

## Annex B – Consultation Response Questionnaire

### Mandatory Licensing Scheme for Special Procedures in Wales

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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 tick here:

Please return this form to reach the Welsh Government no later than **19 April 2023**.  
The email address for responses or queries is:

[SpecialProceduresMailbox@gov.wales](mailto:SpecialProceduresMailbox@gov.wales)

This form can be downloaded or the online response questionnaire accessed from the Welsh Government website here:

<https://www.gov.wales/mandatory-licensing-special-procedures-wales>

**We welcome responses in Welsh or English.**

	<b>Please give reasons for your answers when responding.</b>
<b>1.</b>	<b>Do you agree with our proposals to mandate the form and content of a special procedure licence and the premises/vehicle approval certificate within regulations? Is there anything else that should be included in the format of these documents?</b>
	<p>Yes. Mandating the form and the content ensures consistency across Wales, which is important both for practitioners and for the public. The form and content of the approval should ensure that the requirements in relation to approved premises and vehicles are transparent and obtainable by the public. Approval conditions relating to the display of approval certificates should allow members of the public not only to ascertain whether or not a premises/vehicle is approved for special procedures but also where they might view the applicable mandatory conditions of approval. Similarly, the form and contents of the special procedure licence should include information about the applicable mandatory licensing conditions that the holder of the licence must adhere to. For example, the licence may specify that the licence holder is only permitted to undertake body piercing of the ear using a “hygienic piercing instrument” or is only permitted to practice acupuncture if they use single-use needles. The list of procedures in the examples in annex C are inconsistent with each other and confusing. For example a person licensed merely for ear piercing using a hygienic piercing instrument would be described in the suggested licence as licensed for all body piercing including intimate piercing (unless the limiting conditions to be adhered to are also displayed). Consideration should also be given to clarifying the procedures listed in the Approval Certificate. For example the word ‘intimate’ without further description is uninformative and should be linked to the performance of an intimate piercing on a person who is over the age of 18.</p>
<b>2.</b>	<b>Do you agree with our proposal to make regulations about further provision (as set out in paragraph 4.13)?</b>
	<p>Yes – the Chartered Institute of Environmental Health (CIEH) considers that certainty, consistency of application and transparency are important, and dealing with these issues by Regulation will ensure that this the case. To facilitate this the CIEH would encourage Welsh Government carry out consultation with appropriate representative persons whether or not there is a statutory duty in the Act to do so.</p>
<b>3.</b>	<b>Do you agree that nine months is a sufficient transition period? If not, what should it be?</b>
	<p>Yes. This is sufficient time for existing practitioners to make the necessary arrangements and for local authorities to carry out inspections and process applications.</p> <p>The CIEH agrees that there should be no acquired rights for practitioners</p>

	<p>who are currently practicing. The proposals put in place new requirements to protect public health and reduce the risk of infection; it is important that all practitioners including those who have been practicing for a number of years should meet the prescribed standards.</p>
<b>4.</b>	<p><b>Do you agree that the proposed minimum age for applicants for special procedure licences is appropriate?</b></p>
	<p>Yes. The CIEH previously strongly argued that the minimum age for being able to have an intimate piercing should be 18 years of age. We are of the view that practitioners performing body modification are at the same risk of sexual predation as those having the treatments, and for the same reason argue that 18 years of age should be the minimum age for applicants. This is consistent with the National Careers Service and Tattoo Training Academy, both organisations setting that 18 years of age as an entry requirement.</p> <p>We recognise that there may be some individual currently practising who are under the age of 18 years who will, as we oppose the idea of acquired rights be stopped from practising until they reach the age of 18. We suggest that such individual should be given apprentice or trainee status until they reach 18 years of age. This will only be a short term requirement as the number of individuals falling into this group is likely to be small.</p>
<b>5.</b>	<p><b>Do you agree with the proposed licensing criteria for special procedure licences and the supporting documents listed? Are there other documents applicants should supply?</b></p>
	<p>Yes.</p>
<b>6.</b>	<p><b>Do you agree with the proposal that applicants should evidence their competence in the special procedure(s) they wish to perform? If you agree, how should that be demonstrated, and what documentary evidence should be produced?</b></p>
	<p>There has been much confusion in the past regarding competence, particularly with respect to tattoo artists, when competence has been confused with artistic ability.</p> <p>We agree that it desirable that applicants should be able demonstrate competence and suggest that this is done during the application process, since those who cannot, at that stage demonstrate competence should not be able to proceed to be licensed.</p> <p>We suggest that competence can be demonstrated by local authority enforcement officers asking the applicants questions that will probe their competence and understanding. To ensure consistency and transparency these questions and their answers should be provided in statutory guidance to local authorities.</p>

