



# Public Health (Wales) Act 2017

**2017 anaw 2**

An Act of the National Assembly for Wales to make provision for a national strategy on tackling obesity; about smoking; for a register of retailers of tobacco and nicotine products; about the handing over of tobacco and nicotine products to persons aged under 18; about the performance of certain procedures for aesthetic or therapeutic purposes; about intimate piercing of children; about health impact assessments; about assessing the local need for pharmaceutical services; about pharmaceutical lists; about assessing the local need for public toilets; about fixed penalty receipts for food hygiene rating offences; and for connected purposes. [3 July 2017]

**Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## **PART 1**

### **OVERVIEW**

#### **1 Overview**

- (1) This Part of the Act is an overview of the main provisions of the Act.
- (2) Part 2 makes provision for a national strategy on tackling obesity.
- (3) Part 3 relates to tobacco and nicotine products. It—
  - (a) makes provision restricting smoking in workplaces, public places, outdoor care settings for children, school grounds, hospital grounds and public playgrounds, and confers power on the Welsh Ministers to make regulations restricting smoking in other premises, and in vehicles;
  - (b) makes provision for there to be a register of retailers of tobacco and nicotine products in Wales;
  - (c) confers power on the Welsh Ministers to make regulations specifying offences for the purpose of the making of orders in respect of premises in Wales restricting the sale by retail of tobacco or nicotine products;

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- (d) makes it an offence for a person to hand over tobacco, cigarette papers or a nicotine product to someone aged under 18 who is not accompanied by an adult, where the tobacco (or the cigarette papers or nicotine product) is being delivered or collected under arrangements made in connection with its sale, and is not in a sealed and addressed package.
- (4) Part 4 makes provision about licensing the performance in Wales of special procedures (as defined in section 57): see further overview of Part 4 at section 56.
- (5) Part 5 makes it an offence for a person in Wales to perform, or to make arrangements to perform, an intimate piercing on a person under the age of 18; and defines the term “intimate piercing” by reference to certain body parts.
- (6) Parts 3 to 5 also contain provision about enforcement, including about offences and powers of entry.
- (7) Part 6 requires the Welsh Ministers to make regulations requiring public bodies to carry out health impact assessments.
- (8) Part 7—
  - (a) requires each Local Health Board in Wales to prepare and publish an assessment of the need for pharmaceutical services in its area, and to have regard to it in considering applications for inclusion in its pharmaceutical list;
  - (b) confers power on the Welsh Ministers to make regulations about circumstances in which a Local Health Board may invite applications for inclusion in its pharmaceutical list, and may remove a person from its pharmaceutical list.
- (9) Part 8 requires each local authority to prepare and publish a local toilets strategy which assesses the need for public toilets in its area and sets out steps that the authority proposes to take to meet that need.
- (10) Part 8 also restates the existing statutory power for a local authority to provide toilets in its area.
- (11) Part 9 makes provision about the use of fixed penalty receipts in respect of food hygiene rating offences.
- (12) Part 9 also contains general provisions, including about offences committed by bodies corporate, partnerships and unincorporated associations; about powers to make regulations under the Act; and about the coming into force of the provisions of the Act.

## PART 2

### OBESITY

#### 2 National strategy on preventing and reducing obesity: publication and review

- (1) The Welsh Ministers must publish a national strategy on preventing obesity, and reducing obesity levels, in Wales.
- (2) The strategy must—
  - (a) specify objectives the Welsh Ministers consider will, if achieved, contribute towards preventing obesity;

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- (b) specify objectives the Welsh Ministers consider will, if achieved, contribute towards reducing obesity levels;
  - (c) identify how the Welsh Ministers propose to achieve the specified objectives.
- (3) The Welsh Ministers must review the strategy—
- (a) at the end of the period of three years beginning with the date of first publication of the strategy, and
  - (b) at the end of each subsequent period of three years.
- (4) The Welsh Ministers may revise the strategy at any time.
- (5) If the Welsh Ministers revise the strategy, they must publish the revised strategy as soon as it is reasonably practicable to do so.
- (6) The Welsh Ministers must consult such persons as they consider appropriate—
- (a) before they first publish the strategy, and
  - (b) subsequently, before each review under subsection (3).

#### Commencement Information

**I1** [S. 2](#) in force at 4.10.2017 by [S.I. 2017/949](#), [art. 2\(a\)](#)

### 3 Implementation of national strategy

- (1) The Welsh Ministers must take all reasonable steps to achieve the objectives specified in the most recently published strategy under section 2.
- (2) Following each review of the strategy under section 2(3) the Welsh Ministers must publish a progress report.
- (3) A progress report is a report on progress made in achieving objectives specified in the strategy.

#### Commencement Information

**I2** [S. 3](#) in force at 4.10.2017 by [S.I. 2017/949](#), [art. 2\(b\)](#)

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VALID FROM 29/09/2020

## PART 3

### TOBACCO AND NICOTINE PRODUCTS

## CHAPTER 1

### SMOKING

VALID FROM 01/03/2021

#### *Introduction*

#### **4 Smoking**

In this Chapter, references to smoking are to smoking tobacco or anything which contains tobacco, or to smoking any other substance; and smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

#### *Offences*

VALID FROM 01/03/2021

#### **5 Offence of smoking in smoke-free premises or vehicle**

- (1) A person commits an offence if the person smokes—
  - (a) in smoke-free premises;
  - (b) in a smoke-free vehicle.
- (2) For provision about smoke-free premises, see sections 7 to 14.
- (3) For provision about smoke-free vehicles, see section 15.
- (4) It is a defence for a person charged with an offence under this section to show that the person did not know, and could not reasonably have been expected to know, that the premises or vehicle concerned were smoke-free premises or a smoke-free vehicle.
- (5) If a person charged with an offence under this section relies on the defence in subsection (4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

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- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

## **6 Offence of failing to prevent smoking in smoke-free premises**

- (1) A person who controls or is concerned in the management of premises which are smoke-free by virtue of section 7 (workplaces) or 8 (premises that are open to the public) must take reasonable steps to cause a person smoking there to stop smoking.
- (2) A person who controls or is concerned in the management of premises within section 9(3) (registered day care premises) that are smoke free by virtue of section 9 must take reasonable steps to cause a person smoking there to stop smoking.
- (3) A person registered to act as a child minder under Part 2 of the Children and Families (Wales) Measure 2010 (nawm 1) must take reasonable steps to cause a person smoking in premises within subsection (4) to stop smoking.
- (4) Premises are within this subsection if—
  - (a) they form part of premises that are the usual place of residence of the registered person referred to in subsection (3), and
  - (b) they are smoke free by virtue of section 9.
- (5) Regulations may provide for a duty corresponding to that mentioned in subsection (1) in relation to—
  - (a) premises which are smoke-free by virtue of section 10, 11 or 12,
  - (b) premises which are treated as smoke-free by virtue of section 13, or
  - (c) vehicles which are treated as smoke-free by virtue of section 15,to be imposed on a person, or description of person, specified in the regulations.
- (6) A person who fails to comply with a duty in subsection (1), (2) or (3), or any corresponding duty in regulations under subsection (5), commits an offence.
- (7) It is a defence for a person (“D”) charged with an offence under this section to show that D did not know, and could not reasonably have been expected to know, that the person in question was smoking.
- (8) If a person charged with an offence under this section relies on the defence in subsection (7), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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## Smoke-free premises

VALID FROM 01/03/2021

### 7 Workplaces

- (1) Premises in Wales are smoke-free for the purposes of this Chapter if they are workplaces.
- (2) A “workplace” means premises that are—
  - (a) used as a place of work by more than one person (even if the persons who work there do so at different times, or only intermittently), or
  - (b) used as a place of work by no more than one person but where members of the public might attend for the purpose of seeking or receiving goods or services from the person working there (even if members of the public are not always present).
- (3) If only part of the premises is used as a place of work, the premises are smoke-free by virtue of this section only to that extent.
- (4) The premises are smoke-free by virtue of this section only in those areas that are enclosed or substantially enclosed.
- (5) The premises are smoke-free by virtue of this section all the time (including when not used as a place of work), except that premises used to any extent as a dwelling, that are smoke-free by virtue of this section, are smoke-free only when used as a place of work.
- (6) “Work”, in subsection (2), includes voluntary work.
- (7) See section 16 for exemptions.

VALID FROM 01/03/2021

### 8 Premises that are open to the public

- (1) So far as they are not smoke-free by virtue of section 7 (workplaces), premises in Wales are smoke-free for the purposes of this Chapter if they are open to the public.
- (2) Premises are open to the public for the purposes of this section if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.
- (3) If only part of the premises is open to the public, the premises are smoke-free by virtue of this section only to that extent.
- (4) The premises are smoke-free by virtue of this section only in those areas that are enclosed or substantially enclosed.
- (5) The premises are smoke-free by virtue of this section only when open to the public.
- (6) See section 16 for exemptions.

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VALID FROM 01/03/2021

## 9 Outdoor care settings for children

- (1) Outdoor care settings in Wales are smoke free for the purposes of this Chapter.
- (2) Premises are an outdoor care setting so far as—
  - (a) they are not enclosed or substantially enclosed, and
  - (b) they are within subsection (3) or (4).
- (3) Premises are within this subsection if—
  - (a) they are registered under Part 2 of the Children and Families (Wales) Measure 2010 (nawm 1) (the “2010 Measure”) as being premises at which a person is authorised to provide day care for children, or
  - (b) they form part of premises that are so registered.
- (4) Premises are within this section if they form part of premises (the “domestic premises”) that are the usual place of residence of a person registered to act as a child minder under Part 2 of the 2010 Measure.
- (5) An outdoor care setting within subsection (3) is smoke free by virtue of this section only when day care for children is being provided—
  - (a) in the outdoor care setting, or
  - (b) in premises registered under Part 2 of the 2010 Measure (whether or not enclosed or substantially enclosed) of which the outdoor care setting forms part.
- (6) An outdoor care setting within subsection (4) is smoke free by virtue of this section only when—
  - (a) the child minder is acting as a child minder in the domestic premises (whether or not in a part of them that is enclosed or substantially enclosed) for at least one child, and
  - (b) that child or, as the case may be, at least one of those children is in the outdoor care setting.
- (7) For the purposes of this section, references to providing day care and acting as a child minder have the same meaning as in the 2010 Measure.
- (8) Premises are not to be treated as being within subsection (3) or (4) so far as they consist of the grounds of a school (for which see section 10 (school grounds)).

## 10 School grounds

- (1) Premises in Wales are smoke-free for the purposes of this Chapter so far as they consist of the grounds of a school.
- (2) In the case of premises consisting of grounds that adjoin the school concerned, the premises are smoke-free by virtue of this section only when either or both of—
  - (a) the grounds, or any part of the grounds, or
  - (b) the school, or any part of it,are being used for the purpose of education or childcare.

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- (3) In the case of premises consisting of grounds that do not adjoin the school concerned, the premises are smoke-free by virtue of this section only when the grounds, or any part of the grounds, are being used for the purpose of education or childcare.
- (4) The grounds of a school, for the purposes of this section, are premises that—
  - (a) are used exclusively or mainly by the school, for purposes that include educational, sporting or recreational purposes, and
  - (b) are not enclosed or substantially enclosed.
- (5) In the case of a school that provides residential accommodation to pupils, the person in charge of the school may designate any area in the grounds as being an area in which smoking is to be permitted, and to that extent the premises are to be treated as not being smoke-free for the purposes of this Chapter.
- (6) Regulations may make provision—
  - (a) specifying conditions to be met before an area may be designated under subsection (5),
  - (b) requiring the keeping of records of designations, and
  - (c) about the circumstances in which a designation is to cease to have effect.
- (7) Premises used to any extent as a dwelling are not smoke-free by virtue of this section.

## **11 Hospital grounds**

- (1) Premises in Wales are smoke-free premises for the purposes of this Chapter so far as they consist of hospital grounds.
- (2) The premises are smoke-free by virtue of this section at all times.
- (3) The grounds of a hospital, for the purposes of this section, are premises that—
  - (a) adjoin the hospital, and
  - (b) are used or occupied by it, but
  - (c) are not enclosed or substantially enclosed.
- (4) The person in charge of a hospital may designate any area in the grounds as being an area in which smoking is to be permitted, and to that extent the premises are to be treated as not being smoke-free for the purposes of this Chapter.
- (5) Regulations may make provision—
  - (a) specifying conditions to be met before an area may be designated under subsection (4),
  - (b) requiring the keeping of records of designations, and
  - (c) about the circumstances in which a designation is to cease to have effect.
- (6) Premises consisting of an adult care home or of an adult hospice, or premises used to any extent as a dwelling, are not smoke-free by virtue of this section.



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## 12 Public playgrounds

- (1) Premises in Wales are smoke-free premises for the purposes of this Chapter so far as they consist of a public playground.
- (2) The premises are smoke-free—
  - (a) if the premises are within clearly marked boundaries, in the whole of the area within those boundaries;
  - (b) otherwise, only so far as within five metres of any item of playground equipment.
- (3) The premises are smoke-free by virtue of this section at all times.
- (4) Premises consist of a public playground for the purposes of this section if—
  - (a) they are designed or adapted for the use, by children, of one or more items of playground equipment,
  - (b) a local authority or community council, or a person acting by virtue of arrangements made with a local authority or community council, controls them or is to any extent engaged in their management or maintenance, or makes arrangements in respect of their control or management or maintenance,
  - (c) they are open to the public, for the purpose (or the primary purpose) of the provision of play facilities for children, and
  - (d) they are not enclosed or substantially enclosed.

VALID FROM 01/03/2021

## 13 Additional smoke-free premises

- (1) Regulations may provide for any place in Wales, or description of place in Wales, that is not smoke-free by virtue of sections 7 to 12 to be treated as smoke-free premises for the purposes of this Chapter.
- (2) The place, or places falling within the description, need not be enclosed or substantially enclosed.
- (3) The regulations may provide for a place or description of place to be treated as smoke-free premises only if the Welsh Ministers are satisfied that doing so is likely to contribute towards the promotion of the health of the people of Wales.
- (4) The regulations may provide for such places, or places falling within the description, to be treated as smoke-free premises only—
  - (a) in specified circumstances,
  - (b) at specified times,
  - (c) if specified conditions are satisfied, or
  - (d) in specified areas,or any combination of these.

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- (5) The regulations may also provide for exemptions, including the imposition of specified conditions to be satisfied in order for an exemption to apply.
- (6) The conditions that may be specified under subsection (5) may include a condition that the person in charge of the place, or place falling within the description, has designated, in accordance with the regulations, any areas in which smoking is to be permitted.
- (7) Regulations under this section may not make provision in respect of premises used wholly or mainly as a dwelling; and to the extent that they make provision for premises used partly as a dwelling to be treated as smoke-free premises, regulations under this section must comply with section 14.

VALID FROM 01/03/2021

#### **14 Further provision about additional smoke-free premises: dwellings**

- (1) Regulations under section 13 that provide for premises used partly as a dwelling to be treated as smoke-free premises for the purposes of this Chapter must comply with the following requirements.
- (2) The regulations may only make provision in relation to those areas of such premises that are not enclosed or substantially enclosed.
- (3) The regulations may not provide for those areas to be treated as smoke-free premises unless—
  - (a) they are workplaces (within the meaning of section 7(2)), or
  - (b) they are open to the public (within the meaning of section 8(2)).
- (4) The regulations must provide that—
  - (a) those areas are to be treated as smoke-free premises only when they are used as a place of work or open to the public, and
  - (b) if only part of an area is used as a place of work or is open to the public, the area is to be treated as smoke-free only to that extent.

#### *Smoke-free vehicles*

#### **15 Smoke-free vehicles**

- (1) A vehicle in Wales is smoke-free for the purposes of this Chapter if regulations under this section provide for it to be treated as a smoke-free vehicle.
- (2) The regulations may provide for a vehicle to be treated as a smoke-free vehicle only if the Welsh Ministers are satisfied that doing so is likely to contribute towards the promotion of the health of the people of Wales.
- (3) The regulations may, among other things, make provision—
  - (a) for the descriptions of vehicles that are to be treated as smoke-free;
  - (b) for the circumstances in which vehicles are to be treated as smoke-free (including by reference to the age of any person in the vehicle);

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- (c) for vehicles to be treated as smoke-free only in specified areas, or except in specified areas;
  - (d) for exemptions.
- (4) The power to make regulations under this section may not be exercised so as to provide for a ship or hovercraft within subsection (5) to be treated as a smoke-free vehicle.
- (5) A ship or hovercraft is within this subsection if regulations could be made in relation to it under section 85 of the Merchant Shipping Act 1995 (c.21) including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968 (c.59).

*Smoke-free premises: exemptions*

**16 Smoke-free premises: exemptions**

- (1) Regulations may provide for premises—
  - (a) that would otherwise be smoke-free premises by virtue of section 7 (workplaces) or 8 (premises that are open to the public), and
  - (b) that are not smoke-free premises by virtue of any other provision of this Chapter,to be treated as not being smoke-free premises for the purposes of this Chapter.
- (2) The regulations may make provision in relation to specified descriptions of premises or specified areas within specified descriptions of premises.
- (3) The regulations may provide, in relation to any description of premises or areas of premises specified in the regulations, that the premises or areas are to be treated as not being smoke-free premises—
  - (a) in specified circumstances,
  - (b) at specified times, or
  - (c) if specified conditions are satisfied,or any combination of these.
- (4) The conditions that may be specified under subsection (3)(c) may include a condition that the person in charge of the premises has designated, in accordance with the regulations, areas in which smoking is to be permitted.

*Signs*

**17 Signs: smoke-free premises**

- (1) A person who occupies or is concerned in the management of smoke-free premises must make sure that signs are displayed in those premises in accordance with regulations under this subsection.
- (2) Regulations under subsection (1) may make provision as to how the signs are to be displayed and may specify requirements to which the signs must conform (for example, requirements as to content, size, design, colour or wording).

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- (3) Regulations under this subsection may provide for a duty corresponding to that mentioned in subsection (1) in relation to—
  - (a) premises which are treated as smoke-free by virtue of section 13,
  - (b) vehicles which are treated as smoke-free by virtue of section 15,to be imposed on a person, or person of a description, specified in the regulations.
- (4) Regulations under subsection (1) or (3) may include provision about the signs to be displayed in premises, areas of premises or vehicles that, by virtue of regulations under section 13(5), 15(3)(d) or 16, are to be treated as not being smoke-free, but that would otherwise be smoke-free under or by virtue of this Chapter.
- (5) A person who fails to comply with the duty in subsection (1), or any corresponding duty in regulations under subsection (3), commits an offence.
- (6) It is a defence for a person charged with an offence under this section to show—
  - (a) that the person did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was to be treated as smoke-free),
  - (b) that the person did not know, and could not reasonably have been expected to know, that signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or
  - (c) that on other grounds it was reasonable for the person not to comply with the duty.
- (7) If a person charged with an offence under this section relies on a defence in subsection (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) Regulations under this section may not make provision in respect of premises used to any extent as a dwelling.

### *Enforcement*

## **18 Enforcement authorities**

- (1) Each local authority is authorised to act as an enforcement authority in relation to premises, places and vehicles that are within its area.
- (2) 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.
- (3) An enforcement authority must enforce the provisions of this Chapter and regulations made under it as respects the premises, places and vehicles in relation to which, by virtue of this section, it is authorised to act.
- (4) An enforcement authority may make arrangements with another enforcement authority for a case being dealt with by it in the exercise of its functions for the

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purposes of this Chapter to be transferred (or further transferred, or transferred back) to, and taken over by that other authority.

