**



In the English language version of the Regulations, the heading 'Part 1' and its title are missing. The Welsh language version of the Regulations include "*Rhan 1 Cyffredinol*".

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

There appear to be words missing from regulation 4(1):

The licensing criteria that must be met by an individual (an "applicant") for a special procedure licence in order for the application to be granted are set out in paragraphs (2) to (4).

Section 62(1) of the Act states that "*Regulations must set out criteria that must be met **on an application** by an individual (an "applicant") for a special procedure licence...*" (emphasis added).

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 6(1) states that a special procedure licence must be in two parts, as set out in Schedule 2, however they appear to be set out in separate schedules, both being "*Schedule 2*". The first Schedule 2 sets out the form and content of part 1 of a special procedure licence, and the second Schedule 2 sets out the form and content of part 2 of a special procedure licence. We ask the Welsh Government to confirm whether the form and content of the special procedure licence is set out in a single schedule or two separate schedules.

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 6(6) defines "*approved premises or vehicle*" for the purpose of Schedule 2, however the phrase used, in the second Schedule 2, is "*approved premises **and/or** vehicle*" (emphasis added).

5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

Regulation 7(3) defines "*the applicable special procedure conditions*" by reference to a table at paragraph (4). The table appears to be in paragraph (3), there is no paragraph (4) in regulation 7. As a consequence, the shoulder notes to Schedules 4 to 7 are incorrect.

6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

We query whether the reference in regulation 9(2) should be to section 76(3) of the Act, as opposed to section 76(4) of the Act. Section 76(3) refers to the local authority determining the amount of the compliance fee, having regard to the costs incurred or expected to be incurred.

7. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation



In Schedule 1 to the Regulations, which sets out the form of application for a special procedure licence, question 1.2 asks when does the applicant want the special procedure licence to start, with 'as soon as possible' being an option. Regulation 3(3) states that in the case of a temporary licence, an application must be made at least 28 working days prior to the intended start date of the temporary licence, it may have been helpful to include this information on the application form or in a guidance note.

8. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In Schedule 1 to the Regulations, question 5.1 asks if an applicant has been served with a notice under section 61(1) of the Act and it refers to a special procedure licence, the Welsh language version of the form reads "*trwydded gweithdrefn arbennig*", however the translation used in the Regulations and in the Act is "*trwydded triniaeth arbennig*" (emphasis added).

9. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In Schedule 1 to the Regulations, Guidance Note 1 states:

(b) if the applicant believes that the special procedure is likely to be carried out by the applicant in the areas of different local authorities, an application is to be made to one of those local authorities.

It is not clear if the applicant is required to state the names of all authorities in whose areas they expect to carry out the special procedure on the application form.

10. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In Schedule 1 to the Regulations, Guidance Note 5 advises applicants to consult the non-statutory guidance if they are unsure as to what "basis" they perform special procedures. We ask the Welsh Government to confirm which guidance is being referring to. It would better assist applicants if the guidance was signposted.

11. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Applicants are required to disclose unspent convictions for "relevant offences" in an application for a special procedure licence. In Schedule 1 to the Regulations, Guidance Note 8 "*Convictions for relevant offences*" states that what is considered a relevant offence is set out in section 66 of the Act. Given the importance of this information, setting out the relevant offences in the guidance notes would better assist an applicant in the process of completing the application form.

12. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.



In the second Schedule 2, on Part 2 of the special procedure licence, the English language reads "*Approved premises and/or vehicle*" whereas the Welsh reads "*gerbydau*", the plural of vehicle. This appears in both the Welsh and English versions of the Regulations.

13. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Paragraph 2(4) of Schedule 3 to the Regulations requires-

In the event of the special procedure licence becoming mislaid, stolen or damaged, the licence holder must apply, within a reasonable period, to obtain a replacement from the issuing local authority.

Setting a specified period of time within which a replacement should be obtained, or providing guidance on what is considered a reasonable period would provide a licence holder with more clarity.

14. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Paragraph 4 of Schedule 3 to the Regulations require the licence holder to keep and maintain a register of incidents associated with the performance of special procedures by the licence holder. The licence holder must also register such incidents. Does the Welsh Government consider the drafting of this mandatory condition to be sufficiently clear, and would a licence holder be able to identify what would constitute an 'incident' and know how to register such an incident?

15. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In paragraph 6(2) of Schedule 3 to the Regulations, the translation of "*contamination from blood or bodily fluids are likely*" reads as "*halogiad gan waed neu hylifau yn debygol*", the word "*corfforol*" is missing after "*hylifau*" in the Welsh language version.

16. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Schedules 3 to 7 to the Regulations set out the mandatory licensing conditions that are to apply to special procedure licences, for the purposes of section 63 of the Act. These mandatory licensing conditions must be "*readily available upon request*" by a client.