7.	<b>Do you agree that the current descriptions of relevant offences are sufficient? If not, why?</b>
	<p>No.</p> <p>In our view the list should be extended to include offences relating to Modern Slavery and illegal trafficking of people. We justify this by noting that the concept of an 'apprentice' can be abused such that young people wishing to learn a trade can be seriously disadvantaged by the terms of their apprenticeship and effectively be enslaved by their Apprentice Master. We point to the Nail Bar sector where there are examples of people being trafficked to work as 'slaves' in nail bars.</p> <p>We are also of the view that offences relating to the supply of drugs should be added to the list. Research has shown that risky behaviors are significantly more common in people with tattoos<sup>i</sup>. There is also evidence of some business being linked to the supply of drugs.<sup>ii</sup> As this is not an area in which we have specific expertise we would defer to the Police view in this matter.</p> <p>As these businesses tend to operate on a cash basis, we raise the question as to whether money laundering should also be included on the list, although we accept this is not an area in which we have expertise.</p>
8.	<b>Do you agree with the principle of this proposal that regulations should be made to limit the exemptions on members of the listed professional bodies in section 60?</b>
	<p>Yes. Where practitioners who have satisfied their relevant professional body of the competency there should be no need for them to have to seek a license, but where they practice outside the scope of the NHS or a service regulated by HIW they should be licensed in the same way as other practitioners.</p>
9.	<b>Do you agree with the principle of this proposal that regulations should be made under section 69 to apply exemptions to premises at which exempt members of these professional bodies will practise?</b>
	<p>Yes. Such premises should be compliant in any event.</p>
10.	<b>Do these exemption principles for individuals and premises adequately protect the safety and health of the client?</b>
	<p>Yes. There is a safeguard as the exemption principles provide that a member of a specified profession may still be required to obtain a special procedure licence in order to practice if their regulatory body has determined that the special procedure is not within the scope of the professional practice of its members.</p>
11.	<b>Do you agree with the principle of this proposal that the statutory registered HCPC named professions of chiropodists/podiatrists; physiotherapists; prosthetists/orthotists should be exempt? Are there other professions on this register that should have an exemption?</b>

	Yes. The individual registered by such bodies have satisfied that body of their competence to practise and therefore should be exempt from a requirement to do so again.
<b>12.</b>	<b>Do you agree with the principle of the proposal that members of voluntary registers accredited by the PSA should not be exempt?</b>
	<p>No. Voluntary registers are not the same as statutory registered HCPC registers.</p> <p>Part of the Professional Standards Authority for Health and Social Care (PSA) role is to accredit voluntary registers of people working in a variety of health and social care occupations. Where occupations are not subject to statutory regulation, the Accredited Voluntary Registers scheme allows people to choose practitioners who are on a register that has been independently assessed and approved. However, The PSA ‘independently assess’ those accredited against their own standards not statutory ones. The coming into force of the statutory licensing scheme will introduce improved statutory regulation against national standards and will allow people to choose a practitioner from a single Statutory register in Wales rather than a voluntary one.</p> <p>NB Extract from the purpose and effect table in the Statement of Policy Intent for the Bill:</p> <p>It is the intention that the regulations are tailored to take account of the practices undertaken by individuals within each profession and are developed in conjunction with the regulatory body/ registering authority. For example, it is the intention that a physiotherapist who is a member of a register maintained by the Health and Care Professions Council will be exempt from the requirement to obtain a licence in order to practice acupuncture. It is also the intention for members of the British Acupuncture Council (BAcC) to be exempt from the requirement to obtain a licence to practice acupuncture (subject to the BAcC maintaining its accreditation with the Professional Standards Authority for Health and Social Care).</p> <p>The British Acupuncture Council (BAcC) – is the UK’s largest, member-led, professional body for traditional acupuncturists. They claim to have nearly 3,000 members. Their members belong to an accredited register, regulated and approved by the Professional Standards Authority for Health &amp; Social Care (PSA).</p>
<b>13.</b>	<b>Do you have any comments on the example mandatory licensing conditions for all special procedures as set out in Annex D1?</b>

	<p>The general conditions relating to standards of hygiene and first aid (Para 31 page 77) states 'with the exception of undertaking acupuncture, they wear single use vinyl or non-Latex gloves...' The acupuncture conditions (page 83 para 4 however provide exceptions to this relaxation. Consideration should be given rewording the general condition to acknowledge this.</p>
<b>14.</b>	<b>Do you agree the specific mandatory licensing conditions at Annex D1 are proportionate to the risks presented by each type of special procedure?</b>
	<p>Yes – The mandatory conditions take account of the different special procedures and the different circumstances in which they are practiced. They will provide consistency in relation to the licensing criteria and ensure that the same criteria are applied across Wales by all local authorities. They will also ensure that the requirements to be met by those applying for a special procedure licence are transparent and obtainable.</p>
<b>15.</b>	<b>Do you agree that the creation of a trainee licence is a proportionate way of dealing with trainees on regulated courses and apprentices following regulated and unregulated apprenticeships?</b>
	<b>If you don't agree, how should they be dealt with?</b>
	<p>Yes. It is important that individuals should be able to enter the professions, but that they do so in a safe way without presenting risk to the public or to themselves. A trainee license allows those who wish to take up any of these professions to do so and to learn and practice their skills until they either apply for a full License or decide that they do not wish to pursue the career. It is a safe stepping stone into the profession.</p>
<b>16.</b>	<b>Do you agree that the minimum age for a practitioner to perform any of the special procedures should be 18?</b>
	Yes. See our answer to Q4 above.
<b>17.</b>	<b>Do you agree that the minimum age for a client to obtain any of the special procedures (notwithstanding the proposed exceptions listed) should be 18?</b>
	Yes. We refer again to our response to Q4.
<b>18.</b>	<b>Do you agree that the outlined obtaining of consent and accompaniment by a parent/guardian for procedures for people under 18 where not otherwise prohibited provides sufficient safeguards?</b>
	Yes.

19.	<b>Do you agree that 16 is an appropriate age for a person to obtain a piercing of the eyebrow, lip, nose or ear cartilage without parental/guardian consent?</b>
	We have no view as to whether this is an appropriate age, however we are aware that the risk of infection and tissue damage caused by self-administered piecing is significantly greater than where the piercing is done by a professional individual, and as we have no evidence of our own with respect to industry practice, we defer to that of the piercing industry.
20.	<b>Should piercings to any other part of the face be permitted from the age of 16? If so, why?</b>
	<p>No. The risk of facial scarring is considerable and the impact on the individuals mental health where this occurs may be significant and long lasting.</p> <p>We also note that the age limit for tattoos is 18, and for consistency it would be more appropriate for tattooing and skin piercing on the face to be the same. For completeness we do not suggest that the minimum age at which an individual can obtain a tattoo should be reduced to 16.</p>
21.	<b>Do you agree that prohibiting the tattooing of eyeballs in the tattooing licensing conditions is sufficient to prevent this from being performed by licensed practitioners?</b>
	<p>A proposed amendment during the passage of the Public Health (Wales) Bill proposed a direct prohibition of the tattooing of an eyeball except when the tattooing was performed by a person regulated by the GMC. The amendment was not agreed but assurances given that the matter would be given consideration in the mandatory licensing conditions.</p> <p>The power to make regulations in the Act allows for the mandatory licensing conditions to make further provision relating to for the standards of competence relevant to performing a special procedure (including standards specified by reference to, among other things, qualifications or experience), <u>or performing a special procedure upon a specified part of an individual's body;</u></p> <p>Whether the proposed prohibition of the tattooing of eyeballs is sufficient to prevent this from being performed by licensed practitioners is a moot point. A licensed practitioner who carries out such a procedure is at risk of losing his license and therefore his livelihood. This may be sufficient to discourage licensed practitioners from tattooing eyeballs, but practitioners must be aware that if they do engage I this practice enforcement action, including criminal sanctions will be taken against them, and local authorities must have sufficient resource to allow this to happen.</p>

22.	<b>Is the proposal to require in licensing conditions that practitioners discuss the impact of facial and other visible procedures with clients and record the discussion sufficient to address the concerns?</b>
	Yes. This is consistent with discussions held between operators of UV tanning equipment and prospective users.
23.	<b>Do you agree with the proposed definition for ‘object’ as it applies to body piercing?</b>
	Yes. Given the fast moving nature of the industry a prescriptive list will be out of date very quickly. In our view a generic description of permitted items is more appropriate, and anything that does not fit that description is therefore not permitted.
24.	<b>Do you agree that prohibiting the use of a scalpel or similar bladed instrument in the body piercing licensing conditions is sufficient to prevent body modifications that extend beyond a body piercing procedure?</b>
	We agree that use of scalpels and similarly bladed instruments should be prohibited but question the omission of instruments that punch by force (dermal biopsy /dermal anchor punches) into the skin and mucous membrane. We consider that for completeness these should be included.
25.	<b>Do you agree with the proposed approval criteria for premises/vehicle approval applications and the supporting documents listed? Are there other documents applicants should supply?</b>
	Yes
26.	<b>Do you agree that holders of trainee special procedure licences should not be able to apply for a premises/vehicle approval certificate in their own right or be nominated as the person in charge of a premises on an application?</b>
	Yes. These individuals are trainees and should therefore be operating under the control of another person. If they hold a premises or vehicle approval certificate or are listed as the person in charge of a premises they could potentially abuse that position and operate outside the control of the trained person or in extreme circumstances remove the trained person. For this reason only persons holding full licenses should be allowed to apply for premises or vehicle approval certificates or be nominated as persons in charge of premises.
27.	<b>Do you agree with the proposals about appealing against the refusal of an application for premises and vehicle approvals as set out in paragraph 11.19?</b>
	Yes

28.	<b>Do you agree that the approval certificate should also include the name of the responsible person and the maximum number of workstations in that premises/vehicle?</b>
	Yes
29.	<b>Do you have any comments on the example mandatory premises/vehicle approval conditions set out in Annex D2?</b>
	<p>Annex D2 states that officers of the LA must be admitted to premises or vehicle. The Act however defines authorised officers as any person (whether or not an officer of the local authority) authorised by a local authority for the purposes ....The CIEH is concerned are about the role of the Police in respect of admission to premises or vehicles for the purposes of this section.</p> <p>For example for the purpose of the exercise of its functions under subsection (2) (Intimate Piercing), a local authority must carry out such consultation as it considers appropriate with the chief officer of police for a police area any part of which falls within the area of the local authority. It is not inconceivable the local authority and police might undertake joint action. In relation to vehicles we note for the smoking provisions in the Act, - regulations may make provision for the chief officer of police for a police area, in addition, to be authorised to act as an enforcement authority in relation to vehicles that are in that police area. There is no such provision for special procedures carried out in vehicles, but a Local Authority may have to undertake joint action to stop a vehicle We suggest that the regulations be amended to include 'whether or not an officer of the local authority' which would make them consistent with all other part of the Act and would also be valuable to local authorities carrying out their enforcement function.</p>
30.	<b>We propose that we make regulations under section 70 of the Act relating to the variation and renewal process for premises approval certificates to make them consistent with the variation and renewal process for special procedure licences. Do you agree?</b>
	Yes. Consistency with special procedure licenses is appropriate.
31.	<b>Should temporary approvals for premises and vehicles be subject to the same mandatory approval conditions as all premises and vehicles? If not, what specific mandatory approval conditions (if any) should apply to temporary approvals for premises and vehicles?</b>
	<p>For vehicles yes as they are self-contained and merely operating at a different venue. For premises additional mandatory approval conditions might be useful. For example tattoo conventions attract tattooists and clients from across Europe. The legal age for a tattoo does differ in other parts of Europe. It may be useful therefore to make entry to tattoo conventions age-restricted i.e. a licensing condition that individuals must be over the age of 18 and have proper, valid identification to enter a tattoo convention and to get tattooed.</p>

	<p>Convention venues may also present their own unique challenges for the practitioners and regulators. <u>Lighting</u>, for example, isn't always the best at conventions, so an additional approval condition relating to lighting may be appropriate. Some flexibility to cater for individual premises idiosyncrasies would be beneficial in the mandatory approval conditions.</p>
<b>32.</b>	<b>Do you agree that requiring the same licensing criteria for a temporary special procedure licence as for a three-year licence is proportionate?</b>
	Yes
<b>33.</b>	<b>Do you think that it is proportionate for an event organiser applying for a temporary premises approval certificate to meet the same approval criteria as for a three-year premises approval certificate?</b>
	<p>The consultation states Section 69 of the Act treats the organiser of the event as the person carrying on a special procedures business for the duration of the event, and the premises at which the event will be held as the business premises. You propose that when applying for a temporary premises/vehicle approval certificate, the event organiser of a industry / trade event or conference will be required to fulfil the same proposed approval criteria as an applicant applying for three-year premises approval certificate unless they already hold a valid three-year special procedure licence or premises/vehicle approval certificate. This will require the organiser too meet the approval criteria set out in 11.11 of the consultation document - if not already licensed. For organisers of music festival type events this may be considered by them to be too onerous if they are not routinely involved in the special procedure industry. It would not also guarantee that they have detailed working knowledge of the industry other than holding a level 2 qualification. The licensing Act 2003 allows for a personal licence holder to be specified as the designated premises supervisor for large scale time-limited events, where the sale of alcohol is involved. Has consideration been given for a similar arrangement for large scale Special Procedure temporary events? A suitable Special Procedure Licence holder could be additionally required to supervise the event and act as an informed liaison point with the local authority.</p>
<b>34.</b>	<b>Do you agree that all premises/vehicles linked to temporary events/exhibitions must be approved by the local authority? If not, why not?</b>
	Yes. The risk presented by such premises/vehicles is exactly the same as for fixed premises or vehicles operating within a local authority area. This is entirely consistent with the need for mobile food vehicles to be inspected by

	a local authority before trading, whether within that local authority area or outside it, and is based on the need to protect public health and for traceability in the event of a potentially linked outbreak of incident.
<b>35.</b>	<b>Should all premises/vehicles linked to temporary events/exhibitions be subject to mandatory approval conditions?</b>
	Yes. The risk they present is no different to that presented by fixed premises, and their temporary nature means that some of the facilities e.g. access to water, drainage etc. may not be as good as for fixed premises. There cannot be an level of risk associated with temporary events or exhibitions.
<b>36.</b>	<b>Do you agree further information should be set out within a temporary approval certificate (as suggested in paragraph 13.12)? What other information should be required (if any)?</b>
	Yes.
<b>37.</b>	<b>Do you agree that the fees in relation to licence application fees should be determined in the way outlined in paragraphs 15.3 and 15.4?</b>
	We defer to the view of Environmental Health Wales and the Directors of Public Protection Wales on this point.
<b>38.</b>	<b>Do you agree that the fees in relation to premises/vehicle approval application fees should be determined in the way outlined in paragraphs 15.5 and 15.6?</b>
	We defer to the view of Environmental Health Wales and the Directors of Public Protection Wales on this point.
<b>39.</b>	<b>Do you agree that the regulations should make provision on how local authorities should determine the amount of fee charged to a licence or premises/vehicle approval holder under section 76 in the way outlined in paragraphs 15.7 – 15.9?</b>
	Yes. Fees should be based on costs recovery only. Regulations will ensure that this must be the case and decisions related to fee setting will be transparent.
<b>40.</b>	<b>Do you agree with our proposal regarding recovery of section 76 unpaid fees in the way outlined in paragraph 15.10?</b>
	Yes. Whilst the discretion to recover unpaid fees should be with the local authority concerned an individual who has not paid an appropriate fee should not be allowed to proceed with an application or application to renew.
<b>41.</b>	<b>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 the Welsh language no less favourably than English.</b>

	<b>What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?</b>
	As such there are limited direct impacts on the Welsh language, either positive or negative. However, the mandatory licensing scheme will indirectly strengthen the position of the Welsh language within the special procedures community and its customers. Provided, as required all documentation is produced in both languages and any training provision is available in both languages there should be no negative impact.
<b>42.</b>	<b>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</b> <ul style="list-style-type: none"> <li>• <b>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, and</b></li> <li>• <b>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.</b></li> </ul>
	A number of the Act's provisions with respect to Special Procedures will require the provision of information to the public in a variety of forms. In a number of areas this will involve opportunities for training through the medium of Welsh. The production of required documentation should take place in accordance with the Welsh language schemes; Welsh Language Standards and policies of the Welsh Government. In this way the Welsh language will be promoted and no adverse effects should be forthcoming.
<b>43.</b>	<b>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.</b>
	During the debate in the Senydd about the Public Health ( Wales) Bill 2017 the then mister for Health and Social services gave an undertaking that once the issues in this consultation had been addressed further attention would be given toother unrelated sectors of the aesthetic body modification industry, such as the administration of Botox and chemical fillers and the practises of scarification and branding. In the view of the CIEH it is important that this work is now progressed by Welsh Government to ensure that appropriate protections are put around these procedures to protect individuals and public health.

<sup>i</sup> <https://www.medicalnewstoday.com/articles/324287#Investigating-ink>

<sup>ii</sup> [Rayleigh tattoo parlour bosses jailed for drug offences](https://www.echo-news.co.uk/news/120116-Rayleigh-tattoo-parlour-bosses-jailed-for-drug-offences) | Echo (echo-news.co.uk)