- (5) References in this Chapter to an authorised officer are to any person (whether or not an officer of the enforcement authority) authorised by an enforcement authority for the purposes of this Chapter.

VALID FROM 01/03/2021

## 19 Powers of entry

- (1) An authorised officer may enter premises in Wales at any reasonable time if the officer—
- (a) has reasonable grounds for believing that an offence under section 5, 6 or 17 has been committed at the premises, and
  - (b) considers it necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) But this does not apply in relation to premises used wholly or mainly as a dwelling.
- (3) An authorised officer may not enter premises by force under this section.
- (4) An authorised officer must, if asked to do so, before entering premises under this section show evidence of the authorisation referred to in section 18(5).
- (5) This section applies to a vehicle as if it were premises.

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## 20 Warrant to enter dwelling

- (1) A justice of the peace may exercise the power in subsection (2) in relation to premises in Wales used wholly or mainly as a dwelling if satisfied on sworn information in writing—
- (a) that there are reasonable grounds for believing that an offence under section 5 or 6 has been committed at the premises, and
  - (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) The justice may issue a warrant authorising an authorised officer to enter the premises, if need be by force.
- (3) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.
- (4) This section applies to a vehicle as if it were premises.

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## 21 Warrant to enter other premises

- (1) A justice of the peace may exercise the power in subsection (2) in relation to premises in Wales other than premises used wholly or mainly as a dwelling if satisfied on sworn information in writing—
  - (a) that there are reasonable grounds for believing that an offence under section 5, 6 or 17 has been committed at the premises,
  - (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed, and
  - (c) that a requirement set out in subsection (3) or (4) is met.
- (2) The justice may issue a warrant authorising an authorised officer to enter the premises, if need be by force.
- (3) The requirement is that—
  - (a) a request to enter the premises has been, or is likely to be, refused, and
  - (b) notice of intention to apply for a warrant under this section has been given to the occupier or a person who reasonably appears to the enforcement authority to be concerned in the management of the premises.
- (4) The requirement is that requesting to enter the premises, or the giving of notice of intention to apply for a warrant under this section, is likely to defeat the purpose of the entry.
- (5) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.
- (6) This section applies to a vehicle as if it were premises.

VALID FROM 01/03/2021

## 22 Supplementary provision about powers of entry

- (1) An authorised officer entering premises under section 19, or by virtue of a warrant under section 20 or 21, may take such other persons and such equipment as the officer considers appropriate.
- (2) If the occupier of premises that an authorised officer is authorised to enter by a warrant under section 20 or 21 is present at the time the authorised officer seeks to execute the warrant—
  - (a) the occupier must be told the officer's name;
  - (b) the officer must produce to the occupier documentary evidence that the officer is an authorised officer;
  - (c) the officer must produce the warrant to the occupier;
  - (d) the officer must supply the occupier with a copy of it.
- (3) If premises that an authorised officer is authorised to enter by a warrant under section 20 or 21 are unoccupied, or if the occupier is temporarily absent, then on

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leaving the premises the officer must leave them as effectively secured against unauthorised entry as when the officer found them.

(4) This section applies to a vehicle as if it were premises.

VALID FROM 01/03/2021

## 23 Powers of inspection etc.

- (1) An authorised officer entering premises under section 19, or by virtue of a warrant under section 20 or 21, may do any of the following if the officer considers it necessary for the purpose of ascertaining whether an offence under section 5, 6 or 17 has been committed—
  - (a) carry out inspections and examinations on the premises;
  - (b) require the production of anything on the premises, inspect it, and take and retain samples of or extracts from it;
  - (c) take possession of anything on the premises, and retain it for as long as the officer considers necessary for that purpose;
  - (d) require any person to give information, or afford facilities and assistance with respect to matters within the person's control.
- (2) If the authorised officer considers it necessary for the purpose of ascertaining whether an offence under section 5, 6 or 17 has been committed, the officer may arrange for anything produced under subsection (1)(b) or anything which the officer has taken possession of under subsection (1)(c) to be analysed.
- (3) If by virtue of subsection (1)(c) the authorised officer takes anything away from the premises, the officer must leave on the premises from which it was taken a statement—
  - (a) giving particulars of what has been taken and stating that the officer has taken possession of it, and
  - (b) identifying the person to whom a request for the return of the property may be made.
- (4) The powers conferred by this section include the power—
  - (a) to copy documents found on the premises;
  - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents found on the premises that are stored electronically).
- (5) For this purpose, “documents” includes information recorded in any form; and references to documents found on the premises include—
  - (a) documents stored on computers or other electronic devices on the premises, and
  - (b) documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.
- (6) This section applies to a vehicle as if it were premises.



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- (7) A person is not required by this section to answer any question or produce any document which the person would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England and Wales.

VALID FROM 01/03/2021

## 24 Obstruction etc. of officers

- (1) Any person who intentionally obstructs an authorised officer exercising functions under sections 19 to 23 commits an offence.
- (2) Any person who without reasonable cause fails—
  - (a) to provide an authorised officer with facilities that the authorised officer reasonably requires for the purpose of a requirement under section 23(1), or
  - (b) to comply with a requirement under section 23(1)(b) or (d),commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) This section is subject to section 23(7).

VALID FROM 01/03/2021

## 25 Retained property: appeals

- (1) A person (“P”) with an interest in anything taken away under section 23(1)(c) (“retained property”) may apply by way of complaint to any magistrates' court for an order requiring it to be released, either to P or another person.
- (2) If on an application under this section the court is satisfied that the continued retention of the retained property is not necessary for the purpose of ascertaining whether an offence under section 5, 6 or 17 has been committed, it may make an order requiring the release of the retained property.
- (3) An order under this section may contain whatever provision the court thinks appropriate for delaying its coming into force pending the making and determination of an appeal (including an application under section 111 of the Magistrates' Courts Act 1980 (c.43)).
- (4) If the court adjourns the hearing of an application under this section, it may make an order in respect of the retained property that lasts until the final hearing of the application or until any further order is made, if it considers it appropriate to do so.
- (5) Nothing in this section affects any other power of the court to make an order in respect of the retained property, including any power to make an order under section 1 of the Police (Property) Act 1897 (c.30).



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## 26 Appropriated property: compensation

- (1) A person (“P”) with an interest in anything of which an authorised officer of an enforcement authority has taken possession under section 23(1)(c) (“appropriated property”) may apply by way of complaint to any magistrates’ court for compensation.
- (2) Subsection (3) applies if on an application under this section the court is satisfied that—
  - (a) P has suffered loss or damage in consequence of the authorised officer’s taking possession of the appropriated property, or retaining it, in circumstances where doing so was not necessary for the purpose of ascertaining whether an offence under section 5, 6 or 17 had been committed, and
  - (b) the loss or damage is not attributable to the neglect or default of P.
- (3) The court may order the enforcement authority to pay compensation to P.

## 27 Fixed penalty notices

- (1) Where an authorised officer has reason to believe that a person has committed either of the following offences on premises or in a place or vehicle in relation to which the enforcement authority is authorised to act—
  - (a) an offence under section 5(1);
  - (b) an offence under section 17(5),the officer may give that person a fixed penalty notice in respect of the offence.
- (2) Where an authorised officer has reason to believe that a person has committed an offence under section 6(6) in relation to a vehicle being used for the purposes mentioned in subsection (4), in relation to which the enforcement authority is authorised to act, the officer may give that person a fixed penalty notice in respect of the offence.
- (3) A fixed penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a fixed penalty.
- (4) The purposes are the social, domestic or other private purposes of the person believed by the authorised officer to have committed the offence.
- (5) In the case of an offence that an authorised officer has reason to believe has been committed by a partnership, the references in subsections (1) and (2) to the person to whom a fixed penalty notice may be given are to be treated as references to the partnership.
- (6) In the case of an offence that an authorised officer has reason to believe has been committed by an unincorporated association other than a partnership, the references in subsections (1) and (2) to the person to whom a fixed penalty notice may be given are to be treated as references to the association.
- (7) In this section, “partnership” means—

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- (a) a partnership within the Partnership Act 1890 (c.39), or
- (b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24).

(8) For further provision about fixed penalties, see Schedule 1.

### General

## 28 Interpretation of this Chapter—

(1) In this Chapter—

“adult care home” (*“cartref gofal i oedolion”*) means premises at which a care home service within the meaning given by paragraph 1 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) is provided to persons aged 18 or over;

“adult hospice” (*“hosbis i oedolion”*) means premises wholly or mainly used for the provision of palliative care to persons aged 18 or over, who are suffering from a progressive disease in its final stages, by or behalf of an establishment the primary function of which is the provision of such care;

“authorised officer” (*“swyddog awdurdodedig”*) has the meaning given by section 18(5);

“child” (*“plentyn”*) means a person aged under 18;

“childcare” (*“gofal plant”*) means (subject to subsection (2)) any form of care for a child, other than care provided for a child by a parent, relative or foster parent of the child, and includes—

- (a) education for a child, and
- (b) any other supervised activity for a child;

“enforcement authority” (*“awdurdod gorfodi”*) is to be interpreted in accordance with section 18;

“hospital” (*“ysbyty”*) has the meaning given by section 206 of the National Health Service (Wales) Act 2006 (c.42);

“parent” (*“rhiant”*) includes any person who has parental responsibility (within the meaning of section 3 of the Children Act 1989 (c.41)) for a child;

“playground equipment” (*“cyfarpar maes chwarae”*) includes (for example) a swing, slide, sand-pit, or ramp, but does not include powered equipment (such as equipment powered by electric motor);

“premises” (*“mangre”*) includes—

- (a) any place;
- (b) a moveable structure other than a vehicle;
- (c) a stall;
- (d) a tent;
- (e) an offshore installation within the meaning given in the Mineral Workings (Offshore Installations) Act 1971 (c.61) (see section 12 of that Act);

“registered pupil” (*“disgybl cofrestredig”*) has the meaning given by section 434(5) of the Education Act 1996 (c.56);

“relative” (*“perthynas”*), in relation to a child, means a step-parent, grandparent, aunt, uncle, brother or sister (including any person who is in

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that relationship by virtue of a marriage or civil partnership or an enduring family relationship);

“school” (“ysgol”) has the meaning given by section 4 of the Education Act 1996 (c.56);

“smoking” and “smokes” (“ysmygu”) are to be read in accordance with section 4;

“vehicle” (“cerbyd”) includes a train, tram, vessel, hovercraft and aircraft;

“Wales” (“Cymru”) has the meaning given by section 158(1) of the Government of Wales Act 2006 (c.32).

(2) References in this Chapter to “childcare” do not include—

- (a) education (or any other supervised activity) provided by a school during school hours for a registered pupil, or
- (b) any form of health care for a child.

(3) For the purposes of subsection (1) a person is a foster parent in relation to a child if the person—

- (a) is a local authority foster parent (within the meaning given by section 197 of the Social Services and Well-being (Wales) Act 2014 (anaw 4)), or
- (b) fosters the child privately.

(4) References in this Chapter to a “dwelling” include land enjoyed with premises where the premises themselves constitute a dwelling, unless the land is agricultural land (within the meaning given by section 246 of the Renting Homes (Wales) Act 2016 (anaw 1)) exceeding 0.809 hectares.

(5) References in this Chapter, however expressed, to premises or vehicles which are (or are not) smoke-free (or treated as smoke-free), are to those premises or vehicles so far as they are (or are not) smoke-free (or treated as smoke-free) under or by virtue of this Chapter.

(6) Premises may be smoke-free by virtue of more than one section in this Chapter.

(7) Regulations may specify for the purpose of this Chapter what “enclosed”, “substantially enclosed” and “not enclosed or substantially enclosed” mean.

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## 29 Consequential amendments

For amendments consequential on this Chapter, see Schedule 2.

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PROSPECTIVE

## CHAPTER 2

### RETAILERS OF TOBACCO AND NICOTINE PRODUCTS

#### *Register of retailers of tobacco and nicotine products*

#### **30 Duty to maintain register of retailers of tobacco and nicotine products**

- (1) The registration authority must maintain a register of persons carrying on a tobacco or nicotine business at premises in Wales (“the register”).
- (2) The registration authority for this purpose is a person specified as such in regulations.
- (3) For the purposes of this Chapter “tobacco or nicotine business” means a business involving the sale by retail of tobacco or cigarette papers or nicotine products.
- (4) Each entry in the register in respect of a person carrying on a tobacco or nicotine business in Wales must state—
  - (a) the person's name and address;
  - (b) the address of each of the premises at which a tobacco or nicotine business is carried on by that person;
  - (c) whether the person is selling—
    - (i) tobacco or cigarette papers,
    - (ii) nicotine products, or
    - (iii) any combination of those items,
 at those premises;
  - (d) in the case of premises consisting of a moveable structure, a stall, a tent or a vehicle, the name of each local authority in whose area the business is carried on.
- (5) For the purpose of subsection (4)(a), a person's name and address is—
  - (a) in the case of an individual—
    - (i) the individual's name and, if different, the individual's trading name, and
    - (ii) the address of the individual's usual place of residence;
  - (b) in the case of a company—
    - (i) its name and, if different, its trading name, and
    - (ii) the address of its registered office;
  - (c) in the case of a partnership other than a limited liability partnership—
    - (i) the name of each partner and, if different, the partnership's trading name, and
    - (ii) the address of each partner's usual place of residence;
  - (d) in the case of a limited liability partnership—
    - (i) its registered name and, if different, its trading name, and
    - (ii) the address of its registered office.

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- (6) The register may include any other information that is information of a description required, by regulations under section 31(3)(b), to be included in an application for registration.
- (7) For the purposes of this Chapter—
  - (a) a person is registered if the person's name is entered in the register, and other related expressions are to be construed accordingly;
  - (b) references to a person's entry in the register are to the entry relating to that person in the register.
- (8) Regulations under subsection (2) may specify the Welsh Ministers as the registration authority.
- (9) In the case of premises consisting of a moveable structure, a stall, a tent or a vehicle, the address to be entered in the register in accordance with subsection (4)(a) is to be treated as the address of the premises for the purpose of subsection (4)(b).

### **31 Application for entry in the register**

- (1) An application may be made to the registration authority—
  - (a) for a person to be registered in respect of the carrying on of a tobacco or nicotine business, or
  - (b) if the applicant is already a registered person—
    - (i) to add further premises to the person's entry in the register, or
    - (ii) in the case of premises consisting of a moveable structure, a stall, a tent or a vehicle, to add another local authority to the person's entry in the register.
- (2) An application under subsection (1) must—
  - (a) state the applicant's name and address (for which see section 30(5));
  - (b) if the application is made under subsection (1)(a), state the address of each of the premises at which the applicant proposes to carry on a tobacco or nicotine business;
  - (c) if the application is made under subsection (1)(b)(i), state the address of each of the further premises at which the applicant proposes to carry on a tobacco or nicotine business;
  - (d) state whether the applicant proposes to sell—
    - (i) tobacco or cigarette papers,
    - (ii) nicotine products, or
    - (iii) any combination of those items,at the premises stated in accordance with paragraph (b) or (c);
  - (e) state whether the applicant proposes to carry on business in a way that involves the making of arrangements for tobacco, cigarette papers or nicotine products—
    - (i) to be delivered to premises in Wales, or
    - (ii) following a sale effected by telephone, the internet or other kind of electronic or other technology, to be collected from premises in Wales;
  - (f) in the case of premises consisting of a moveable structure, a stall, a tent or a vehicle—

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- (i) if the application is made under subsection (1)(a), state the name of each local authority in whose area the applicant proposes to carry on the tobacco or nicotine business, and
  - (ii) if the application is made under subsection (1)(b)(ii), state the name of each additional local authority in whose area the applicant proposes to carry on a tobacco or nicotine business.
- (3) Regulations may make provision—
  - (a) about the form of an application under subsection (1) and the way in which it is to be made;
  - (b) about other information that is to be included in an application (including, in the case of an application by a person who proposes to carry on a tobacco or nicotine business as described in subsection (2)(e), information relating to the nature of the arrangements concerned);
  - (c) requiring payment of a fee to accompany an application under subsection (1)(a) or (1)(b)(i).
- (4) Before making regulations under this section, the Welsh Ministers must—
  - (a) consider whether there are persons who appear to be representative of the interests of those likely to be affected by the regulations (“representative persons”), and
  - (b) carry out consultation with any representative persons whom the Welsh Ministers consider it appropriate to consult.
- (5) If the premises at which the applicant proposes to carry on a tobacco or nicotine business consist of a moveable structure, a stall, a tent or a vehicle, the address stated in the application in accordance with subsection (2)(a) is to be stated as the address of the premises for the purpose of subsection (2)(b) and (c).

### 32 Grant of application

- (1) The registration authority must grant an application made under section 31 unless subsection (2) or (3) applies.
- (2) The registration authority must not grant the application in so far as it relates to premises specified in the application in respect of which a restricted premises order made under section 12A of the Children and Young Persons Act 1933 (c.12) has effect.
- (3) The registration authority must not grant the application if a restricted sale order made under section 12B of the Children and Young Persons Act 1933 (c.12) has effect in respect of the applicant.
- (4) On granting an application made under section 31, the registration authority must make the appropriate entry or amendment to an entry in the register.

### 33 Duty to give notice of certain changes

- (1) A registered person must give the registration authority notice of any of the following matters—
  - (a) any change in the person's name or address from that stated in the register in accordance with section 30(4)(a);



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- (b) any change in what the person is selling from that stated in the person's entry in the register in accordance with section 30(4)(c);
  - (c) if the person stops carrying on a tobacco or nicotine business at premises stated in the person's entry in the register;
  - (d) in the case of a tobacco or nicotine business carried on from premises consisting of a moveable structure, a stall, a tent or a vehicle, if the person stops carrying on the business in the area of a local authority stated in the person's entry in the register.
- (2) A person stops carrying on a business for the purpose of subsection (1)(c) or (d) when that person stops doing so for a continuous period of no less than 28 days.
- (3) The notification referred to in subsection (1) must be given within a period of 28 days beginning with whichever of the following is applicable—
  - (a) the date of the change referred to in subsection (1)(a) or (b);
  - (b) the date on which the registered person stops carrying on the business at the premises in question or in the area of the local authority in question.
- (4) If a local authority becomes aware of any of the matters referred to in subsection (1) (a) to (d) in respect of a registered person carrying on a tobacco or nicotine business in its area, the local authority must give notice to the registration authority of that matter.

#### **34 Duty to revise the register**

- (1) The registration authority must revise the register—
  - (a) on receiving notice under section 33, to reflect the notice;
  - (b) to correct any inaccuracies in the register of which it becomes aware otherwise than by receiving notice under section 33.
- (2) But if the registration authority proposes to revise the register by amending or removing a person's entry, it must give notice of the proposed revision to the person.
- (3) The notice must give reasons for the proposed revision.
- (4) The registration authority must not amend or remove a person's entry in the register if the authority is satisfied, on the basis of information provided by the person to the authority within the period mentioned in subsection (5), that the person's entry is accurate.
- (5) The period is the period of 28 days beginning with the date of the notice given under subsection (2).
- (6) Regulations may provide for the registration authority to charge a fee in connection with revising the register under this section.

#### **35 Access to the register**

- (1) The registration authority must publish a list that sets out the name of each registered person and the address of each of the premises stated in the person's entry in the register as being premises at which a tobacco or nicotine business is carried on.
- (2) But in respect of a registered person carrying on a tobacco or nicotine business at premises consisting of a moveable structure, a stall, a tent or a vehicle, the list

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published under subsection (1) must, instead of the address of the premises, set out the name of each local authority stated in the person's entry in the register.

- (3) The registration authority must also make available to a local authority all other information contained in the register in so far as it relates to premises in the authority's area.

### **36 Excepted premises**

The provisions of this Chapter do not apply in relation to a tobacco or nicotine business so far as carried on at premises of a description specified in regulations.

### **37 Moveable structures etc.**

Regulations may provide for the application of this Chapter in relation to premises consisting of a moveable structure, a stall, a tent or a vehicle to be subject to such modifications as the Welsh Ministers consider necessary or expedient.

## *Offences*

### **38 Offences**

- (1) A person who carries on a tobacco or nicotine business at premises in Wales without being registered commits an offence.
- (2) A registered person who carries on a tobacco or nicotine business at premises in Wales other than premises stated in the person's entry in the register commits an offence.
- (3) Subsection (2) does not apply in the case of a tobacco or nicotine business carried on at premises consisting of a moveable structure, a stall, a tent or a vehicle.
- (4) A registered person who carries on a tobacco or nicotine business at premises consisting of a moveable structure, a stall, a tent or a vehicle in the area of a local authority other than one stated in the person's entry in the register commits an offence.
- (5) A registered person who fails, without reasonable excuse, to comply with section 33 (duty to notify certain changes) commits an offence.
- (6) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine.
- (7) A person guilty of an offence under subsection (2), (4) or (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

## *Enforcement*

### **39 Authorised officers**

References in this Chapter to an authorised officer are to any person (whether or not an officer of the local authority) authorised by a local authority for the purposes of this Chapter.



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#### **40 Powers of entry**

- (1) An authorised officer may enter premises in Wales at any reasonable time if the officer—
  - (a) has reasonable grounds for believing that an offence under section 38(1), (2) or (4) has been committed in the area of the local authority, and
  - (b) considers it necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) But this does not apply in relation to premises used wholly or mainly as a dwelling.
- (3) An authorised officer may not enter premises by force under this section.
- (4) An authorised officer must, if asked to do so, before entering premises under this section show evidence of the authorisation referred to in section 39.

#### **41 Warrant to enter dwelling**

- (1) A justice of the peace may exercise the power in subsection (2) in relation to premises in Wales used wholly or mainly as a dwelling if satisfied on sworn information in writing—
  - (a) that there are reasonable grounds for believing that an offence under section 38(1), (2) or (4) has been committed in the area of a local authority, and
  - (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) The justice may issue a warrant authorising an authorised officer of the local authority to enter the premises, if need be by force.
- (3) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.

#### **42 Warrant to enter other premises**

- (1) A justice of the peace may exercise the power in subsection (4) in relation to premises in Wales other than premises used wholly or mainly as a dwelling if satisfied on sworn information in writing—
  - (a) that there are reasonable grounds for believing that an offence under section 38(1), (2) or (4) has been committed in the area of a local authority,
  - (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed, and
  - (c) that a requirement set out in subsection (2) or (3) is met.
- (2) The requirement is that—
  - (a) a request to enter the premises has been, or is likely to be, refused, and
  - (b) notice of intention to apply for a warrant under this section has been given to the occupier or a person who reasonably appears to the local authority to be concerned in the management of the premises.
- (3) The requirement is that requesting to enter the premises, or the giving of notice of intention to apply for a warrant under this section, is likely to defeat the purpose of the entry.

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- (4) The justice may issue a warrant authorising an authorised officer of the local authority to enter the premises, if need be by force.
- (5) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.

#### **43 Supplementary provision about powers of entry**

- (1) An authorised officer entering premises under section 40, or by virtue of a warrant under section 41 or 42, may take such other persons and such equipment as the officer considers appropriate.
- (2) If the occupier of premises that an authorised officer is authorised to enter by a warrant under section 41 or 42 is present at the time the authorised officer seeks to execute the warrant—
  - (a) the occupier must be told the officer's name;
  - (b) the officer must produce to the occupier documentary evidence that the officer is an authorised officer;
  - (c) the officer must produce the warrant to the occupier;
  - (d) the officer must supply the occupier with a copy of it.
- (3) If premises that an authorised officer is authorised to enter by a warrant under section 41 or 42 are unoccupied, or if the occupier is temporarily absent, then on leaving the premises the officer must leave them as effectively secured against unauthorised entry as when the officer found them.

#### **44 Powers of inspection etc.**

- (1) An authorised officer entering premises under section 40, or by virtue of a warrant under section 41 or 42, may do any of the following if the officer considers it necessary for the purpose of ascertaining whether an offence under section 38(1), (2) or (4) has been committed—
  - (a) carry out inspections and examinations on the premises;
  - (b) require the production of anything on the premises, inspect it, and take and retain samples of or extracts from it;
  - (c) take possession of anything on the premises, and retain it for as long as the officer considers necessary for that purpose;
  - (d) require any person to give information, or afford facilities and assistance with respect to matters within the person's control.
- (2) If the authorised officer considers it necessary for the purpose of ascertaining whether an offence under section 38(1), (2) or (4) has been committed, the officer may arrange for anything produced under subsection (1)(b), or of which the officer has taken possession under subsection (1)(c), to be analysed.
- (3) If by virtue of subsection (1)(c) the authorised officer takes anything away from the premises, the officer must leave on the premises from which it was taken a statement—
  - (a) giving particulars of what has been taken and stating that the officer has taken possession of it, and
  - (b) identifying the person to whom a request for the return of the property may be made.

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- (4) The powers conferred by this section include the power—
  - (a) to copy documents found on the premises;
  - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents found on the premises that are stored electronically).
- (5) For this purpose, “documents” includes information recorded in any form; and references to documents found on the premises include—
  - (a) documents stored on computers or other electronic devices on the premises, and
  - (b) documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.
- (6) A person is not required by this section to answer any question or produce any document which the person would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England and Wales.

#### **45 Obstruction etc. of officers**

- (1) Any person who intentionally obstructs an authorised officer exercising functions under sections 40 to 44 commits an offence.
- (2) Any person who without reasonable cause fails—
  - (a) to provide an authorised officer with facilities that the authorised officer reasonably requires for the purpose of a requirement under section 44(1), or
  - (b) to comply with a requirement under section 44(1)(b) or (d),commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) This section is subject to section 44(6).

#### **46 Power to make test purchases**

An authorised officer may make such purchases and arrangements, and secure the provision of such services, as the officer considers necessary for the purposes of this Chapter.

#### **47 Retained property: appeals**

- (1) A person (“P”) with an interest in anything taken away under section 44(1)(c) (“retained property”) may apply by way of complaint to any magistrates' court for an order requiring it to be released, either to P or another person.
- (2) If on an application under this section the court is satisfied that the continued retention of the retained property is not necessary for the purpose of ascertaining whether an offence under section 38(1), (2) or (4) has been committed, it may make an order requiring the release of the retained property.
- (3) An order under this section may contain whatever provision the court thinks appropriate for delaying its coming into force pending the making and determination

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of an appeal (including an application under section 111 of the Magistrates' Courts Act 1980 (c.43)).

- (4) If the court adjourns the hearing of an application under this section, it may make an order in respect of the retained property that lasts until the final hearing of the application or until any further order is made, if it considers it appropriate to do so.
- (5) Nothing in this section affects any other power of the court to make an order in respect of the retained property, including any power to make an order under section 1 of the Police (Property) Act 1897 (c.30).

#### **48 Appropriated property: compensation**

- (1) A person ("P") with an interest in anything which an authorised officer of a local authority has taken possession of under section 44(1)(c) ("appropriated property") may apply by way of complaint to any magistrates' court for compensation.
- (2) Subsection (3) applies if on an application under this section the court is satisfied that—
  - (a) P has suffered loss or damage in consequence of the authorised officer's taking possession of the appropriated property, or retaining it, in circumstances where doing so was not necessary for the purpose of ascertaining whether an offence under section 38(1), (2) or (4) had been committed, and
  - (b) the loss or damage is not attributable to the neglect or default of P.
- (3) The court may order the local authority to pay compensation to P.

#### **49 Fixed penalty notices**

- (1) Where an authorised officer has reason to believe that a person has committed an offence under section 38(2), (4) or (5) in the local authority's area, the officer may give that person a fixed penalty notice in respect of the offence.
- (2) A fixed penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a fixed penalty.
- (3) In the case of an offence that an authorised officer has reason to believe has been committed by a partnership, the reference in subsection (1) to the person to whom a fixed penalty notice may be given is to be treated as a reference to the partnership.
- (4) In the case of an offence that an authorised officer has reason to believe has been committed by an unincorporated association other than a partnership, the reference in subsection (1) to the person to whom a fixed penalty notice may be given is to be treated as a reference to the association.
- (5) In this section, "partnership" means—
  - (a) a partnership within the Partnership Act 1890 (c.39), or
  - (b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24).
- (6) For further provision about fixed penalties, see Schedule 1.

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## Interpretation

### 50 Interpretation of this Chapter

(1) In this Chapter—

“authorised officer” (“*swyddog awdurdodedig*”) has the meaning given in section 39;

“limited liability partnership” (“*partneriaeth atebolrwydd cyfyngedig*”) means a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12);

“premises” (“*mangre*”) includes any place and any moveable structure, stall, tent or vehicle (other than a train, vessel, aircraft or hovercraft);

“the register” (“*y gofrestr*”) means the register maintained under section 30(1);

“registered” (“*cofrestredig*” and “*wedi ei gofrestru*”) has the meaning given in section 30(7);

“registration authority” (“*awdurdod cofrestru*”) means the person specified in regulations made under section 30(2);

“tobacco” (“*tybaco*”) includes cigarettes, any product containing tobacco and intended for oral or nasal use, and smoking mixtures intended as a substitute for tobacco; and “cigarette” (“*sigarét*”) includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking;

“tobacco or nicotine business” (“*busnes tybaco neu nicotin*”) has the meaning given in section 30(3);

“trading name” (“*enw masnachu*”) means a name under which a person carries on a tobacco or nicotine business.

(2) “Nicotine product”, for the purposes of this Chapter, means a product or description of product specified in regulations, but the following are not to be treated as being nicotine products—

- (a) tobacco;
- (b) cigarette papers;
- (c) any device which is intended to be used for the consumption of lit tobacco.

PROSPECTIVE

## CHAPTER 3

### PROHIBITION ON SALE OF TOBACCO AND NICOTINE PRODUCTS

#### 51 Restricted premises orders: tobacco or nicotine offence

In section 12D of the Children and Young Persons Act 1933 (c.12), after subsection (1) insert—

“(1A) In section 12A a “tobacco or nicotine offence” also means an offence specified in regulations made by the Welsh Ministers which is committed

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on any premises in Wales (which are accordingly “the premises in relation to which the offence is committed”).

- (1B) An offence may be specified in regulations under subsection (1A) only if—
- (a) the Welsh Ministers are satisfied that the offence is one that relates to the supply, sale, transport, display, offer for sale, advertising or possession of tobacco or nicotine products, and
  - (b) in the case of an offence that is triable only summarily, it is punishable by a fine of an amount corresponding to, or greater than, level 4 on the standard scale.
- (1C) Regulations under subsection (1A) may include incidental, consequential or transitional provision.
- (1D) Before making regulations under subsection (1A), the Welsh Ministers must—
- (a) consider whether there are persons who appear to be representative of the interests of those likely to have an interest in the regulations (“representative persons”), and
  - (b) carry out consultation with any representative persons whom the Welsh Ministers consider it appropriate to consult.
- (1E) The power of the Welsh Ministers to make regulations under subsection (1A) is exercisable by statutory instrument.
- (1F) A statutory instrument containing regulations made by the Welsh Ministers under subsection (1A) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.”

PROSPECTIVE

## CHAPTER 4

### HANDING OVER TOBACCO ETC. TO PERSONS UNDER 18

#### **52 Offence of handing over tobacco etc. to persons under 18**

- (1) A person (“A”) commits an offence if—
- (a) in connection with arrangements under section 53, A hands over in Wales tobacco, cigarette papers or nicotine products to a person aged under 18 (“B”),
  - (b) the handing over does not take place either—
    - (i) in the course of B's trade, profession, business or employment, or
    - (ii) in the presence of another person who is aged 18 or over,
  - (c) at the time of the handing over, A knows that tobacco or cigarette papers or nicotine products (whichever is the case) are being handed over, and
  - (d) when handed over, the tobacco, cigarette papers or nicotine products are not contained in a package that—
    - (i) is sealed, and



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- (ii) has an address on it, for the purpose of its delivery to that address in accordance with arrangements within section 53.
- (2) “Package” in subsection (1)(d) means a package in addition to the original package in which the tobacco, cigarette papers or nicotine products were supplied for the purpose of retail sale by their manufacturer or importer.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) Where a person (“the accused”) is charged with an offence under this section by reason of the accused's own conduct (and otherwise than by virtue of section 44 of the Magistrates' Courts Act 1980 (c.43) (aiders and abettors)) it is a defence for the accused to show—
  - (a) that the accused believed, when the handing over took place, that the person to whom the tobacco, cigarette papers or nicotine products were handed over, or another person present at the time of the handing over, was aged 18 or over, and
  - (b) either—
    - (i) that the accused had taken reasonable steps to establish the age of that person, or
    - (ii) that nobody could reasonably have suspected from that person's appearance that the person was aged under 18.
- (5) For the purposes of subsection (4)(b), the accused is to be treated as having taken reasonable steps to establish the age of a person if—
  - (a) the accused asked that person for evidence of that person's age, and
  - (b) the evidence would have convinced a reasonable person.
- (6) Where a person is charged with an offence under this section by reason of the act or default of another person, or by virtue of the application of section 44 of the Magistrates' Courts Act 1980 (c.43) (aiders and abettors), it is a defence to show that the person took reasonable precautions and exercised due diligence to avoid committing the offence.
- (7) In this section, “employment” means any employment, whether paid or unpaid, and includes—
  - (a) work under a contract for services or as an office holder, and
  - (b) work experience provided pursuant to a training course or programme or in the course of training for employment.

### **53 Arrangements in connection with handing over tobacco etc.**

- (1) Arrangements are within this section if, in relation to the handing over of tobacco, cigarette papers or nicotine products—
  - (a) they are arrangements for the tobacco, cigarette papers or nicotine products to be delivered to premises in Wales, and
  - (b) they are made in connection with the sale of the tobacco, cigarette papers or nicotine products concerned.
- (2) Arrangements are also within this section if, in relation to the handing over of tobacco, cigarette papers or nicotine products—

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- (a) they are arrangements for the tobacco, cigarette papers or nicotine products to be collected from premises in Wales, and
  - (b) they are made in connection with the sale of the tobacco, cigarette papers or nicotine products concerned.
- (3) But subsection (2) applies only where the sale concerned is effected by telephone, the internet or any other kind of electronic or other technology.

#### **54 Enforcement**

In section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 (c.23) (enforcement action by local authorities in England and Wales), in subsection (1)(a), after “persons under 18” insert “, and in the case of a local authority in Wales, section 52 of the Public Health (Wales) Act 2017 (offence of handing over tobacco etc. to persons under 18) ”.

#### **55 Interpretation of this Chapter**

In this Chapter—

“nicotine product” (“*cynnyrch nicotin*”) means a nicotine product the sale of which is for the time being prohibited in respect of the person to whom it is handed over by regulations under section 92 of the Children and Families Act 2014 (c.6) (prohibition of sale of products to persons under 18);

“tobacco” (“*tybaco*”) includes cigarettes, any product containing tobacco and intended for oral or nasal use, and smoking mixtures intended as a substitute for tobacco; and “cigarette” (“*sigarét*”) includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking.

## **PART 4**

### **SPECIAL PROCEDURES**

PROSPECTIVE

#### *Introduction*

#### **56 Overview of this Part**

- (1) This Part provides that certain individuals who perform special procedures (see section 57) in Wales are required to be licensed to do so by a local authority unless they are exempt (see section 60).
- (2) Section 62 makes provision for criteria that are to be met for an application for a licence to be granted.
- (3) Section 63 makes provision about the conditions to which a licence will be subject.



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- (4) Sections 65 to 68 set out the procedure for applying for a licence and for revoking a licence; and section 75 provides that a local authority must maintain a register of those individuals who are licensed.
- (5) Sections 69 to 74 make provision about approval of premises at which, or a vehicle in which, a special procedure is performed.
- (6) Section 76 enables a local authority to charge fees in relation to special procedure licences and approvals of premises and vehicles.
- (7) Sections 77 to 81 make provision about notices that may be served by a local authority in the case of a breach of the requirements of this Part, about compliance with notices and about appeals.
- (8) Section 82 makes provision about offences under this Part.
- (9) Sections 83 to 90 make general provision about the powers of local authorities to enforce the requirements of this Part, and sections 91 and 92 make provision about property retained under this Part.

## PROSPECTIVE

### *Meaning of special procedure*

#### **57 What is a special procedure?**

Each of the following is a special procedure for the purposes of this Part—

- (a) acupuncture;
- (b) body piercing;
- (c) electrolysis;
- (d) tattooing.

## PROSPECTIVE

### *Performance of special procedure: licensing requirement*

#### **58 Requirement for individual performing special procedure to be licensed**

- (1) The following requirements apply in respect of the performance of a special procedure in Wales.
- (2) An individual who performs a special procedure on someone else in the course of a business must do so under the authority of a special procedure licence, unless the individual performing the procedure is exempt from the requirement to be licensed in respect of that procedure.
- (3) An individual designated under section 61 who performs a special procedure on someone else must do so under the authority of a special procedure licence, whether or not the procedure is performed in the course of a business.

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- (4) For provision about exemption from the requirement to be licensed, see section 60.

## **59 General provision about special procedure licences**

- (1) A special procedure licence is a licence issued by a local authority under this Part.
- (2) For the purposes of this Part, a special procedure licence authorises the performance in Wales by the licence holder of the special procedure (or those special procedures) specified in the licence.
- (3) But a licence is not to be treated for the purposes of this Part as authorising the performance of a special procedure at premises or in a vehicle in Wales either occupied by, or to any extent under the management or control—
  - (a) of the individual performing the procedure (“P”), or
  - (b) where P performs the procedure under a contract of service or apprenticeship, or a contract for services with another person (“E”), of E,
 unless the conditions in subsection (4) are met.
- (4) The conditions are that the premises or vehicle—
  - (a) are identified in the licence, and
  - (b) are approved under section 70 in respect of the procedure.
- (5) But subsection (3) does not apply if, by virtue of regulations under section 69(8), the requirement in section 69(2) (procedure to be carried on only in approved premises or vehicle) does not apply in respect of the premises or vehicle concerned.
- (6) The period during which a special procedure licence authorises the performance of a special procedure is to be specified in the licence, and must be either—
  - (a) a period of no more than seven days, beginning with a date specified in the licence, or
  - (b) a period of three years, beginning with the date of the issue of the licence.
- (7) For provision about applications for special procedure licences, and about varying, renewing and revoking special procedure licences, see Schedule 3.
- (8) In this Part—
  - (a) references to the licence period, in relation to a special procedure licence, are to the period during which the licence authorises the performance of a special procedure;
  - (b) references to the licence holder, in relation to a special procedure licence, are to the individual to whom the licence is issued;
  - (c) references to a temporary licence are to a licence that authorises the performance of a special procedure for a period of no more than seven days.

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PROSPECTIVE

*Exemption from requirement to be licensed*

**60 Exempted individuals**

- (1) An individual who is a member of a profession within subsection (2) is to be treated as being exempt from the requirement to be licensed in respect of each special procedure other than any special procedure that is specified for this purpose in or under regulations in respect of members of that profession.
- (2) A profession within this subsection is one that is regulated by a body mentioned in paragraphs (a) to (ga) of section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c.17).
- (3) Regulations may provide that an individual—
  - (a) who is a member of a profession that is not within subsection (2) but which is specified in or under the regulations, or who is a worker of a description specified in or under the regulations, and
  - (b) who is registered, in the capacity of a member of that profession or a worker of that description, in a qualifying register,is to be treated as being exempt from the requirement to be licensed in respect of whatever special procedure is specified for this purpose, in or under the regulations, in respect of members of that profession or workers of that description.
- (4) Each of the following is a qualifying register—
  - (a) a register maintained by the Health and Care Professions Council that is specified in or under regulations;
  - (b) a voluntary register that is—
    - (i) accredited by the Professional Standards Authority for Health and Social Care under section 25G of the National Health Service Reform and Health Care Professions Act 2002 (c.17), and
    - (ii) specified in or under regulations.
- (5) Regulations under this section may make different provision for different purposes including (among other things) in respect of different descriptions of individual.

PROSPECTIVE

*Designation for purposes of licensing requirement*

**61 Designation of individual for the purposes of section 58(3)**

- (1) If the condition in subsection (2) is met, a local authority may give notice under this subsection to an individual (“P”), designating P for the purposes of section 58(3) in respect of a special procedure specified in the notice.
- (2) The condition is that the authority is satisfied that—
  - (a) P is likely to perform the procedure on someone else in Wales,

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- (b) the procedure as likely to be so performed by P presents or could present significant risk of harm to human health, and
  - (c) in order to remove or reduce that risk, it is appropriate to subject P to the requirement in section 58(3).
- (3) Notice under subsection (1) must—
  - (a) explain why the authority has decided to designate P,
  - (b) specify the date beginning with which the designation is to take effect, and
  - (c) prohibit P from performing the special procedure in question, as from the beginning of that date, otherwise than under the authority of a special procedure licence.
- (4) The notice must also state—
  - (a) that P may appeal under paragraph 18 of Schedule 3 against the decision, and
  - (b) the period within which an appeal may be brought.
- (5) The date specified under subsection (3)(b) may be the date of the notice, or a subsequent date.
- (6) References in this Part to a special procedure in respect of which an individual is designated are to the procedure specified in the notice under this section designating the individual.
- (7) A local authority may withdraw a designation under subsection (1).
- (8) If a local authority withdraws the designation of an individual under subsection (1), it must give the individual notice of this, specifying—
  - (a) the reasons for the withdrawal;
  - (b) the date with the expiry of which the withdrawal is to take effect.
- (9) If a designation of an individual under subsection (1) in respect of a special procedure is withdrawn, the prohibition imposed under subsection (3)(c) in respect of that procedure ceases to have effect with the expiry of the date specified under subsection (8)(b).

PROSPECTIVE

### *Licensing criteria and mandatory licensing conditions*

## **62 Licensing criteria**

- (1) Regulations must set out criteria that must be met on an application by an individual (an “applicant”) for a special procedure licence in order for the application to be granted (“licensing criteria”).
- (2) The licensing criteria specified in the regulations must be such as to require the applicant to demonstrate knowledge of—
  - (a) infection control and first aid, in the context of the special procedure to which the application relates;

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- (b) duties imposed, under or by virtue of this Part, on a person authorised by a special procedure licence to perform the special procedure to which the application relates.
- (3) The licensing criteria may also (among other things) relate to—
  - (a) an individual's eligibility for a licence (including by reference to, among other things, standards of competence);
  - (b) the premises or vehicle at or in which the performance of a special procedure is to be authorised, or at or in which equipment or material used in a special procedure is to be stored or prepared (including, among other things, facilities available there and standards of hygiene);
  - (c) equipment to be used in, or in connection with, the performance of a special procedure.
- (4) Regulations may require a local authority not to issue or renew a licence unless premises or a vehicle identified in the application have been inspected in accordance with the regulations for the purpose of determining compliance with licensing criteria.
- (5) Regulations under this section may make different provision for different purposes, including (among other things) in respect of—
  - (a) different descriptions of premises and vehicles;
  - (b) different descriptions of special procedure;
  - (c) different circumstances in which a special procedure is performed (including by reference to, among other things, the frequency or regularity with which a special procedure is performed, the duration of any period during which a special procedure is performed, and whether a special procedure is performed on a peripatetic basis, on a fixed site basis, on a mobile basis, on a temporary basis, or otherwise).

## 63 Mandatory licensing conditions

- (1) Regulations must set out mandatory licensing conditions that are to apply to special procedure licences.
- (2) The mandatory licensing conditions specified in the regulations must include conditions imposing requirements in connection with—
  - (a) the verification of the age of an individual on whom a special procedure is to be performed;
  - (b) infection control, standards of hygiene, and first aid;
  - (c) consultation to be carried out before and after a special procedure is performed;
  - (d) record keeping.
- (3) The conditions specified in the regulations must also include a condition prohibiting the performance of a special procedure in circumstances where the individual on whom the procedure would otherwise be performed is, or appears to be, intoxicated, whether by virtue of drink, drugs or any other means.
- (4) Mandatory licensing conditions may also make further provision relating to (among other things)—
  - (a) the premises or vehicle at or in which a special procedure is to be performed, or at or in which equipment or material used in a special procedure is to be

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- stored or prepared (including, among other things, facilities and equipment available there, and cleaning and maintenance);
  - (b) the way in which a special procedure is to be performed (including by reference to, among other things, equipment used in, or in connection with, its performance, and protective clothing);
  - (c) standards of competence relevant to performing a special procedure (including standards specified by reference to, among other things, qualifications or experience), or performing a special procedure upon a specified part of an individual's body;
  - (d) information to be provided by a licence holder (whether by display or otherwise), and to a licence holder, before and after a special procedure is performed;
  - (e) displaying a licence;
  - (f) information to be provided to a local authority in the case of the conviction of a licence holder for a relevant offence;
  - (g) circumstances in which an application for variation of a licence is to be made;
  - (h) the return of a licence, on its expiry, to the authority by which it was issued.
- (5) Regulations under this section may make different provision for different purposes, including (among other things) in respect of—
- (a) different descriptions of premises and vehicles;
  - (b) different descriptions of special procedure;
  - (c) different circumstances in which a special procedure is performed (including by reference to, among other things, the frequency or regularity with which a special procedure is performed, the duration of any period during which a special procedure is performed, and whether a special procedure is performed on a peripatetic basis, on a fixed site basis, on a mobile basis, on a temporary basis, or otherwise).
- (6) Each special procedure licence is to be subject to the applicable mandatory licensing conditions.
- (7) The applicable mandatory licensing conditions, in relation to a special procedure licence, are the mandatory licensing conditions applying in respect of the licence concerned as at the date of its issue under this Part.

## **64 Consultation about licensing criteria and mandatory licensing conditions**

Before making regulations under section 62 or 63, the Welsh Ministers must—

- (a) consider whether there are persons who appear to be representative of the interests of those likely to be affected by the regulations (“representative persons”), and
- (b) carry out consultation with any representative persons whom the Welsh Ministers consider it appropriate to consult.

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## PROSPECTIVE

*Issuing a special procedure licence***65 Mandatory grant or refusal of application for special procedure licence**

- (1) This section applies where an application for the issue of a special procedure licence authorising the performance of a special procedure is made to a local authority in accordance with Schedule 3.
- (2) If the authority is not satisfied that all of the applicable licensing criteria are met in respect of the performance of the procedure, on the basis specified in the application and at or in any premises or vehicle specified in the application, the authority must give the applicant notice that the application is refused so far as it relates to the performance of that procedure on that basis and at or in the premises or vehicle.
- (3) If the authority is satisfied that all of the applicable licensing criteria are met in respect of the performance of the procedure, on the basis specified in the application and at or in any premises or vehicle specified in the application, the authority must issue a special procedure licence to the applicant authorising the performance of the procedure on that basis and at or in the premises or vehicle.
- (4) The applicable licensing criteria, in relation to a special procedure specified in an application, are the licensing criteria applying to the performance of the procedure on the basis specified in the application.

**66 Discretion to grant application for special procedure licence**

- (1) The requirement to issue a special procedure licence in section 65(3) does not apply in the case of an applicant who has been convicted of a relevant offence.
- (2) For the purpose of determining whether an applicant has been convicted of a relevant offence, a conviction is to be taken to include a conviction by or before a court outside England and Wales; and references in this Part to a conviction, or to a person's having been convicted of an offence, are to be interpreted accordingly.
- (3) If the local authority is satisfied as described in section 65(3) in respect of an application, but the applicant has been convicted of a relevant offence, the 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.
- (4) In reaching its decision, the authority must have regard to—
  - (a) the nature and circumstances of the offence, and
  - (b) guidance issued by the Welsh Ministers under subsection (11).
- (5) If the local authority decides that the applicant's fitness has not been called into question as described in subsection (3) in respect of the performance of a procedure specified in the application, it must issue the licence in respect of the performance of that procedure.



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- (6) If the local authority decides that the applicant's fitness has been called into question as described in subsection (3) in respect of the performance of a procedure specified in the application—
  - (a) it must not issue the licence in respect of the performance of that procedure, and
  - (b) it must give notice to the applicant that the application is refused so far as it relates to the performance of that procedure.
- (7) But subsection (6) is subject to the requirements set out in paragraphs 15 and 16 of Schedule 3.
- (8) For the purposes of this Part, each of the following is a relevant offence—
  - (a) an offence under this Part or under Part 5 (intimate piercing);
  - (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 this Act.
- (9) But a conviction for a relevant offence is to be disregarded for the purposes of this Part if it is spent for the purposes of the Rehabilitation of Offenders Act 1974 (c.53).
- (10) Regulations may amend subsection (8) by adding, varying or removing a description of offence.
- (11) The Welsh Ministers must 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.

## **67 Grant or refusal of application for renewal**

Sections 65, 66 and 68 apply for the purposes of an application to renew a special procedure licence as if that application were an application for the issue of a licence.

## **PROSPECTIVE**

### *Revoking a special procedure licence*

## **68 Revocation of special procedure licence**

- (1) If a local authority is satisfied that the conditions in subsection (2), (3) or (4) are met, it may give notice to a licence holder—
  - (a) revoking a special procedure licence issued by it to the licence holder, or
  - (b) revoking a special procedure licence issued by it to the licence holder in so far as it authorises the performance of a particular special procedure.
- (2) The conditions are—



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- (a) that the licence holder has failed to comply with an applicable mandatory licensing condition, and
  - (b) that the non-compliance presents, or could present, significant risk of harm to human health.
- (3) The conditions are—
  - (a) that 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),
  - (b) that 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, and
  - (c) that, had the 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 (in the case of revocation as described in subsection (1)(a)), or would not have been issued in so far as it relates to the performance of a particular procedure (in the case of revocation as described in subsection (1)(b) in respect of the performance of that procedure).
- (4) The conditions are—
  - (a) that the licence holder made a statement that was false or misleading in connection with an application for the issue, variation or renewal of a special procedure licence, and
  - (b) had the authority known that the statement was false or misleading, the licence would either not have been issued at all (in the case of revocation as described in subsection (1)(a)), or would not have been issued in so far as it relates to the performance of a particular procedure (in the case of revocation as described in subsection (1)(b)).
- (5) A revocation under this section has effect—
  - (a) with the expiry of the period for bringing an appeal under Schedule 3 in respect of the revocation expires, if no appeal is brought under that Schedule within that period;
  - (b) with the date of the withdrawal of any appeal or further appeal brought in respect of the revocation, or the date of final determination of any unsuccessful appeal or further appeal brought in respect of the revocation, where the appeal or further appeal has been brought under Schedule 3 and no further appeal under that Schedule is available;
  - (c) with the expiry of the period for bringing a further appeal under Schedule 3, where an appeal brought under Schedule 3 in respect of the revocation is withdrawn or unsuccessful, and a further appeal under Schedule 3 is available but is not brought within that period.
- (6) For the purposes of subsection (5)(b) and (c) above, an appeal is brought under Schedule 3 if it is brought within the period provided for in that Schedule for bringing an appeal of the type concerned.
- (7) For provision about the procedure for revocations, see Schedule 3.

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## PROSPECTIVE

### *Approved premises and vehicles*

#### **69 Performance of special procedure in course of business: approval requirement**

- (1) A person carrying on a business in the course of which a special procedure is performed must comply with the requirements in subsections (2) and (3).
- (2) The first requirement is to ensure that the procedure, so far as carried on in the course of the business—
  - (a) in the case of a special procedure performed at premises, is performed at premises approved under section 70 in respect of the procedure;
  - (b) in the case of a special procedure performed in a vehicle, is performed in a vehicle approved under section 70 in respect of the procedure.
- (3) The second requirement is to ensure compliance with the applicable mandatory conditions of approval.
- (4) The applicable mandatory conditions of approval, for this purpose, are the mandatory approval conditions to which approval of the premises or vehicle concerned is subject. (For mandatory approval conditions, see section 70(3).)
- (5) Subsections (6) and (7) apply in the case of an exhibition, entertainment or other event—
  - (a) to which members of the public have access, and
  - (b) at which a special procedure is performed by a person in the course of a business.
- (6) The person who organises the exhibition, entertainment or event is to be treated for the purposes of this section as carrying on a business in the course of which the special procedure is performed.
- (7) The premises at which the exhibition, entertainment or event is held are to be treated for the purposes of this section as being the premises at which the special procedure is performed in the course of that business.
- (8) Regulations—
  - (a) may provide that either or both of the requirements in subsections (2) and (3) do not apply in respect of a description of premises, or vehicle, specified in the regulations;
  - (b) may provide for any one or more of subsections (5) to (7) to apply with modifications, or not to apply, in respect of a description of person, or a description of premises or vehicle, specified in the regulations.
- (9) For the purposes of subsection (8), premises or vehicles may be described by reference to any of the following (among other things)—
  - (a) the persons by whom they are managed or controlled;
  - (b) the nature of activities carried on at or in them (including, among other things, the range of special procedures performed at or in them);
  - (c) the different circumstances in which a special procedure is performed at or in them (including by reference to, among other things, the frequency or

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regularity with which a special procedure is performed at or in them, the duration of any period during which a special procedure is performed at or in them, and whether a special procedure is performed at or in them on a peripatetic basis, on a fixed site basis, on a mobile basis, on a temporary basis, or otherwise);

- (d) the number of individuals by whom special procedures are performed at or in them.

- (10) For the purposes of this section and section 70, an individual designated under section 61 in respect of a special procedure is to be treated as carrying on a business in the course of which that procedure is performed.

## **70 Approval of premises and vehicles in respect of performance of special procedure**

- (1) A local authority may, on an application to it by a person carrying on a business in the course of which a special procedure is or is likely to be performed in its area, by issuing a certificate under this section (an “approval certificate”), approve in respect of the special procedure premises or a vehicle that are within subsection (2).
- (2) Premises or a vehicle are within this subsection if—
  - (a) in the case of premises, they are in the area of the local authority;
  - (b) in the case of a vehicle, the local authority considers that the vehicle is, or is likely to be, driven, used or kept in the area of the local authority.
- (3) Regulations must make provision—
  - (a) for criteria that must be met for an application for approval to be granted;
  - (b) for circumstances in which an application for approval is to be granted;
  - (c) for conditions (“mandatory approval conditions”) to which an approval under this section is to be subject;
  - (d) about appealing against refusal of an application for approval.
- (4) The mandatory approval conditions may, among other things, include conditions relating to the inspection of premises and vehicles approved under this section, and the display of an approval certificate.
- (5) An approval certificate must specify a period for which, in the absence of any previous expiry under section 72 or 73, the approval to which it relates is to have effect, being either—
  - (a) a period of no more than seven days, beginning with the date on which the approval certificate is issued (the “approval date”), or
  - (b) a period of three years, beginning with the approval date.
- (6) Unless it previously ceases to have effect under section 72 or 73, approval under this section ceases to have effect with the expiry of that period.
- (7) Regulations may make provision about—
  - (a) the way in which applications for approval are to be made and dealt with (including for the payment of a fee in respect of an application, and for inspections to be carried out before an approval is granted);
  - (b) circumstances in which an application for approval must not be granted, or may be granted at the discretion of the authority to which the application is made;

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- (c) the renewal of approval;
  - (d) the variation of approval.
- (8) Regulations making provision as described in subsection (7)(a) may include (among other things)—
- (a) provision about how a local authority is to determine the amount of a fee payable in respect of an application;
  - (b) provision about the consequences of failure to comply with a requirement to pay a fee (including provision permitting the local authority to decline to proceed with the application).
- (9) Regulations under this section may make different provision for different purposes, including (among other things) in respect of—
- (a) different descriptions of premises and vehicles;
  - (b) different descriptions of special procedure;
  - (c) different circumstances in which a special procedure is performed (including by reference to, among other things, the frequency or regularity with which a special procedure is performed at premises or in a vehicle, the duration of any period during which a special procedure is performed at premises or in a vehicle, and whether a special procedure is performed on a peripatetic basis, on a fixed site basis, on a mobile basis, on a temporary basis, or otherwise).

## **71 Approval certificates**

- (1) An approval certificate must state—
- (a) the approval date;
  - (b) the special procedure in respect of which the premises (or vehicle) concerned are approved;
  - (c) the date with the expiry of which the approval will, unless it previously ceases to have effect under section 72 or 73, expire under section 70(6).
- (2) In the case of approval of premises, an approval certificate must also state the address of the premises.
- (3) In the case of approval of a vehicle, an approval certificate must also—
- (a) if the vehicle has a registration number, state that number;
  - (b) if the vehicle does not have a registration number, identify the vehicle in whatever way the authority issuing the certificate considers appropriate.
- (4) Regulations may make further provision about the form and content of approval certificates.
- (5) In this section, “approval date” has the same meaning as in section 70(5).

## **72 Voluntary termination of approval**

- (1) Where a person on whose application a local authority has approved premises or a vehicle under section 70, in respect of a special procedure, wishes the approval to cease to have effect, the person may give notice to that effect to the authority.
- (2) The notice must state the date with the expiry of which approval is to cease to have effect.

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- (3) Subject to any earlier expiry under section 70(6) or 73, the approval ceases to have effect with the expiry of the date specified in the notice.
- (4) An authority to which notice under this section is given must take reasonable steps for bringing the notice to the attention of any persons the authority thinks likely to be affected by the notice.
- (5) Regulations may make further provision about notice under this section, including (among other things) about information to be included in the notice.

### **73 Revocation of approval**

- (1) If a local authority is satisfied that both of the conditions in subsection (2) are met, it may give notice to a person (“P”) on whose application premises or a vehicle have been approved under section 70 by the authority, revoking the approval of the premises or vehicle under that section in respect of a special procedure specified in the notice.
- (2) The conditions are—
  - (a) that the mandatory approval conditions that apply in respect of the premises or vehicle have not been complied with, and
  - (b) that the non-compliance presents, or could present, significant risk of harm to human health.
- (3) Paragraphs 15 to 21 of Schedule 3 apply in respect of a revocation under this section as if the revocation were a revocation under section 68 (revocation of special procedure licence) and for this purpose references in those paragraphs—
  - (a) to a licence holder, are to be treated as references to P;
  - (b) to notice given under section 68, are to be treated as references to notice under subsection (1);
  - (c) to functions under section 68, are to be treated as references to functions under this section.
- (4) Revocation under this section has effect—
  - (a) with the expiry of the period for bringing an appeal under Schedule 3 in respect of the revocation expires, if no appeal is brought under that Schedule within that period;
  - (b) with the date of the withdrawal of any appeal or further appeal brought in respect of the revocation, or the date of final determination of any unsuccessful appeal or further appeal brought in respect of the revocation, where the appeal or further appeal has been brought under Schedule 3 and no further appeal under that Schedule is available;
  - (c) with the expiry of the period for bringing a further appeal under Schedule 3, where an appeal brought under Schedule 3 in respect of the revocation is withdrawn or unsuccessful, and a further appeal under Schedule 3 is available but is not brought within that period.

### **74 Revocation of approval: notification requirements**

- (1) A local authority that gives notice under one of the provisions specified in subsection (2) to a person in respect of a revocation, or a proposed revocation, of approval under section 70 must take reasonable steps for bringing the notice to the attention of any persons the authority thinks likely to be affected by the notice.

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- (2) The provisions are section 73 and paragraph 15(3) or 17 of Schedule 3 (as applied by section 73(3)).

## PROSPECTIVE

### *Register of special procedure licences and approved premises and vehicles*

#### **75 Duty to maintain register of special procedure licences and approved premises and vehicles**

- (1) A local authority must maintain and publish a register of—
  - (a) the special procedure licences issued by it that have not yet ceased to have effect, and
  - (b) the premises and vehicles currently approved by it under section 70.
- (2) Each entry in the register in respect of a licence must record—
  - (a) the name of the licence holder;
  - (b) the date on which the licence was issued;
  - (c) the procedure the performance of which is authorised by the licence;
  - (d) the licence period;
  - (e) in the case of a licence authorising the performance of a procedure at premises within section 59(3), the address of the premises at which the performance of the procedure is authorised;
  - (f) in the case of a licence authorising the performance of a procedure in a vehicle within section 59(3) that has a registration number, the registration number of the vehicle;
  - (g) in the case of a licence authorising the performance of a procedure in a vehicle within section 59(3) that does not have a registration number, whatever identifying details of the vehicle the authority considers appropriate.
- (3) Each entry in the register in respect of approved premises or a vehicle must record—
  - (a) the name of the person on whose application the approval was granted;
  - (b) in the case of an entry in respect of premises, the address of the premises;
  - (c) in the case of an entry in respect of a vehicle that has a registration number, the registration number of the vehicle;
  - (d) in the case of an entry in respect of a vehicle that does not have a registration number, whatever identifying details of the vehicle the authority considers appropriate;
  - (e) the procedure in respect of which the approval applies;
  - (f) the date on which the approval was granted;
  - (g) the duration of the approval.
- (4) The register may also include any other information that the authority maintaining it considers appropriate.
- (5) The Welsh Ministers may arrange for the duties imposed on local authorities by this section to be discharged by means of a central register kept by a local authority appointed pursuant to the arrangements.



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- (6) The Welsh Ministers may require local authorities to participate in and contribute towards the cost of any arrangements made under subsection (5).
- (7) The requirements that may be imposed on an authority under subsection (6) may include (among other things) a requirement to share information with the authority appointed to keep the central register.
- (8) For the purposes of this section, a “central register” is a register covering the areas of each local authority.

## PROSPECTIVE

### *Fees*

#### **76 Fees**

- (1) A local authority that has issued a special procedure licence may charge the licence holder a fee, either periodically or otherwise, for so long as the licence continues to have effect.
- (2) A local authority that has approved premises or a vehicle under section 70 may charge the person on whose application the approval was granted a fee, either periodically or otherwise, for so long as the approval continues to have effect.
- (3) The amount of a fee charged by a local authority under this section is to be determined by the authority, having regard to the costs incurred or expected to be incurred by the authority in connection with this Part.
- (4) Regulations may make provision about the way in which (subject to subsection (3)) a local authority is to determine the amount of the fee.
- (5) Regulations may make other provision in respect of fees charged under this section, including (among other things) in connection with—
  - (a) the way in which a fee is to be paid;
  - (b) repayment of a fee (or a proportion of it) in cases of overpayment;
  - (c) recovery of a fee due to an authority and unpaid.

## PROSPECTIVE

### *Stop notices*

#### **77 Stop notices**

- (1) This section applies if a local authority is satisfied—
  - (a) that an individual is performing a special procedure in the authority's area in breach of section 58(2) or (3) (requirement to be licensed), or
  - (b) that a person is carrying on a business, in the course of which a special procedure is performed in its area, in breach of the requirement in section 69(2) (approval requirement).



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- (2) The authority may give notice under this section to that individual or person (who is referred to in this section as “P”).
- (3) Notice given under this section is referred to in this Part as a stop notice.
- (4) A stop notice must state that the local authority is satisfied that P is in breach of (as the case may be) section 58(2) or (3) or the requirement in section 69(2), and—
  - (a) in a case where the local authority is satisfied as mentioned in subsection (1) (a), prohibit the performance of the procedure concerned by P anywhere in Wales, as from a date specified in the notice, otherwise than under the authority of a special procedure licence;
  - (b) in a case where the local authority is satisfied as mentioned in subsection (1) (b), prohibit the performance anywhere in Wales of the special procedure concerned in the course of the business carried on by P, as from a date specified in the notice, otherwise than at premises or in a vehicle approved under section 70.
- (5) A stop notice must also state—
  - (a) that P may appeal under section 81 against the notice, and
  - (b) the period within which an appeal may be brought.

## PROSPECTIVE

### *Remedial action notices*

#### **78 Special procedure licences: licence holder remedial action notices**

- (1) If a local authority by which a special procedure licence authorising the performance of a special procedure was issued is satisfied that the licence holder is in breach of an applicable mandatory licensing condition, it may give notice under this section to the licence holder.
- (2) Notice given under this section is referred to in this Part as a licence holder remedial action notice.
- (3) A licence holder remedial action notice must—
  - (a) state that the local authority is satisfied that the licence holder is in breach of an applicable mandatory licensing condition;
  - (b) specify the matters giving rise to the breach;
  - (c) specify steps to be taken by the licence holder in order to secure compliance with the applicable mandatory licensing conditions;
  - (d) specify a period (the “compliance period”) of not less than 14 days beginning with the date of the notice during which those steps are to be taken.
- (4) A licence holder remedial action notice must also state—
  - (a) that the licence holder may appeal under section 81 against the notice, and
  - (b) the period within which an appeal may be brought.
- (5) If the authority is satisfied that the breach of the condition presents, or could present, significant risk of harm to human health, the licence holder remedial action notice may

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also prohibit the performance of the procedure by the licence holder until the steps specified under subsection (3)(c) have been taken.

- (6) The prohibition may relate to the performance of the procedure by the licence holder in an area in Wales that is specified in the notice, or to its performance by the licence holder anywhere in Wales.
- (7) Where a licence holder remedial action notice has been given to a licence holder, no proceedings for an offence under section 82 are to be instituted during the compliance period in respect of—
  - (a) the breach that gave rise to the notice, or
  - (b) any continuation of that breach.
- (8) If the steps specified in a licence holder remedial action notice are taken during the compliance period, no proceedings for an offence under section 82 are to be instituted in respect of—
  - (a) the breach that gave rise to the notice, or
  - (b) any continuation of that breach prior to the taking of the steps specified in the notice.
- (9) But nothing in subsection (7) or (8) prevents proceedings for an offence under section 82 being instituted, at any time, in respect of the breach of a prohibition on the performance of a procedure that is included in a licence holder remedial action notice under subsection (5).

## **79 Approved premises and vehicles: premises remedial action notices**

- (1) If a local authority that has approved premises or a vehicle under section 70 is satisfied that a person is in breach of the requirement in section 69(3) (compliance with applicable mandatory conditions of approval) in respect of the premises or vehicle, it may give notice under this section to the person.
- (2) Notice given under this section to a person (“P”) is referred to in this Part as a premises remedial action notice.
- (3) A premises remedial action notice must—
  - (a) state that the local authority is satisfied that P is in breach of the requirement in section 69(3);
  - (b) specify the matters giving rise to the breach;
  - (c) specify steps to be taken by P in order to secure compliance with the requirement;
  - (d) specify a period (the “compliance period”) of not less than 14 days beginning with the date of the notice during which those steps are to be taken.
- (4) A premises remedial action notice must also state—
  - (a) that P may appeal under section 81 against the notice, and
  - (b) the period within which an appeal may be brought.
- (5) If the authority is satisfied that the breach of the requirement presents, or could present, significant risk of harm to human health, the premises remedial action notice may also prohibit the performance of a special procedure, until the steps specified under subsection (3)(c) have been taken, at the premises or (as the case may be) in the vehicle to which the notice relates.

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- (6) No proceedings for an offence under section 82 are to be instituted against P during the compliance period in respect of—
  - (a) the breach that gave rise to the notice, or
  - (b) any continuation of that breach.
- (7) If the steps specified in a premises remedial action notice are taken during the compliance period, no proceedings for an offence under section 82 are to be instituted against P in respect of—
  - (a) the breach that gave rise to the notice, or
  - (b) any continuation of that breach prior to the taking of the steps specified in the notice.
- (8) But nothing in subsection (6) or (7) prevents proceedings for an offence under section 82 being instituted, at any time, in respect of the breach of a prohibition on the performance of a procedure that is included in a premises remedial action notice under subsection (5).
- (9) If a premises remedial action notice given to a person prohibits the performance of a special procedure as described in subsection (5), the authority by which it was given must take reasonable steps for bringing the notice to the attention of any persons the authority thinks likely to be affected by the notice.

## **80 Completion certificate**

- (1) This section and section 81 apply where a local authority has given notice under section 78 or 79 to a person (“P”).
- (2) If the authority is satisfied that P has taken the steps specified in the notice, the authority must give a certificate to that effect to P (a “completion certificate”) discharging the notice.
- (3) P may at any time apply to the authority for a completion certificate.
- (4) The application—
  - (a) is to be made in whatever way the authority may require, and
  - (b) is to include whatever information the authority may require.
- (5) If a local authority refuses an application under subsection (3), it must give P notice that the application is refused.
- (6) The notice must—
  - (a) set out the authority's reasons for refusing the application,
  - (b) state that P may appeal under section 81 against the decision, and
  - (c) specify the period within which an appeal may be brought.
- (7) A local authority that gives a certificate or notice under this section must take reasonable steps for bringing the certificate or notice to the attention of any persons the authority thinks likely to be affected by it.

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PROSPECTIVE

*Appeals against stop notices and remedial action notices*

**81 Appeals**

- (1) A person (“P”) may appeal to a magistrates' court—
  - (a) against notice given to P under section 77;
  - (b) against notice given to P under section 78 or 79;
  - (c) if P is given notice under section 80(5), against the refusal of P's application for a completion certificate.
- (2) An appeal is to be made within the period of 21 days beginning with the date of the notice concerned.
- (3) An appeal is to be by way of complaint for an order, and in accordance with the Magistrates' Courts Act 1980 (c.43).
- (4) For the purposes of the time limit for making an appeal, the making of the complaint is to be treated as the making of the appeal.
- (5) On an appeal, the magistrates' court may—
  - (a) confirm the notice or refusal;
  - (b) in the case of an appeal against a notice given to P under section 77, 78 or 79, quash or vary the notice;
  - (c) in the case of an appeal against a refusal of an application for a completion certificate, quash the refusal;
  - (d) in any case, remit the case to the local authority to dispose of in accordance with directions given by the court;and may make such order as to costs as it thinks fit.
- (6) Where on an appeal under this section a magistrates' court quashes or varies a notice given to P by a local authority, or quashes the refusal of an application for a completion certificate, it may order the local authority to compensate P for loss suffered as the result of the service of the notice or (as the case may be) the refusal.
- (7) An appeal by either party against the decision of a magistrates' court on an appeal under this section may be brought to the Crown Court.
- (8) On an appeal to the Crown Court, the Crown Court may—
  - (a) confirm, vary or reverse the magistrates' court's decision;
  - (b) remit the case to the magistrates' court or the local authority to dispose of in accordance with directions given by the Crown Court.
- (9) The bringing of an appeal under this section against a notice given by a local authority does not suspend the effect of the notice.

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## PROSPECTIVE

### *Offences relating to licensing and approval system*

#### **82 Offences**

- (1) A person who contravenes section 58 (licensing requirement) commits an offence.
- (2) A person who contravenes a prohibition specified, under section 61(3)(c), in notice given under section 61(1) (designation of person for purposes of section 58(3)) commits an offence.
- (3) A person who, without reasonable cause, contravenes the requirement in section 69(2) (approval requirement) commits an offence.
- (4) A person who, without reasonable cause, contravenes a notice under section 77 (stop notices) commits an offence.
- (5) A person who, without reasonable cause, contravenes a notice under section 78 (licence holder remedial action notices) commits an offence.
- (6) A person who, without reasonable cause, contravenes a notice under section 79 (premises remedial action notice) commits an offence.
- (7) 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, and
  - (b) either knows, or is reckless as to whether, it is false or misleading,
 commits an offence.
- (8) In subsection (7), “false or misleading” means false or misleading in a material particular.
- (9) A person who commits an offence under this section is liable on summary conviction to a fine.

## PROSPECTIVE

### *Enforcement*

#### **83 Authorised officers**

References in sections 84 to 92 to an authorised officer are to any person (whether or not an officer of the local authority) authorised to exercise functions of a local authority under or by virtue of this Part, either—

- (a) by the authority, or
- (b) by any person with whom the authority has entered into arrangements for that person to exercise functions of the authority under this Part.

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#### **84 Powers of entry etc.**

- (1) An authorised officer may, if the officer considers it necessary for the purpose of the exercise of the local authority's functions under or by virtue of this Part, at any reasonable time enter any premises that are within subsection (4).
- (2) But this does not apply in relation to premises used wholly or mainly as a dwelling.
- (3) An authorised officer may not enter premises by force under this section.
- (4) Premises are within this subsection if the officer has reason to believe that—
  - (a) a special procedure has been, is being, or is likely to be performed at the premises, or
  - (b) material or equipment intended for use in, or in connection with, the performance of a special procedure is stored or prepared at the premises.
- (5) An authorised officer must, if asked to do so, before entering premises under this section show evidence of the authorisation referred to in section 83.
- (6) This section applies to a vehicle as if it were premises.

#### **85 Warrant to enter dwelling**

- (1) A justice of the peace may exercise the power in subsection (3) if satisfied on sworn information in writing that, for the purpose of the exercise of a local authority's functions under or by virtue of this Part, it is necessary to enter premises that—
  - (a) are used wholly or mainly as a dwelling, but
  - (b) are within subsection (2).
- (2) Premises are within this subsection if there is reason to believe that—
  - (a) a special procedure has been, is being, or is likely to be performed at the premises, or
  - (b) material or equipment intended for use in, or in connection with, the performance of a special procedure is stored or prepared at the premises.
- (3) The justice may issue a warrant authorising an authorised officer of the authority to enter the premises, if need be by force.
- (4) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.
- (5) This section applies to a vehicle as if it were premises.

#### **86 Warrant to enter other premises**

- (1) A justice of the peace may exercise the power in subsection (2) if satisfied on sworn information in writing—
  - (a) that, for the purpose of the exercise of a local authority's functions under or by virtue of this Part, it is necessary to enter premises that are not used wholly or mainly as a dwelling, and
  - (b) that a requirement set out in one or more of subsections (3) to (6) is met.
- (2) The justice may issue a warrant authorising an authorised officer of the authority to enter the premises, if need be by force.

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- (3) The requirement is that—
  - (a) a request to enter the premises has been, or is likely to be, refused, and
  - (b) notice of intention to apply for a warrant under this section has been given to the occupier or a person who reasonably appears to the local authority to be concerned in the management of the premises.
- (4) The requirement is that requesting to enter the premises, or the giving of notice of intention to apply for a warrant under this section, is likely to defeat the purpose of the entry.
- (5) The requirement is that the premises are unoccupied.
- (6) The requirement is that—
  - (a) the occupier of the premises is temporarily absent, and
  - (b) awaiting the occupier's return is likely to defeat the purpose of the entry.
- (7) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.
- (8) This section applies to a vehicle as if it were premises.

## **87 Supplementary provision about powers of entry**

- (1) An authorised officer entering premises by virtue of section 84, or by virtue of a warrant under section 85 or 86, may take such other persons and such equipment as the officer considers appropriate.
- (2) If the occupier of premises that an authorised officer is authorised to enter by a warrant under section 85 or 86 is present at the time the authorised officer seeks to execute the warrant—
  - (a) the occupier must be told the officer's name;
  - (b) the officer must produce to the occupier documentary evidence that the officer is an authorised officer;
  - (c) the officer must produce the warrant to the occupier;
  - (d) the officer must supply the occupier with a copy of it.
- (3) If premises that an authorised officer is authorised to enter by a warrant under section 85 or 86 are unoccupied, or if the occupier is temporarily absent, then on leaving the premises the officer must leave them as effectively secured against unauthorised entry as when the officer found them.
- (4) This section applies to a vehicle as if it were premises.

## **88 Powers of inspection etc.**

- (1) An authorised officer entering premises under section 84, or by virtue of a warrant under section 85 or 86, may do any of the following if the officer considers it necessary for the purpose of the exercise of the authority's functions under or by virtue of this Part—
  - (a) carry out inspections and examinations on the premises;
  - (b) require the production of anything on the premises, inspect it, and take and retain samples of or extracts from it;



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- (c) take possession of anything on the premises, and retain it for as long as the officer considers necessary for that purpose;
  - (d) require any person to give information, or afford facilities and assistance with respect to matters within the person's control.
- (2) If the authorised officer considers it necessary for the purpose of the exercise of the local authority's functions under or by virtue of this Part, the officer may arrange for anything produced under subsection (1)(b), or of which the officer has taken possession under subsection (1)(c), to be analysed.
- (3) If by virtue of subsection (1)(c) the authorised officer takes anything away from the premises, the officer must leave on the premises from which it was taken a statement—
  - (a) giving particulars of what has been taken and stating that the officer has taken possession of it, and
  - (b) identifying the person to whom a request for the return of the property may be made.
- (4) The powers conferred by this section include the power—
  - (a) to copy documents found on the premises;
  - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents found on the premises that are stored electronically).
- (5) For this purpose, “documents” includes information recorded in any form; and references to documents found on the premises include—
  - (a) documents stored on computers or other electronic devices on the premises, and
  - (b) documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.
- (6) A person is not required by this section to answer any question or produce any document which the person would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England and Wales.
- (7) This section applies to a vehicle as if it were premises.

## **89 Obstruction etc. of officers**

- (1) Any person who intentionally obstructs an authorised officer exercising functions under sections 84 to 88 commits an offence.
- (2) Any person who without reasonable cause fails—
  - (a) to provide an authorised officer with facilities that the authorised officer reasonably requires for the purpose of a requirement under section 88(1), or
  - (b) to comply with a requirement under section 88(1)(b) or (d),
 commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) This section is subject to section 88(6).

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## **90 Power to make test purchases**

An authorised officer may make such purchases and arrangements, and secure the provision of such services, as the officer considers necessary for the purpose of the exercise of the local authority's functions under or by virtue of this Part.

## **91 Retained property: appeals**

- (1) A person (“P”) with an interest in anything taken away under section 88(1)(c) by an authorised officer of a local authority (“retained property”) may apply by way of complaint to any magistrates' court for an order requiring it to be released, either to P or another person.
- (2) If, on an application under this section, the court is satisfied that the continued retention of the retained property is not necessary for the purpose of the exercise of the authority's functions under or by virtue of this Part, it may make an order requiring the release of the retained property.
- (3) An order under this section may contain whatever provision the court thinks appropriate for delaying its coming into force pending the making and determination of an appeal (including an application under section 111 of the Magistrates' Courts Act 1980 (c.43)).
- (4) If the court adjourns the hearing of an application under this section, it may make an order in respect of the retained property that lasts until the final hearing of the application or until any further order is made, if it considers it appropriate to do so.
- (5) Nothing in this section affects any other power of the court to make an order in respect of the retained property, including any power to make an order under section 1 of the Police (Property) Act 1897 (c.30).

## **92 Appropriated property: compensation**

- (1) A person (“P”) with an interest in anything of which an authorised officer of a local authority has taken possession under section 88(1)(c) (“appropriated property”) may apply by way of complaint to any magistrates' court for compensation.
- (2) Subsection (3) applies if, on an application under this section, the court is satisfied that—
  - (a) P has suffered loss or damage in consequence of the authorised officer's taking possession of the appropriated property, or retaining it, in circumstances where doing so was not necessary for the purpose of the exercise of the local authority's functions under or by virtue of this Part, and
  - (b) the loss or damage is not attributable to the neglect or default of P.
- (3) The court may order the local authority to pay compensation to P.

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PROSPECTIVE

*Amendment of meaning of special procedure*

**93 Power to add or remove special procedures**

- (1) Regulations may amend section 57 by—
  - (a) adding or removing a type or description of procedure to or from the list in that section, or
  - (b) varying a reference in that section to a type or description of procedure.
- (2) For this purpose a procedure may be described by reference to (among other things)—
  - (a) the description of individual by whom it is carried out;
  - (b) the description of individual on whom it is carried out.
- (3) The power to add a type or description of procedure to the list in section 57 by regulations under this section is to be exercised in respect of a procedure only if the Welsh Ministers consider—
  - (a) that the procedure is one that is capable of being performed for aesthetic purposes, or for purposes that the Welsh Ministers consider to be therapeutic, and
  - (b) that its performance for those purposes is capable of causing harm to human health.
- (4) Before making regulations under this section, the Welsh Ministers must—
  - (a) consider whether there are persons who appear to be representative of the interests of those likely to be affected by the regulations (“representative persons”), and
  - (b) carry out consultation with any representative persons whom the Welsh Ministers consider it appropriate to consult.
- (5) Regulations under this section may make amendments to this Part that are consequential upon the amendment to section 57 effected by the regulations.

*Interpretation*

**94 Interpretation of this Part**

- (1) In this Part—
  - “acupuncture” (“*aciwbigo*”) means the insertion of needles into an individual's tissue for remedial or therapeutic purposes, but excluding the insertion of needles into tissue for the purpose of injecting any substance;
  - “applicable mandatory licensing conditions” (“*amodau trwyddedu mandadol cymwys*”) has the meaning given in section 63(7);
  - “approval certificate” (“*tystysgrif gymeradwyo*”) has the meaning given in section 70;
  - “authorised officer” (“*swyddog awdurdodedig*”) has the meaning given in section 83;

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“body piercing” (“*tyllu'r corff*”) means the perforation of an individual's skin or mucous membrane, with a view to enabling—

- (a) jewellery, or
- (b) an object of a description prescribed in or under regulations,

to be attached to, implanted in, or removed from the individual's body;

“completion certificate” (“*tystyysgrif gwblhau*”) has the meaning given in section 80;

“electrolysis” (“*electrolysis*”) means the removal of an individual's body hair by passing an electric current through the root by means of an inserted needle or probe;

“licence holder” (“*deiliad trwydded*”) has the meaning given in section 59(8);

“licence period” (“*cyfnod y drwydded*”) has the meaning given in section 59(8);

“licensing criteria” (“*meini prawf trwyddedu*”) has the meaning given in section 62;

“mandatory approval conditions” (“*amodau cymeradwyo mandadol*”) has the meaning given in section 70;

“premises” (“*mangre*”) includes any place or moveable facility (but does not include a vehicle);

“relevant offence” (“*trosedd berthnasol*”) means an offence listed in section 66(8);

“special procedure” (“*triniaeth arbennig*”) has the meaning given in section 57;

“special procedure licence” (“*trwydded triniaeth arbennig*”) has the meaning given in section 59;

“tattooing” (“*tatwio*”) means the insertion into punctures made in an individual's skin, or mucous membrane, of any colouring material designed to leave a semi-permanent or permanent mark (including micro pigmentation);

“temporary licence” (“*trwydded dros dro*”) has the meaning given in section 59;

“vehicle” (“*cerbyd*”) includes—

- (a) a trailer, a semi-trailer, or other thing that is designed or adapted to be towed by another vehicle;
- (b) anything on a vehicle;
- (c) a detachable part of a vehicle;
- (d) a container or other structure designed or adapted to be carried by or on another vehicle.

(2) For the purposes of the definition of “body piercing” in subsection (1), the reference to perforating an individual's skin or mucous membrane includes a reference to breaching the integrity of the skin or mucous membrane in any way, including (among other things) by way of puncture or incision.

(3) Regulations under subsection (1) may prescribe an object or description of object by reference to (among other things) the part of the body on which the perforation is performed.

(4) For the purposes of this Part—

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- (a) a special procedure is performed on a fixed site basis if it is performed at premises that—
    - (i) are either occupied by, or to any extent under the management or control of, the individual performing the procedure (“P”), or
    - (ii) where P performs the procedure under a contract of service or apprenticeship, or a contract for services, with another person (“E”), are either occupied by, or to any extent under the management or control of, E;
  - (b) a special procedure is performed on a mobile basis if it is performed in a vehicle;
  - (c) a special procedure is performed on a peripatetic basis if it is performed at various different premises that are not within paragraph (a)(i) or (ii);
  - (d) a special procedure is performed on a temporary basis if—
    - (i) it is performed in the course of an entertainment, exhibition or other event, to which members of the public have access, and
    - (ii) the period during which it is performed at that entertainment, exhibition or event does not exceed seven days.
- (5) In this Part, references to harm to human health include (among other things) references to—
- (a) harm to an individual's physical health arising through (among other things)—
    - (i) physical injury,
    - (ii) exposure to any form of infection or contamination, or
    - (iii) engendering or increasing susceptibility to any form of infection or contamination;
  - (b) harm to an individual's mental health.

#### Commencement Information

**I3** [S. 94](#) in force at 1.2.2018 by [S.I. 2018/1](#), [art. 2\(b\)](#)

## PART 5

### INTIMATE PIERCING

#### *Offences related to intimate piercing*

#### **95 Offence of performing or making arrangements to perform an intimate piercing on a child**

- (1) It is an offence for a person in Wales to—
  - (a) perform an intimate piercing on a person who is under the age of 18, or
  - (b) make arrangements to perform an intimate piercing, in Wales, on a particular person who is under the age of 18.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine.

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- (3) Where a person (“the accused”) is charged with an offence under this section by reason of the accused's own conduct (and otherwise than by virtue of the application of section 44 of the Magistrates' Courts Act 1980 (c.43) (aiders and abettors)) it is a defence for the accused to show—
- (a) that the accused believed that the person on whom the piercing referred to in subsection (1)(a) was performed, or in respect of whom the arrangements referred to in subsection (1)(b) were made, was aged 18 or over, and
  - (b) either—
    - (i) that the accused had taken reasonable steps to establish the age of that person, or
    - (ii) that nobody could reasonably have suspected from that person's appearance that the person was under the age of 18.
- (4) For the purposes of subsection (3)(b)(i), the accused (in the case of an offence under subsection (1)(a)) is to be treated as having taken reasonable steps to establish the age of another person if—
- (a) the accused asked that person for evidence of that person's age, and
  - (b) the evidence would have convinced a reasonable person.
- (5) Where a person is charged with an offence under this section by reason of the act or default of another person, or by virtue of the application of section 44 of the Magistrates' Courts Act 1980 (c.43) (aiders and abettors), it is a defence to show that the person took reasonable precautions and exercised due diligence to avoid committing the offence.

#### Commencement Information

**I4** [S. 95](#) in force at 1.2.2018 by [S.I. 2018/1](#), [art. 2\(a\)](#)

## 96 What is an intimate piercing?

- (1) For the purposes of section 95, an intimate piercing is a body piercing performed on an intimate body part listed in subsection (2), where performed otherwise than in the course of a medical procedure.
- (2) The intimate body parts are the—
- (a) anus;
  - (b) breast (including the nipple and areola);
  - (c) buttock;
  - (d) natal cleft;
  - (e) penis (including the foreskin);
  - (f) perineum;
  - (g) pubic mound;
  - (h) scrotum;
  - (i) tongue;
  - (j) vulva.
- (3) In this section “body piercing” has the meaning given in section 94.

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- (4) For the purposes of this section a medical procedure is a procedure carried out by a registered medical practitioner, registered nurse or registered midwife, for the purposes of, or in connection with—
- (a) the diagnosis, prevention, monitoring, treatment or alleviation of disease, ill-health, disability, or other physical or mental abnormality, or
  - (b) birth control.

#### Commencement Information

**I5** [S. 96](#) in force at 1.2.2018 by [S.I. 2018/1](#), [art. 2\(a\)](#)

### Enforcement

#### 97 Enforcement action by local authorities

- (1) A local authority may—
- (a) bring prosecutions in respect of offences in its area under section 95;
  - (b) investigate complaints in respect of alleged offences in its area under section 95;
  - (c) take any other steps with a view to reducing the incidence of offences under section 95 in its area.
- (2) A local authority must—
- (a) consider, at least once in every period of twelve months, the extent to which it is appropriate for the authority to carry out in its area a programme of enforcement action in relation to section 95, and
  - (b) to the extent that it considers it appropriate to do so, carry out such a programme.
- (3) For the purposes of subsection (2), a programme of enforcement action in relation to section 95 is a programme involving the taking of all or any of the steps referred to in subsection (1).
- (4) For the purpose of the exercise of its functions under subsection (2), 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.

#### Commencement Information

**I6** [S. 97](#) in force at 1.2.2018 by [S.I. 2018/1](#), [art. 2\(a\)](#)

#### 98 Authorised officers

References in this Part to an authorised officer are to any person (whether or not an officer of the local authority) authorised by a local authority for the purposes of this Part.



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#### Commencement Information

**I7** [S. 98](#) in force at 1.2.2018 by [S.I. 2018/1](#), [art. 2\(a\)](#)

### 99 Powers of entry

- (1) A constable or authorised officer may enter premises at any reasonable time if the constable or authorised officer—
  - (a) has reasonable grounds for believing that an offence under section 95 has been committed, and
  - (b) considers it necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) But this does not apply in relation to premises used wholly or mainly as a dwelling.
- (3) A person referred to in subsection (1) may not enter premises by force under this section.
- (4) An authorised officer must, if asked to do so, before entering premises under this section show evidence of the authorisation referred to in section 98.
- (5) In this section and in sections 100 to 103, “premises” includes any place and any vehicle (other than an aircraft or hovercraft), stall or moveable structure.

#### Commencement Information

**I8** [S. 99](#) in force at 1.2.2018 by [S.I. 2018/1](#), [art. 2\(a\)](#)

### 100 Warrant to enter dwelling

- (1) A justice of the peace may exercise the power in subsection (2) in relation to premises in Wales used wholly or mainly as a dwelling if satisfied on sworn information in writing—
  - (a) that there are reasonable grounds for believing than an offence under section 95 has been committed, and
  - (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed.
- (2) The justice may issue a warrant authorising a constable or authorised officer to enter the premises, if need be by force.
- (3) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.

#### Commencement Information

**I9** [S. 100](#) in force at 1.2.2018 by [S.I. 2018/1](#), [art. 2\(a\)](#)

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## 101 Warrant to enter other premises

- (1) A justice of the peace may exercise the power in subsection (2) in relation to premises in Wales other than premises used wholly or mainly as a dwelling if satisfied on sworn information in writing—
  - (a) that there are reasonable grounds for believing that an offence under section 95 has been committed,
  - (b) that it is necessary to enter the premises for the purpose of ascertaining whether such an offence has been committed, and
  - (c) that a requirement set out in one or more of subsections (3) to (6) is met.
- (2) The justice may issue a warrant authorising a constable or authorised officer to enter the premises, if need be by force.
- (3) The requirement is that—
  - (a) a request to enter the premises has been, or is likely to be, refused, and
  - (b) notice of intention to apply for a warrant under this section has been given to the occupier or a person who reasonably appears to the justice of the peace to be concerned in the management of the premises.
- (4) The requirement is that requesting to enter the premises, or the giving of notice of intention to apply for a warrant under this section, is likely to defeat the purpose of the entry.
- (5) The requirement is that the premises are unoccupied.
- (6) The requirement is that—
  - (a) the occupier of the premises is temporarily absent, and
  - (b) awaiting the occupier's return is likely to defeat the object of the entry.
- (7) The warrant continues in force until the end of the period of 28 days beginning with the date on which it was issued.

### Commencement Information

**I10** S. 101 in force at 1.2.2018 by S.I. 2018/1, art. 2(a)

## 102 Supplementary provision about powers of entry

- (1) A person entering premises by virtue of section 99, or by virtue of a warrant under section 100 or 101, may take such other persons and such equipment as the person considers appropriate.
- (2) If the occupier of premises that a person is authorised to enter by a warrant under section 100 or 101 is present at the time the person seeks to execute the warrant—
  - (a) the occupier must be told the person's name;
  - (b) if not a constable in uniform, the person must produce to the occupier documentary evidence that the person is a constable or authorised officer;
  - (c) the person must produce the warrant to the occupier;
  - (d) the person must supply the occupier with a copy of it.
- (3) If premises that a person is authorised to enter by a warrant under section 100 or 101 are unoccupied, or if the occupier is temporarily absent, then on leaving the premises

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the person must leave them as effectively secured against unauthorised entry as when the person found them.

#### Commencement Information

**I11** S. 102 in force at 1.2.2018 by S.I. 2018/1, art. 2(a)

### 103 Powers of inspection etc.

- (1) A constable or authorised officer entering premises under section 99, or by virtue of a warrant under section 100 or 101, may do any of the following if the constable or authorised officer considers it necessary for the purpose of ascertaining whether an offence under section 95 has been committed—
  - (a) carry out inspections and examinations on the premises;
  - (b) require the production of anything on the premises, inspect it, and take and retain samples of or extracts from it;
  - (c) take possession of anything on the premises, and retain it for as long as the constable or authorised officer considers necessary for that purpose;
  - (d) require any person to give information, or afford facilities and assistance with respect to matters within the person's control.
- (2) If by virtue of subsection (1)(c) a constable or authorised officer takes anything away from the premises, the constable or authorised officer must leave on the premises from which it was taken a statement—
  - (a) giving particulars of what has been taken and stating that the constable or officer has taken possession of it, and
  - (b) identifying the person to whom a request for the return of the property may be made.
- (3) The powers conferred by this section include the power—
  - (a) to copy documents found on the premises;
  - (b) to impose requirements as to how documents are provided (which may include requirements to provide legible copies of documents found on the premises that are stored electronically).
- (4) For this purpose, “documents” includes information recorded in any form; and references to documents found on the premises include—
  - (a) documents stored on computers or other electronic devices on the premises, and
  - (b) documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.
- (5) A person is not required by this section to answer any question or produce any document which the person would be entitled to refuse to answer or produce in or for the purposes of proceedings in a court in England and Wales.

#### Commencement Information

**I12** S. 103 in force at 1.2.2018 by S.I. 2018/1, art. 2(a)

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## 104 Obstruction etc. of constable or officer

- (1) Any person who intentionally obstructs a constable or authorised officer exercising functions under sections 99 to 103 commits an offence.
- (2) Any person who without reasonable cause fails—
  - (a) to provide a constable or authorised officer with facilities that the constable or authorised officer reasonably requires for the purpose of a requirement under section 103(1), or
  - (b) to comply with a requirement under section 103(1)(b) or (d),
 commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) This section is subject to section 103(5).

### Commencement Information

**I13** [S. 104](#) in force at 1.2.2018 by [S.I. 2018/1](#), [art. 2\(a\)](#)

## 105 Power to make test purchases

An authorised officer may make such purchases and arrangements, and secure the provision of such services, as the officer considers necessary for the purpose of the exercise of the local authority's functions under or by virtue of this Part.

### Commencement Information

**I14** [S. 105](#) in force at 1.2.2018 by [S.I. 2018/1](#), [art. 2\(a\)](#)

## 106 Retained property: appeals

- (1) A person (“P”) with an interest in anything taken away under section 103(1)(c) (“retained property”) may apply by way of complaint to any magistrates' court for an order requiring it to be released, either to P or another person.
- (2) If, on an application under this section, the court is satisfied that the continued retention of the retained property is not necessary for the purpose of ascertaining whether an offence under section 95 has been committed, it may make an order requiring the release of the retained property.
- (3) An order under this section may contain whatever provision the court thinks appropriate for delaying its coming into force pending the making and determination of an appeal (including an application under section 111 of the Magistrates' Courts Act 1980 (c.43)).
- (4) If the court adjourns the hearing of an application under this section, it may make an order in respect of the retained property that lasts until the final hearing of the application or until any further order is made, if it considers it appropriate to do so.
- (5) Nothing in this section affects any other power of the court to make an order in respect of the retained property, including any power to make an order under section 1 of the

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Police (Property) Act 1897 (c.30) (power to make orders with respect to property in possession of police).

#### Commencement Information

**I15** S. 106 in force at 1.2.2018 by S.I. 2018/1, art. 2(a)

### 107 Appropriated property: compensation

- (1) A person (“P”) with an interest in anything of which an authorised officer or a constable (“an enforcement officer”) has taken possession under section 103(1)(c) (“appropriated property”) may apply by way of complaint to any magistrates' court for compensation.
- (2) Subsection (3) applies if, on an application under this section, the court is satisfied that—
  - (a) P has suffered loss or damage in consequence of the enforcement officer's taking possession of the appropriated property, or retaining it, in circumstances where doing so was not necessary for the purpose of ascertaining whether an offence under section 95 had been committed, and
  - (b) the loss or damage is not attributable to the neglect or default of P.
- (3) The court may order compensation to be paid to P—
  - (a) where the enforcement officer is an authorised officer of a local authority, by the local authority, or
  - (b) where the enforcement officer is a constable, by the chief constable of the police force of which the constable is a member.
- (4) The reference in subsection (3) to a “police force” is to a police force for an area that is a police area for the purposes of section 1 of the Police Act 1996 (c.16).

#### Commencement Information

**I16** S. 107 in force at 1.2.2018 by S.I. 2018/1, art. 2(a)

PROSPECTIVE

## PART 6

### HEALTH IMPACT ASSESSMENTS

#### 108 Requirement to carry out health impact assessments

- (1) Regulations must make provision about the carrying out of health impact assessments by public bodies.
- (2) A health impact assessment is an assessment of the likely effect, both in the short term and in the long term, of a proposed action or decision on the physical and mental health of the people of Wales or of some of the people of Wales.

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- (3) The regulations must specify—
  - (a) the circumstances in which a public body must carry out a health impact assessment;
  - (b) the way in which a health impact assessment is to be carried out.
- (4) The regulations may require the Public Health Wales National Health Service Trust to give assistance to another public body carrying out a health impact assessment.
- (5) The regulations may make provision about how the assistance is to be given, including (among other things) about when it is to be given.
- (6) The regulations may make provision which applies subject to exceptions specified in the regulations.
- (7) Before making regulations under this section, the Welsh Ministers must—
  - (a) consider whether there are persons who appear to be representative of the interests of those likely to be affected by the regulations (“representative persons”), and
  - (b) carry out consultation with any representative persons whom the Welsh Ministers consider it appropriate to consult.

#### **109 Health impact assessments: publication and taking into account**

- (1) Where a public body has carried out a health impact assessment in accordance with regulations under section 108 it must—
  - (a) publish the assessment, and
  - (b) take the assessment into account when exercising those functions in connection with which the assessment was carried out.
- (2) When taking the assessment into account, the public body must act in accordance with the sustainable development principle.
- (3) For the purpose of subsection (2), the reference to acting in accordance with the sustainable development principle is to be construed in accordance with section 5 of the Well-being of Future Generations (Wales) Act 2015 (anaw 2).
- (4) Regulations may make provision about publishing assessments, including (among other things) about when assessments are to be published.

#### **110 Meaning of “public body”**

- (1) For the purposes of sections 108 and 109, each of the following persons is a “public body”—
  - (a) the Welsh Ministers;
  - (b) a local authority;
  - (c) a Local Health Board;
  - (d) the following National Health Service Trusts—
    - (i) Public Health Wales;
    - (ii) Velindre;
  - (e) a National Park authority for a National Park in Wales;
  - (f) a Welsh fire and rescue authority;
  - (g) the Natural Resources Body for Wales;

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- (h) the Higher Education Funding Council for Wales;
  - (i) the Arts Council of Wales;
  - (j) the Sports Council for Wales;
  - (k) the National Library of Wales;
  - (l) the National Museum of Wales.
- (2) Regulations may amend subsection (1) by—
- (a) adding a person,
  - (b) removing a person, or
  - (c) amending a reference to a person.
- (3) But the regulations may not amend subsection (1) by adding a person unless that person exercises functions of a public nature.
- (4) If the regulations amend subsection (1) so as to add a person who has functions of a public nature and other functions, sections 108 and 109 apply to that person only in relation to those of its functions which are of a public nature.
- (5) In this section—
- “Local Health Board” (“*Bwrdd Iechyd Lleol*”) means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c.42);
  - “Welsh fire and rescue authority” (“*awdurdod tân ac achub yng Nghymru*”) means an authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c.21) or a scheme to which section 4 of that Act applies.

VALID FROM 01/04/2019

## PART 7

### PHARMACEUTICAL SERVICES

#### 111 Pharmaceutical needs assessments

- (1) After section 82 of the National Health Service (Wales) Act 2006 (c.42) (arrangements for additional pharmaceutical services: terms and conditions), insert—

##### “82A Pharmaceutical needs assessments

- (1) A Local Health Board must prepare and publish an assessment of needs for pharmaceutical services in its area.
- (2) A Local Health Board must—
  - (a) keep the assessment most recently published by it under subsection (1) under review, and
  - (b) revise it as appropriate.
- (3) Regulations must—



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- (a) specify a date by which a Local Health Board is to prepare and publish its first assessment under subsection (1);
  - (b) make provision about circumstances in which a Local Health Board is to review and if appropriate revise its assessment (and may make such provision by reference to, among other things, a period within which or following which a Local Health Board is to review and if appropriate revise its assessment);
  - (c) make provision about the way in which an assessment is to be published.
- (4) The regulations may make other provision about the preparation, publication, review and revision of an assessment under subsection (1), including (among other things) about—
- (a) the information to be contained in an assessment (which may include, among other things, information relating to persons with whom a Local Health Board has entered into a general medical services contract);
  - (b) the extent to which an assessment is to take account of likely future needs and of other matters;
  - (c) consultation to be carried out in connection with an assessment;
  - (d) procedural requirements.”
- (2) In section 203 of the National Health Service (Wales) Act 2006 (c.42) (orders, regulations and directions), after subsection (6) insert—
- “(6A) A statutory instrument containing the first regulations under section 82A (pharmaceutical needs assessments) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.”

## 112 Pharmaceutical lists

- (1) Section 83 of the National Health Service (Wales) Act 2006 (c.42) (regulations as to pharmaceutical services) is amended as follows.
- (2) In subsection (2), in paragraph (c), for the words from “satisfied,” to the end of the paragraph, substitute “ satisfied as mentioned in subsection (2B), and ”.
- (3) After subsection (2) insert—
- “(2A) The regulations may specify persons or descriptions of persons who are not to be included in a list prepared by virtue of subsection (2)(a).
- (2B) The Local Health Board is satisfied as mentioned in this subsection if, having regard to the assessment most recently published by it under section 82A and to any matters specified in the regulations, it is satisfied that granting the application would meet a need in its area for the services, or some of the services, specified in the application.
- (2C) In relation to cases where the Local Health Board is satisfied as mentioned in subsection (2B), the regulations may make provision as to—
- (a) the procedure for determining whether to grant the application;
  - (b) matters to be taken into account for the purpose of determining whether to grant the application.”

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(4) After subsection (3) insert—

“(3A) The regulations may prescribe circumstances in which two or more applications referred to in subsection (2)(c)(i) or (ii) may or must be considered together by the Local Health Board.”

(5) In subsection (4)—

- (a) for the words from “include” to “the case” substitute “ make provision for the Local Health Board to take into account prescribed matters ”;
- (b) omit paragraph (a);
- (c) in paragraph (b), for “they” substitute “ two or more applications referred to in subsection (2)(c)(i) or (ii) ”;
- (d) in paragraph (c), for “subsection (2)(c)” substitute “ subsection (2B) ”.

(6) After subsection (4) insert—

“(4A) The regulations may in particular make the provision mentioned in subsection (5), with or without modifications.”

(7) In subsection (6)—

- (a) before paragraph (a) insert—
  - “(za) as to circumstances in which the Local Health Board may invite applications for inclusion in a pharmaceutical list,”;
- (b) after paragraph (f), insert—
  - “(fa) about the timescale for dealing with an application,”;
- (c) in paragraph (g), after the words “other grounds on which” insert “ or circumstances in which ”;
- (d) after paragraph (m) insert—
  - “(n) as to circumstances in which a Local Health Board may, or must, remove a person or an entry in respect of premises from the pharmaceutical list for breach of a term or condition of arrangements made with the Local Health Board for the provision of pharmaceutical services.”

(8) After subsection (6), insert—

“(6A) The regulations, if they make provision within subsection (6)(n), must specify that a person or entry is not to be removed by a Local Health Board unless—

- (a) the Local Health Board has given notice under section 106A (notice in relation to breach of arrangements) in respect of the breach, and
- (b) the person in respect of whom the notice was given has failed to comply with a requirement of that notice.”

(9) After subsection (10) insert—

“(10A) The regulations may make provision for a Local Health Board to give reasons for decisions made by virtue of this section.”

(10) In section 84 of the National Health Service (Wales) Act 2006 (c. 42), in subsection (2)—

- (a) after “application” insert “ on grounds corresponding to the conditions referred to in section 107(2), (3) or (4) as read with section 109 ”;

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(b) after “appeal” omit “(by way of redetermination)”.

(11) In section 84 of the National Health Service (Wales) Act 2006 (c.42), after subsection (3), insert—

“(4) If regulations made under section 83 include provision for a Local Health Board to remove a person or an entry in respect of premises from a pharmaceutical list, the regulations must also make provision —

- (a) requiring the Local Health Board to give notice of its intention to remove the person or entry (including provision requiring the notice to give reasons for the intended removal);
- (b) about making representations.”

(12) In Schedule 6 to the Health Act 2009 (c.21) (repeals and revocations), in the table, omit the entry relating to section 83(6)(d) of the National Health Service (Wales) Act 2006 (c.42).

VALID FROM 31/05/2018

## PART 8

### PROVISION OF TOILETS

#### *Local toilets strategies*

#### **113 Local toilets strategies: preparation and review**

- (1) A local authority must prepare and publish a local toilets strategy before the end of the period of one year beginning with the date on which this section comes into force.
- (2) A local toilets strategy must include—
  - (a) an assessment of the need for toilets in the local authority's area to be available for use by the public,
  - (b) a statement setting out the steps which the local authority proposes to take to meet that need, and
  - (c) any other information which the local authority considers appropriate.
- (3) A local authority must carry out a review of its local toilets strategy after each ordinary election held for its area under section 26 of the Local Government Act 1972 (c. 70); and each review must be carried out before the end of the period of one year beginning with the date of the election.
- (4) A local authority may, in addition to a review required by subsection (3), carry out other reviews of its local toilets strategy.
- (5) When a local authority reviews its local toilets strategy it must publish a statement of the steps which it has taken in accordance with the strategy during the period—
  - (a) beginning with the date on which the strategy was last published, and
  - (b) ending with the date on which that review commenced.

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- (6) When a local authority reviews its local toilets strategy and considers that a change is needed, it must—
  - (a) revise the strategy, and
  - (b) publish the revised strategy.
- (7) The Welsh Ministers must issue guidance to local authorities about the matters which they should take into consideration when—
  - (a) preparing a local toilets strategy,
  - (b) reviewing a local toilets strategy,
  - (c) consulting on a local toilets strategy under section 115, or
  - (d) publishing a local toilets strategy.
- (8) Guidance issued by the Welsh Ministers under subsection (7) must make provision about —
  - (a) the assessment of the need—
    - (i) for toilets to be available for use by users of highways and active travel routes;
    - (ii) for toilets to be available for use by users of other sites and facilities that, having regard to criteria set out in the guidance, are facilities of particular significance for transport;
    - (iii) for toilets to be available for use in the vicinity of sites and in connection with events that, having regard to criteria set out in the guidance, are of particular significance or of cultural, sporting, historic, popular or national interest;
    - (iv) for toilets located in premises that are publicly funded (whether wholly or in part) to be available for use by the public,
  - (b) promoting public awareness of toilets available for use by the public, and
  - (c) collaboration between local authorities.
- (9) In subsection (8) “highway” has the meaning given by section 328 of the Highways Act 1980 (c.66).
- (10) For the purposes of subsection (8), a route is an active travel route if it is shown as an active travel route on the map most recently prepared by a local authority under section 3 of the Active Travel (Wales) Act 2013 (anaw 7).
- (11) A local authority must have regard to any guidance issued under subsection (7).
- (12) For the purposes of this Part “toilets” includes—
  - (a) changing facilities for babies, and
  - (b) changing places for disabled persons.

#### **114 Local toilets strategies: interim progress statement**

- (1) A local authority that has published a local toilets strategy under section 113 (whether pursuant to a review of the strategy, or otherwise) must prepare and publish an interim progress statement in accordance with this section.
- (2) A local authority that has reviewed its local toilets strategy under section 113(3) but not revised it must prepare and publish an interim progress statement in accordance with this section.

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- (3) An interim progress statement is a statement of the steps that the authority has taken in accordance with its local toilets strategy during the period (the “statement period”) of 2 years beginning with the date on which—
  - (a) in the case of a requirement imposed by subsection (1), the authority last published that strategy;
  - (b) in the case of a requirement imposed by subsection (2), the authority last reviewed that strategy.
- (4) A local authority must publish its interim progress statement no later than six months after the last day of the statement period.
- (5) The Welsh Ministers must issue guidance to local authorities about the matters which they should take into consideration when preparing an interim progress statement; and a local authority must have regard to any guidance issued under this subsection.

## **115 Local toilets strategies: consultation**

- (1) A local authority must consult any person it considers is likely to be interested in the provision of toilets in its area that are available for use by the public before it publishes its local toilets strategy under—
  - (a) section 113(1), or
  - (b) section 113(6)(b).
- (2) As part of the consultation, the local authority must make available to each person consulted under subsection (1) a draft local toilets strategy.

### *Local authority power to provide public toilets*

## **116 Local authority power to provide public toilets**

- (1) A local authority may provide toilets in its area for use by the public.
- (2) A local authority must have regard to the relevant local toilets strategy when determining—
  - (a) whether to provide toilets under subsection (1), and
  - (b) the types of toilets to be provided.
- (3) For the purposes of subsection (2), the relevant local toilets strategy is—
  - (a) in the case of a county or county borough council (“a principal council”), the local toilets strategy most recently published under section 113 by that council, and
  - (b) in the case of a community council, the local toilets strategy most recently published under section 113 by the principal council of the area in which the community council is situated.
- (4) A local authority may not provide toilets under subsection (1) on or under land adjoining, or in the vicinity of, a highway or proposed highway unless—
  - (a) the local authority is (or in the case of a proposed highway, will be) the highway authority for that highway, or
  - (b) the local authority has obtained the consent of the highway authority for that highway, or (in the case of a proposed highway) of the authority that will be the highway authority for that highway, to provide such toilets.

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(5) A local authority that provides toilets under this section may charge fees for the use of those toilets.

(6) In this section—

“highway” (“*priffordd*”) has the meaning given by section 113(9);

“local authority” (“*awdurdod lleol*”) includes a community council.

### **117 Power to make byelaws in relation to toilets**

(1) A local authority that provides toilets under section 116 may make byelaws as to the conduct of persons using or entering them.

(2) Where a community council makes byelaws under subsection (1) in respect of toilets provided by it, the byelaws (if any) made under section 2 of the Local Government Byelaws (Wales) Act 2012 (anaw 2), in relation to those toilets by the county or county borough council of the area in which the community council is situated, are of no effect during the currency of the byelaws made by the community council.

(3) For the purposes of this section “local authority” is to be read in accordance with section 116.

### **118 Consequential amendments**

For amendments consequential on this Part, see Schedule 4.

## **PART 9**

### **MISCELLANEOUS AND GENERAL**

#### *Food hygiene rating offences: fixed penalty receipts*

### **119 Fixed penalty receipts for food hygiene rating offences**

In section 22 of the Food Hygiene Rating (Wales) Act 2013 (anaw 2), for subsection (1) substitute—

“(1) A food authority may use its fixed penalty receipts only for the purpose of its functions relating to the enforcement of the provisions of this Act and regulations made under it.”

#### **Commencement Information**

**I17** [S. 119](#) in force at 4.10.2017 by [S.I. 2017/949](#), [art. 2\(c\)](#)

#### *General*

### **120 Offences by bodies corporate etc.**

(1) This section applies where an offence under this Act is committed by—

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- (a) a body corporate;
  - (b) a partnership;
  - (c) an unincorporated association other than a partnership.
- (2) If the offence is proved to have been committed by, or with the consent or connivance of, or to be attributable to neglect on the part of—
  - (a) a senior officer of the body corporate or partnership or unincorporated association, or
  - (b) any person purporting to act in a capacity mentioned in paragraph (a),that senior officer or person (as well as the body corporate, partnership or association) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In this section, “senior officer” means—
  - (a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate;
  - (b) in relation to a partnership, a partner in the partnership;
  - (c) in relation to an unincorporated association other than a partnership, any officer of the association or any member of its governing body.
- (4) In subsection (3)(a), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (5) In this section and sections 121 and 122, “partnership” means—
  - (a) a partnership within the Partnership Act 1890 (c.39), or
  - (b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24).

## **121 Offences committed by partnerships and other unincorporated associations**

- (1) Proceedings for an offence under this Act alleged to have been committed by a partnership are to be brought in the name of the partnership (and not in that of any of the partners).
- (2) Proceedings for an offence under this Act alleged to have been committed by an unincorporated association other than a partnership are to be brought in the name of the association (and not in that of any of its members).
- (3) Rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate.
- (4) Section 33 of the Criminal Justice Act 1925 (c.86) and Schedule 3 to the Magistrates' Courts Act 1980 (c.43) apply in proceedings for an offence brought against a partnership or an unincorporated association as they apply in relation to a body corporate.

## **122 Giving notices**

- (1) This section applies where a provision of this Act or of regulations made under it requires or authorises a person to give notice to another person (“P”).
- (2) The notice must be in writing.
- (3) The notice may be given to P in any one of the following ways—



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- (a) by delivering it to P;
  - (b) by leaving it at or posting it to any address specified by P as an address for giving notices, or (if P has not specified an address for this purpose) by leaving it at or posting it to P's usual address;
  - (c) if the conditions in subsection (4) are met, by sending it to P electronically.
- (4) The conditions are—
- (a) that P has indicated to the person by whom the notice is sent a willingness to receive it electronically, and has provided that person with an address suitable for that purpose, and
  - (b) that the notice is sent to that address.
- (5) P's usual address, for the purpose of subsection (3)(b), is—
- (a) if P is a body corporate, the address of the registered or principal office of the body;
  - (b) if P is acting in his or her capacity as a partner in a partnership, the address of the principal office of the partnership;
  - (c) if P is a local authority, the principal office of the local authority;
  - (d) in any other case, the last known residence or place of business of P.
- (6) A fixed penalty notice given under section 27 or 49 may not be given to P by sending it electronically.
- (7) The reference in subsection (3)(a) to delivering a notice to P is—
- (a) if P is a body corporate, a reference to delivering it to the secretary or clerk of that body;
  - (b) if P is a partnership, a reference to delivering it to a partner or a person having control or management of the partnership business.
- (8) A notice that is given to P by leaving it at a place in accordance with subsection (3)(b) is to be treated as having been given at the time at which it was left at that place.

## 123 Regulations

- (1) A power to make regulations under this Act—
- (a) is exercisable by statutory instrument;
  - (b) includes power to make different provision for different purposes;
  - (c) includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.
- (2) A statutory instrument containing any of the following may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales—
- (a) regulations made under section 6(5), 10(6), 11(5), 13, 15, 16, 17(3), 28(7) or 50(2) or paragraph 6 or 9 of Schedule 1;
  - (b) regulations made under section 60, 62, 63, 66(10), 69(8), 70(3)(a) or (c), 93 or 94(1);
  - (c) regulations made under section 108 or 110(2);
  - (d) regulations made under section 125 that amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales.

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- (3) Any other statutory instrument containing regulations made under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

## 124 Interpretation

- (1) Except as otherwise expressly provided, in this Act—
- “local authority” (“*awdurdod lleol*”) means the council of a county or county borough in Wales;
  - “regulations” (“*rheoliadau*”) means regulations made by the Welsh Ministers;
  - “specified” (“*a bennir*” and “*penodedig*”), in relation to provision made in regulations, means specified in the regulations.
- (2) In this Act, references to the occupier of premises, so far as applicable in relation to any vehicle, are to the person who appears to be in charge of the vehicle, and “unoccupied” is to be construed accordingly.

## 125 Power to make consequential and transitional etc. provision

- (1) If the Welsh Ministers consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act, they may by regulations make—
- (a) any supplementary, incidental or consequential provision;
  - (b) any transitional, transitory or saving provision.
- (2) Regulations under this section may (among other things) amend, repeal or revoke any enactment.
- (3) In this section, “enactment” means an enactment, whenever enacted or made, comprised in or made under—
- (a) an Act of Parliament;
  - (b) a Measure or Act of the National Assembly for Wales.

## 126 Coming into force

- (1) The following provisions come into force on the day on which this Act receives Royal Assent—
- (a) section 1;
  - (b) sections 120 to 125;
  - (c) this section;
  - (d) section 127.
- (2) The other provisions of this Act come into force on such day as the Welsh Ministers may appoint by order made by statutory instrument.
- (3) An order under subsection (2) may—
- (a) appoint different days for different purposes;
  - (b) make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.

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## 127 Short title

The short title of this Act is the Public Health (Wales) Act 2017.

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VALID FROM 31/05/2018	
VALID FROM 29/09/2020	
<div>SCHEDULE 1<div>(introduced by sections 27 and 49)</div>FIXED PENALTIES<div>.....</div></div>	
VALID FROM 01/03/2021	
<div>SCHEDULE 2<div>(introduced by section 29)</div>SMOKING: CONSEQUENTIAL AMENDMENTS<div>Health Act 2006 (c.28)</div><div>1The Health Act 2006 is amended as follows.</div><div>2In the heading to Chapter 1 of Part 1 after “vehicles” insert “ in England ”.</div><div>3In section 1 (introduction), in subsection (1) after “vehicles” insert “ in England ”.</div><div>4In section 2 (smoke-free premises)—<div>(a) in subsection (1) after “Premises” insert “ in England ”;</div><div>(b) in subsection (2) after “Premises” insert “ in England ”;</div><div>(c) in subsection (5) for “appropriate national authority” substitute “ Secretary of State ”.</div></div><div>5In section 3 (smoke-free premises (exemptions)), in subsection (1)—<div>(a) for “appropriate national authority” substitute “ Secretary of State ”;</div><div>(b) after “premises” in both places insert “ in England ”.</div></div><div>6In section 4 (additional smoke-free places)—<div>(a) in subsection (1)—<div>(i) for “appropriate national authority” substitute “ Secretary of State ”;</div><div>(ii) after “place” in both places insert “ in England ”;</div></div><div>(b) in subsection (3)—<div>(i) for “appropriate national authority” substitute “ Secretary of State ”;</div><div>(ii) for “authority's” substitute “Secretary of State's”.</div></div><div>7In section 5 (vehicles), in subsection (1)—</div></div></div>	

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	(a) for “appropriate national authority” substitute “ Secretary of State ”;
	(b) after “vehicles” insert “ in England ”.
8	In section 6 (no-smoking signs), in subsections (2), (3) and (4) for “appropriate national authority” substitute “ Secretary of State ”.
9	In section 8 (offence of failing to prevent smoking in smoke-free place), in subsection (3) for “appropriate national authority” substitute “ Secretary of State ”.
10	In section 9 (fixed penalties), in subsection (1A) for “appropriate national authority” substitute “ Secretary of State ”.
11	In section 10 (enforcement)—
	(a) in subsection (1) for “appropriate national authority” substitute “ Secretary of State ”;
	(b) in subsection (4) for “appropriate national authority” in both places substitute “ Secretary of State ”.
12	In section 11 (obstruction etc of officers), in subsection (5) for “appropriate national authority” in both places substitute “ Secretary of State ”.
13	In section 12 (interpretation and territorial sea)—
	(a) in subsection (2) for “appropriate national authority” substitute “ Secretary of State ”;
	(b) omit subsection (3)(b).
14	In section 82 (interpretation), in subsection (1) omit the definition of “the appropriate national authority”.
15	In Schedule 1 (fixed penalties), in paragraphs 4 and 17 for “appropriate national authority” substitute “ Secretary of State ”.
16	In Schedule 2 (powers of entry, etc), in paragraph 10 for “appropriate national authority” in both places substitute “ Secretary of State ”.
	<i>Children and Families Act 2014 (c.6)</i>
17	In section 91 of the Children and Families Act 2014 (purchase of tobacco, nicotine products etc on behalf of persons under 18), in subsection (5), after paragraph (b), insert —
	“(c) in relation to Wales—
	(i) the reference to the Secretary of State in paragraph 4 of Schedule 1 to the Health Act 2006 is to be read as a reference to the Welsh Ministers;
	(ii) the power of the Welsh Ministers to make regulations under paragraph 4 of Schedule 1 as so applied is to be exercised by statutory instrument;
	(iii) a statutory instrument containing such regulations made by the Welsh Ministers is to be subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

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PROSPECTIVE

SCHEDULE 3

(introduced by section 59)

FURTHER PROVISION IN CONNECTION  
 WITH SPECIAL PROCEDURE LICENCES

*Application for special procedure licence*

- 1 An application for the issue of a special procedure licence may relate to one special procedure, or more than one.
- 2 An application for a licence authorising the performance of a special procedure is to be made—
  - (a) if the applicant believes that the procedure is likely to be carried out by the applicant in the area of one local authority only, to that local authority;
  - (b) if the applicant believes that the procedure is likely to be carried out by the applicant in the areas of different local authorities, to one of those local authorities.
- 3 (1) An application—
  - (a) must specify the procedure to which it relates;
  - (b) must give whatever details the authority to which it is made may require about the basis on which the procedure is to be performed (for instance, whether it is to be performed on a peripatetic basis, on a fixed site basis, on a mobile basis, on a temporary basis, or otherwise);
  - (c) must state whether or not it is an application for a temporary licence.(2) An application—
  - (a) is to be made in whatever way the authority to which it is made may require;
  - (b) is to be accompanied by whatever fee is set by the authority.(3) That fee (if any) is to be set by the authority having regard to the costs incurred or expected to be incurred by the authority in connection with dealing with applications.
- 4 (1) An application must include the following information—
  - (a) the full name, date of birth and usual residential address of the applicant;
  - (b) any proposed trading name;
  - (c) the telephone number and e-mail address (if any) of the applicant;
  - (d) in the case of an application for the issue of a licence authorising the performance of a procedure at premises within section 59(3) (premises or vehicle occupied by or under control or management of certain persons), the address of each of the premises at which the performance of the procedure is to be authorised by the licence;
  - (e) in the case of an application for a licence authorising the performance of a procedure in a vehicle within section 59(3) that has a registration number, the registration number of the vehicle;

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- (f) in the case of an application for a licence authorising the performance of a procedure in a vehicle within section 59(3) that does not have a registration number, whatever identifying details of the vehicle the authority considers appropriate;
  - (g) any other information that the authority concerned may require, which may, for instance, include information about any offence of which the applicant has been convicted (whether or not committed under the law of England and Wales).
- (2) At any time after receiving but before determining an application, an authority may require the applicant to provide it with any further information that it considers necessary to enable it to determine the application.
- (3) That further information may include any information that the authority considers necessary for the purpose of verifying the identity of the applicant.
- (4) Regulations may—
- (a) make provision about the way in which a local authority is to determine the amount of the fee that is to accompany an application made to it;
  - (b) make further provision about applications (including, among other things, about the way in which an application is to be made, the information to be provided, and the way in which an application is to be dealt with by an authority).

#### *Contents of special procedure licence*

- 5 (1) A special procedure licence must—
- (a) state the name of the licence holder;
  - (b) bear a photograph of the licence holder;
  - (c) specify a residential or business address for the licence holder;
  - (d) name the authority by which the licence is issued;
  - (e) specify each procedure the performance of which is authorised by the licence;
  - (f) specify the licence period and, in the case of a temporary licence, state that it is a temporary licence.
- (2) A licence that is required, by section 59(3), to identify premises or a vehicle must (as the case may be)—
- (a) specify the address of the premises;
  - (b) in the case of a vehicle that has a registration number, state the registration number;
  - (c) in the case of a vehicle that does not have a registration number, identify the vehicle in whatever way the authority issuing the licence considers appropriate.
- (3) Regulations may make further provision about the form and content of special procedure licences (including, among other things, about the inclusion of information about the applicable mandatory licensing conditions).



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### *Copy of licence*

- 6 (1) If a special procedure licence is mislaid, stolen, or damaged, the licence holder may apply to the authority by which it was issued for a copy.
- (2) An application under sub-paragraph (1)—
- (a) is to be made in whatever way the authority concerned may require, and
  - (b) is to be accompanied by whatever fee is set by the authority.
- (3) The authority must grant the application if it is satisfied—
- (a) that the licence has been mislaid, stolen or damaged, and
  - (b) that where the licence has been mislaid or stolen, the loss or theft has been reported to the police.
- (4) As soon as reasonably practicable after granting an application under sub-paragraph (1), an authority is to issue a copy of the licence to the applicant.
- 7 A copy of a licence issued by an authority under paragraph 6 is—
- (a) to be certified by the authority as a true copy, and
  - (b) to be treated for the purposes of this Part and any requirements imposed by or under it as being the original licence.

### *Expiry of licence*

- 8 (1) A special procedure licence is to be treated for the purposes of this Part as expiring with whichever is the earliest of—
- (a) the end of the licence period;
  - (b) the date with the expiry of which revocation of the licence has effect;
  - (c) the date with the expiry of which the licence ceases to have effect under paragraph 14(3) (voluntary termination of licence);
  - (d) in the case of a licence authorising the performance of a procedure by an individual who is designated under section 61 in respect of that procedure, the date on which any withdrawal of the designation takes effect.
- (2) But sub-paragraph (1) is subject to paragraph 10.

### *Renewal of licence*

- 9 (1) A local authority may, on an application by the licence holder, renew a special procedure licence.
- (2) An application for renewal of a licence is to be made to the authority that granted the licence.
- (3) An application for renewal—
- (a) is to be made in whatever way the authority concerned may require,
  - (b) is to include whatever information the authority concerned may require, and
  - (c) is to be accompanied by whatever fee is set by the authority.
- 10 If an application to renew a licence is received before the licence would but for this paragraph be treated as having expired, the licence is not to be treated as having expired while—
- (a) the application for renewal is pending;

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- (b) an appeal may be brought under paragraph 18 or 19 in respect of the application;
- (c) an appeal brought in respect of the application under paragraph 18 or 19, within the period for bringing an appeal under that paragraph, remains to be determined.

#### *Variation of licence*

- 11 (1) A local authority may, on an application to this effect by a licence holder, vary a special procedure licence issued by it.
- (2) The effect of a variation may be such as to (among other things)—
- (a) add, amend or remove a description of special procedure the performance of which is authorised by the licence;
  - (b) subject to section 59(4) (requirement that premises or vehicle be identified in licence, and approved) authorise the performance of a special procedure at premises or in a vehicle not previously identified in the licence for this purpose;
  - (c) remove a reference to premises or a vehicle previously identified in the licence.
- (3) A licence must not be varied under this paragraph so as to—
- (a) transfer the licence from the licence holder to another individual;
  - (b) extend the licence period.
- 12 (1) An application to vary a special procedure licence—
- (a) is to be made in whatever way the authority concerned may require, and
  - (b) is to be accompanied by whatever fee is set by the authority.
- (2) An application must include—
- (a) particulars of the changes proposed to be made to the licence, and
  - (b) any other information that the authority concerned may require.
- 13 (1) An application to vary a special procedure licence by adding a description of special procedure the performance of which is to be authorised by the licence—
- (a) must specify the procedure concerned, and
  - (b) is to be treated for the purposes of this Part as being an application for the issue of a special procedure licence authorising the performance of that procedure (and the date of the variation is to be treated, for the application of this Part in respect of that procedure, as being the date of the issue of a licence authorising the performance of the procedure).
- (2) But sub-paragraph (1)(b) does not apply for the purposes of the determination of the licence period.

#### *Voluntary termination of licence*

- 14 (1) Where a licence holder wishes a special procedure licence to cease to have effect, the licence holder may give notice to that effect to the authority that issued the licence.
- (2) The notice must state the date with which the licence is to cease to have effect.

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- (3) Subject to any earlier expiry under paragraph 8(1)(a), (b) or (d), the licence ceases to have effect with the expiry of the date stated under sub-paragraph (2).

*Right to make representations*

- 15 (1) This paragraph applies if a local authority proposes—
- (a) to give notice to an applicant under section 65(2) or 66(6) of refusal of an application (including under any of those provisions as applying in respect of the application by virtue of section 67 or paragraph 13(1)(b)),
  - (b) to give notice to a licence holder under section 68 of revocation of a licence (including under that section as applying in respect of the application by virtue of section 67 or paragraph 13(1)(b)), or
  - (c) to give notice to an individual under section 61(1), designating that individual in respect of a special procedure.
- (2) In this paragraph and paragraphs 16 and 17, the applicant or licence holder is referred to as “A”.
- (3) The authority must give A a notice (a “warning notice”) that sets out what the authority proposes to do and why.
- (4) A warning notice must state that, within a period specified in the notice, A may either—
- (a) make representations about the proposal, or
  - (b) inform the authority that A wishes to make representations.
- (5) The period specified in the warning notice must not be less than 14 days beginning with the date of the notice.
- (6) The authority may take the steps specified in the warning notice, if—
- (a) within the period specified in the warning notice, A informs the authority that A does not wish to make representations, or
  - (b) the period specified in the warning notice expires and A has neither made representations nor informed the authority that A wishes to do so.
- (7) If, within the period specified in the warning notice, A informs the authority that A wishes to make representations, the authority—
- (a) must allow A a further reasonable period to make representations, and
  - (b) may take the steps specified in the warning notice, if A fails to make representations within that further period.
- (8) If A makes representations (either within the period specified in the warning notice or within the further period allowed under sub-paragraph (7)(a)), the authority must consider the representations.
- (9) The representations made by A under this paragraph may be made orally or otherwise; and in the case of oral representations, may be made either by A or by A's representative.

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### *Notice of decision*

- 16 (1) This paragraph applies if, having complied with the requirements of paragraph 15 in respect of a proposed notice under section 65(2), 66(6) or 68, a local authority decides to take the action set out in the warning notice.
- (2) The notice given under section 65, 66 or 68 (as the case may be) must set out the authority's reasons for giving it.
- (3) The notice must also state—
- (a) that A may appeal under paragraph 18 against the decision,
  - (b) the period within which an appeal may be brought, and
  - (c) in the case of revocation under section 68, the date on which (in the absence of an appeal under paragraph 18) the revocation is to take effect.
- 17 If, having complied with the requirements of paragraph 15, a local authority decides not to take the action set out in the warning notice, the authority must give notice of the decision to A.

### *Appeals*

- 18 (1) An applicant may appeal to a magistrates' court against—
- (a) the refusal of an application for a special procedure licence;
  - (b) the refusal of an application to vary a special procedure licence;
  - (c) the refusal of an application to renew a special procedure licence.
- (2) A licence holder may appeal to a magistrates' court against a revocation under section 68.
- (3) An individual to whom notice has been given under section 61(1) (designation of a person for the purposes of section 58) may appeal to a magistrates' court against the decision to give the notice.
- (4) An appeal is to be made within the period of 21 days beginning with the date of—
- (a) in the case of an appeal under sub-paragraph (1) or (2), the notice of the decision to refuse the application or of the decision to revoke;
  - (b) in the case of an appeal under sub-paragraph (3), the notice under section 61(1).
- (5) An appeal is to be by way of complaint for an order, and in accordance with the Magistrates' Courts Act 1980 (c.43).
- (6) For the purposes of the time limit for making an appeal, the making of the complaint is to be treated as the making of the appeal.
- (7) On an appeal, the magistrates' court may—
- (a) confirm the decision of the local authority appealed against, or
  - (b) quash or vary the decision appealed against,
- and may make such order as to costs as it thinks fit.
- (8) If the magistrates' court quashes or varies the decision appealed against, it may remit the case to the local authority to dispose of in accordance with directions given by the court.

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- 19 (1) An appeal by either party against the decision of a magistrates' court under paragraph 18 may be brought to the Crown Court.
- (2) On an appeal to the Crown Court, the Crown Court may—
- (a) confirm, vary or reverse the magistrates' court's decision;
  - (b) remit the case to the magistrates' court or the local authority to dispose of in accordance with directions given by the Crown Court.
- 20 (1) Where on an appeal under paragraph 18 or 19 a court varies or reverses a local authority's decision, the court may order the local authority to compensate the applicant, licence holder, or person within paragraph 18(3) (as the case may be) for loss suffered as the result of the decision.
- (2) The bringing of an appeal under paragraph 18 or 19 in respect of a decision made by a local authority or notice given by a local authority does not suspend the effect of the decision or notice.

#### *Delegation of functions*

- 21 (1) The functions of a local authority under the following provisions of this Part are by virtue of this sub-paragraph delegated to the licensing committee of the authority established under section 6 of the Licensing Act 2003 (c.17)—
- (a) section 65(2) and 66(3) (including as applied by virtue of section 67 and paragraph 13(1)), in a case where representations are made under paragraph 15;
  - (b) section 68, in a case where representations are made under paragraph 15;
  - (c) paragraph 15(8);
  - (d) paragraphs 16 and 17.
- (2) The following provisions of the Licensing Act 2003 (c.17) are to apply in relation to a function of an authority delegated to a licensing committee by virtue of sub-paragraph (1) as they apply in relation to a function delegated under that Act, and as if references in them to a licensing authority were to the authority concerned—
- (a) section 7(9) (referral back to authority), and
  - (b) section 10 (sub-delegation).
- (3) In the application of section 10(4) of that Act by virtue of sub-paragraph (2), for the list of functions in that section there is substituted the list of functions at sub-paragraph (1)(a) to (d).
- (4) Regulations may make provision about the procedures applicable to licensing committees and their sub-committees for the purpose of the exercise of functions under or by virtue of this Part, including (among other things) provision as to—
- (a) validity and quorum;
  - (b) public access;
  - (c) publicity;
  - (d) records.
- (5) Subject to any provision made under the regulations, each licensing committee may, for the purposes of the exercise of the functions referred to in sub-paragraph (4), regulate its own procedure and that of its sub-committees.

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### *Consequential amendments*

- 22 (1) The Local Government (Miscellaneous Provisions) Act 1982 (c.30) is amended as follows.
- (2) In section 13(11) (meaning of “local authority” in Part 8), in paragraph (a) after “district” insert “ in England ”.
- (3) In section 14 (acupuncture)—
- (a) in subsection (1) after “any area” insert “ in England ”, and
  - (b) in subsection (2) after “any area” insert “ in England ”.
- (4) In section 15 (tattooing etc)—
- (a) in subsection (1) after “any area” insert “ in England ”, and
  - (b) in subsection (2) after “any area” insert “ in England ”.
- 23 In the Local Government Byelaws (Wales) Act 2012 (anaw 2), in each table in Schedule 1 (byelaw making powers) omit the entry relating to—
- (a) section 14 of the Local Government (Miscellaneous Provisions) Act 1982 (c.30);
  - (b) section 15 of the Local Government (Miscellaneous Provisions) Act 1982 (c.30).

## SCHEDULE 4

(introduced by section 118)

### PROVISION OF TOILETS: CONSEQUENTIAL AMENDMENTS

#### *Public Health Act 1936 (c.49)*

- 1 (1) Section 87 of the Public Health Act 1936 (provision of public conveniences) is amended as follows.
- (2) In subsection (1)—
- (a) for “A county council, a local authority” substitute “ A county council in England, a local authority in England ”;
  - (b) omit “or community”.
- (3) In the heading, after “conveniences”, insert “ in England ”.

#### *Highways Act 1980 (c.66)*

- 2 In section 114 of the Highways Act 1980 (provision of public conveniences for road users), for subsection (4) substitute—
- “(4) The powers in subsection (1) are without prejudice to—
- (a) section 87 of the Public Health Act 1936 (provision of public conveniences in England);
  - (b) section 116 of the Public Health (Wales) Act 2017 (local authority power to provide public toilets in Wales).”

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Local Government Byelaws (Wales) Act 2012 (anaw 2)		
3	(1) In the Local Government Byelaws (Wales) Act 2012, Schedule 1 (byelaws not requiring confirmation) is amended as follows.	
	(2) In each table omit the entry relating to section 87 of the Public Health Act 1936.	
	(3) In each table, in the appropriate place insert—	
	“Section 117 of the Public Health (Wales) Act 2017	Regulating the conduct of persons in toilets
		County council, county borough council and community council”



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