We note that definitions have been included in the Schedules, however many of these definitions do not assist the reader in their understanding of the mandatory licensing conditions, as they merely refer to sections of the Act. The inclusion of the definitions at the end of the Schedules also hinders their accessibility.



Merits Scrutiny

The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

17. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Regulation 4(2) sets out the licensing criteria that must be met by an applicant for a special procedure licence, in order for that application to be granted. The criteria include providing evidence of a criminal record check.

The application form for a special procedure licence, as set out in Schedule 1 to the Regulations, asks at 2.12 whether the applicant is eligible for a basic disclosure certificate issued by the Disclosure and Barring Service, an overseas criminal record certificate, or both. The applicant is also required to tick a box confirming that *“Evidence of basic disclosure certificate / overseas criminal record certificate is enclosed”*.

Guidance Note 8 on the application form states that a basic disclosure certificate will show an applicant’s unspent convictions and conditional cautions.

Part 4 of the application form is titled *“Convictions for relevant offences”* where an applicant is required to declare whether they have an unspent conviction for a relevant offence and to provide information about any relevant offences. A relevant offence is defined in section 66(8) of the Act as:

- (a) an offence under Part 4 (special procedures) or Part 5 (intimate piercing) of the Act;
- (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,
 - (iii) consists of tattooing a child under the age of 18,
 - (iv) relates to health and safety at work, or
 - (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 the Act.

Under section 66 of the Act, where an applicant has been convicted of a relevant offence, a local authority must decide whether the applicant's fitness to perform a procedure to which the application relates has been called into question to such an extent that it would be inappropriate to issue the licence in respect of the performance of that procedure.

We ask the Welsh Government to provide an explanation as to why it considers requiring applicants for a special procedure licence to submit a criminal record check (which would show an applicant’s unspent convictions and conditional cautions, including those not considered



relevant offences) a proportionate means of establishing whether an applicant has unspent convictions for relevant offences. Were any alternative means of establishing whether an applicant has unspent convictions for relevant offences considered?

Further, the Explanatory Memorandum states that:

4.16 The Act provides for all applicants for a special procedure licence to declare any unspent convictions for 'relevant offences' as part of the application process and to submit a recent DBS certificate.

This statement suggests that such provisions are set out in the Act itself, can the Welsh Government clarify this statement?

18. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Public Health (Wales) Act 2017 received Royal Assent on 3 July 2017. These Regulations are due to come into force on 29 November 2024. This means it will have taken over 7 years for the new rules on special procedures to be implemented.

In 2017, the Explanatory Memorandum that accompanied the Public Health (Wales) Bill specified the “known and well reported health risks connected to” special procedures and the “complications that can arise” with special procedures.¹

The Explanatory Memorandum to the Bill also referred to the current legislation being “inadequate to sufficiently protect the public”.² The Explanatory Memorandum also noted the costs to the NHS under the current regime: “The main benefit of the licensing system is savings to the NHS, in terms of treatment costs, and to individuals’ health”.³

Further, the Explanatory Memorandum to these Regulations says that enforcement of the current rules has been inconsistent. It adds that Welsh Government model byelaws intended to address historic inconsistencies in this area have not been adopted by a number of local authorities in Wales, and that local authorities are unlikely to do so because “since the Act was passed in 2017, they have been waiting for the creation of the mandatory licensing scheme for special procedures”.⁴

Given all of the above, it is unclear why it has taken over 7 years to implement the new rules on special procedures set out in the 2017 Act.

19. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

¹ See paragraphs 116 and 117 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#)

² See paragraph 616 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#).

³ See paragraph 614 of the [Explanatory Memorandum to the Public Health \(Wales\) Bill](#)

⁴ See paragraph 4.7 of the [Explanatory Memorandum to these Regulations](#)



We note the following extracts from the Explanatory Memorandum regarding the consultation undertaken in respect of the Regulations:

5.2. The Welsh Government consulted on the principles of the special procedures licensing scheme (from here referred to as the 'first consultation') with a view to informing draft Regulations that would enable the commencement of the provisions of Part 4 and Schedule 3 of the Act. That 12-week consultation ran between 25 January and 19 April 2023 and the draft version of the RIA formed part of the consultation materials along with an Integrated Impact Assessment. [...]

5.9. A further consultation (from here referred to as the 'second consultation') ran for eight weeks between 12 February and 8 April 2024 and followed on from the first consultation referred to above.

5.10. As the policy proposals for the mandatory licensing scheme had already been consulted upon, this second consultation was considered a technical consultation specifically on the wording of the draft Regulations and draft Statutory Guidance, although the draft Regulations provided further detail around the new scheme, including those subjects where the statutory duty to consult under section 64 of the Act applied. For this reason, the Cabinet Secretary for Health and Social Services gave her consent for the consultation to run for eight weeks instead of the standard 12-week period.

Welsh Government response

A Welsh Government response is required for all reporting points, save for the final Merits point.

Legal Advisers

Legislation, Justice and Constitution Committee

25 September 2024



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee