

PUBLIC HEALTH (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 3 - Further provision in connection with special procedure licences

272. Paragraphs 1-4 set out the process that an applicant for a special procedure licence must follow, including the information that they must provide to the local authority to obtain a licence. In the application, the applicant must specify the special procedure(s) to which the application relates and provide details of the basis that the procedure is to be performed (i.e. peripatetic basis (i.e. the applicant plans to practice a special procedure in various different premises, for example clients' homes), fixed site basis, mobile basis, temporary basis, or otherwise). If the procedure is intended to be performed at a set premises or vehicle, details of that premises or vehicle must be provided in the application.
273. The application must also include the details of the applicant (including their full name, date of birth, address and contact details) together with other required information including, for example, information about any offence they have been convicted of. The application is to be accompanied by whatever fee is required by the authority. In setting this fee, the local authority must have regard to the costs incurred or expected to be incurred by it in connection with dealing with applications. In considering the application, the local authority may require further information to be provided by the applicant including information necessary to verify their identity. Paragraph 4(4) provides the Welsh Ministers with a regulation-making power to make further provision about the way in which a local authority is to determine the amount of fee that is to accompany an application, and the procedure for dealing with applications. This may include the way an application is made, the information to be provided in the application and the way in which an application is to be dealt with by the authority.
274. Paragraph 5 specifies the content of a special procedure licence. The licence must, amongst other things, state the name of the licence holder, name the authority by which the licence is issued and state the special procedure that is authorised by the licence. The period that the licence is valid for must also be included; in the case of a temporary licence that is valid for no more than seven days, this must be specified on the licence. If required by section 59, the licence must also include the details of the approved premises or vehicle from which the licence holder is authorised to perform special procedures. Paragraph 5(3) provides the Welsh Ministers with a regulation-making power to make further provision about the form and contents of special procedure licences. These regulations may include, amongst other things, information about the applicable mandatory licensing conditions that the holder of the special procedure licence must adhere to. These mandatory licensing conditions may relate to the condition (i.e. cleanliness, maintenance and standards of hygiene) of the premises or vehicle from which the special procedure is performed or where the equipment or material is stored or prepared.
275. Paragraphs 6 and 7 enable the licence holder to apply to the local authority for a copy of their licence if it is mislaid, stolen or damaged. As the mandatory licensing conditions

may require the licence to be displayed, the licence holder may require a copy of the licence in order to comply with that requirement. The application must be made in any way the local authority requires and must be accompanied by whatever fee has been set by the authority. If the local authority is satisfied that the licence has been mislaid, stolen or damaged, the local authority must grant the application and issue a copy of the licence to the applicant as soon as practicable. In the case of a mislaid or stolen licence, the local authority must also be satisfied that the loss or theft has been reported to the police. The copy of the licence must be certified by the local authority as a true copy and will be treated as being the original licence.

276. [Paragraph 8\(1\)](#) provides details of the circumstances under which a licence expires. These include the end of the licence period, the voluntary termination of a licence, or the date that the revocation by the local authority (as provided by section 68) of the licence takes effect. A licence will also expire once withdrawal of an individual's designation under section 61 takes effect.
277. [Paragraph 9](#) enables a licence holder to apply to a local authority for the renewal of their special procedure licence. The application must be submitted to the same local authority that granted the original licence and must be made in whatever way and contain whatever information is required by the local authority. The application must also include the fee set by the local authority.
278. [Paragraph 10](#) provides that a licence does not expire during the time that the local authority is considering the application for renewal, during the appeal period available in respect of an application for renewal, or whilst an appeal is pending.
279. [Paragraphs 11, 12 and 13](#) enable a special procedure licence to be varied upon application from the licence holder. For example, a variation may be applied for because the licence holder wishes to add, amend or remove a description of special procedure from their licence. The variation may also be required to add reference to an approved premises or vehicle from which the licence holder intends to perform special procedures, or to remove a premises or vehicle previously identified on the licence. If the licence holder is applying to add a special procedure to their licence, the licence holder must specify the special procedure they wish to be added and meet the licensing criteria in relation to that procedure. The variation cannot however transfer the licence from the licence holder to another individual or extend the licence period. The application must be made in whatever way is required by the local authority and be accompanied by whatever fee is set by the local authority.
280. If a licence holder intends to terminate their licence, paragraph 14 enables the licence holder to give notice to the local authority of this. In giving notice, the licence holder must state the date with which the licence is to cease to have effect. Subject to any earlier expiry under paragraph 8(1)(a), (b) or (d), the licence will cease to have effect on the date specified in the notice.
281. [Paragraph 15](#) provides that where a local authority proposes to give notice to an applicant, licence holder or individual (referred to as "A"), A has the right to make representations to the local authority licensing committee. The notice may relate to:
- the refusal of an application for a licence under section 65(2) or 66(3) (including under any of those provisions as applying in respect of the application by virtue of section 67 or paragraph 13);
 - the intention to revoke a licence (section 68); or
 - the designation of an individual under section 61(1), requiring them to have a licence.
282. Before a decision is taken by the local authority, it must provide a warning notice to A that sets out what it intends to do and why. The warning notice must state that within the period specified (which must not be less than 14 days) A may

either make representations or inform the local authority that he/she wishes to make representations about the proposal. If A wishes to, the local authority must enable A to make representations (including oral representations if A or his/her representative wishes to do so) and it must consider those representations. If A does not wish to make representations, or does not inform the local authority that he wishes to make representations within the specified period, the local authority may take the steps specified in the warning notice.

283. Having complied with the requirements in paragraph 15, paragraph 16 enables the local authority to take the action set out in the warning notice and to issue a notice of decision. The notice of decision must set out the local authority's reasons for giving it. Similarly, if the local authority decides not to take the action set out in the warning notice, it is also required to notify the applicant or licence holder of its decision. This ensures that an applicant or licence holder is informed of the outcome in all scenarios. The notice of decision must also state that A may appeal the decision and provide details of the period within which an appeal may be brought. In the case of a revocation under section 68, the notice of decision must also state the date on which (in the absence of an appeal) the revocation will take effect.
284. [Paragraph 18](#) provides that an applicant, licence holder or individual may appeal to a magistrates' court against the local authority's decision (as taken under paragraph 16). The appeal must be made within 21 days of the local authority's notice of decision. On hearing the appeal, the magistrates' court may confirm, quash or vary the decision made by the local authority; alternatively, the magistrates' court could remit the case to be considered by the local authority in accordance with directions given by the magistrates' court. The magistrates' court may also make an order for costs incurred to be paid. These may be the costs incurred by the applicant or the local authority in defending its decision.
285. [Paragraph 19](#) provides that an appeal against the decision of the magistrates' court under paragraph 18 may be brought to the Crown Court. The Crown Court may confirm, vary or reverse the magistrates' court's decision or require that the case is considered by the magistrates' court or the local authority in accordance with the directions given by the Crown Court.
286. If on appeal under paragraphs 18 and 19, the local authority's decision is varied or reversed, the magistrates' court or the Crown Court may order the local authority to compensate the applicant, licence holder or person subject to designation under section 61, for loss suffered as a result of the decision. For example, the person could be compensated for a loss of income due to the local authority's decision to prevent them from working whilst the appeal was ongoing.
287. During the time that an appeal under paragraphs 18 and 19 is taking place, the decision made or the notice given by the local authority continues to have effect. Therefore, if it is the local authority's decision to revoke a licence under section 68, the decision will remain in force until the court makes its determination.
288. [Paragraph 21](#) delegates the specified functions of a local authority to the licensing committee of the local authority. This allows the licensing committee to make the decisions in relation to those functions listed under paragraph 21(1). Whilst the functions remain functions of the local authority, requiring the licensing committee (or one of its sub-committees) to take the decision provides a level of oversight. Committees and their members have experience in taking licensing decisions which may affect people's livelihood. In taking a decision, the licensing committee will be required to hear any representations provided by 'A' following the issuing of a warning notice by the local authority under paragraph 15. The functions of the licensing committee are provided to it by section 6 of the Licensing Act 2003. In addition to enabling the licensing committee to take decisions in relation to specific areas, these functions enable the licensing committee to refer specified decisions to the local authority and to sub-delegate decision making.

*These notes refer to the Public Health (Wales) Act
2017 (c.2) which received Royal Assent on 3 July 2017*

289. [Paragraph 21\(4\)](#) provides the Welsh Ministers with a regulation-making power to make provision about the procedures applicable to licensing committees and their sub-committees for the purpose of the exercise of the delegated functions under this paragraph, including public access and the availability of records. Subject to any regulations made by the Welsh Ministers, paragraph 21(5) enables each licensing committee and its sub-committees to regulate its own procedure.
290. [Paragraph 22](#) repeals provisions in Part 8 of the Local Government (Miscellaneous Provisions) Act 1982 in relation to Wales. This means that the registration system available under that Act which covers acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis will no longer apply. References to sections 14 and 15 of the Local Government (Miscellaneous Provisions) Act 1982 will also be removed from the Schedule to the Local Government Byelaws (Wales) Act 2012. As these provisions will no longer apply, local authorities will be unable to run parallel systems which address the same concerns, thereby providing clarity for both local authorities and practitioners as to the scheme in operation.