

# **PUBLIC HEALTH (WALES) ACT 2017**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4**

#### **Special Procedures**

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

95. This section lists those procedures that are considered to be a special procedure for the purposes of this Part. These are acupuncture, body piercing, electrolysis and tattooing. Each of the procedures is defined in section 94(1). The meaning of special procedure may be amended by regulations, as provided by section 93.

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

96. [Section 58\(2\)](#) provides that a person performing a special procedure in Wales on someone else in the course of a business must be licensed, unless they are an exempted practitioner under section 60. The requirement also applies to those persons designated in respect of a special procedure under section 61.

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

97. This section provides that a special procedure licence is issued by a local authority. The licence authorises the performance of the special procedure (or special procedures) specified in the licence by the licence holder.
98. A special procedure licence does not authorise a person to carry out a special procedure at premises or in a vehicle that the person manages or controls, unless the premises or vehicle has been approved (as required by section 70). It is also a requirement that the approved premises or vehicle from which a special procedure will be performed is identified on the licence holder's special procedure licence. These requirements ensure that the licence holder's terms of practice are clear to both clients and enforcement officers.
99. The requirement for the licence holder to only practice special procedures from an approved premises or vehicle does not apply if the premises or vehicle has been specified in regulations made under section 69(8). These regulations therefore enable certain premises or vehicles to be exempt from the approval requirements and the requirement for identification on the licence.
100. A special procedures licence authorises the licence holder to perform the specified special procedures for the period specified on the licence. This period must either be no more than seven days (to take account of temporary exhibitions, entertainment or other events), or three years. Once the licence has expired, an application to the local authority must be made for a replacement licence.

101. The procedure for applying for a special procedure licence, including the process for varying, reviewing or revoking a licence, is outlined in Schedule 3. For commentary on this, see Schedule 3 below.
102. [Section 59\(8\)](#) sets out the meaning of three key terms (“licence period”; “licence holder” and “temporary licence”) which are referred to in this Part.

### ***Section 60 - Exempted individuals***

103. This section provides detail about the circumstances in which an individual is exempt from the requirement to obtain a special procedure licence. Subsection (2) provides that an individual who is a member of a profession mentioned in paragraphs (a) to (ga) of section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 is exempt, unless regulations specify that a licence is required in relation to a specific special procedure. These professions include doctors, dentists and nurses.
104. Subsection (3) provides the Welsh Ministers with a regulation-making power to enable individuals who are members of a profession (but not those specified in paragraphs (a) to (ga) of section 25(3) of the National Health Service Reform and Health Care Professions Act 2002) or are workers of a description specified in regulations, to be exempt if they are registered with a qualifying register. A qualifying register is defined in subsection (4) as one maintained by the Health and Care Professions Council, or a voluntary register that is both accredited by the Professional Standards Authority for Health and Social Care and specified in or under regulations.
105. These regulation-making powers provide the Welsh Ministers with the discretion to exempt qualifying professions from the requirement to obtain a special procedure licence.

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

106. If the local authority is satisfied that the condition in subsection (2) is met, this section enables the local authority to give notice to an individual designating them as a person requiring a special procedure licence if they intend to perform a specified special procedure.
107. The condition at subsection (2) has a number of components. These provide that the person is likely to perform the specified procedure on someone else in Wales, that the procedure as likely to be performed by the person presents or could present significant risk of harm to human health, and in order to remove or reduce that risk, it is appropriate to designate the person as needing a licence. The local authority’s ability to designate the person does not rely on the special procedure being performed in the course of a business; therefore a person performing a special procedure in any circumstances and for any purpose (such as from home and not for remuneration) can be designated and therefore prohibited from performing the specified special procedure.
108. The notice provided to the individual must specify why the authority has decided to designate the individual, the date upon which the designation will take effect (which may be either the date of the notice or a subsequent date), and prohibit the individual from performing the specified special procedure unless it is under the authority of a special procedure licence. The notice must also state that the person may appeal the designation and the timescale within which an appeal may be brought. The appeal may be made to a Magistrate’s Court. The appeal procedure is set out in paragraph 18 of Schedule 3 of this Act.
109. Once served the designation notice will be in place until the local authority withdraws it, thereby preventing the designated individual from performing the specified special procedure unless it is under the authority of a special procedure licence. If the individual wishes to perform a special procedure, they must apply to the local authority for a licence.

110. If the local authority withdraws the designation, the local authority must give notice to the individual. The notice must contain the reasons for the withdrawal and the date upon which the withdrawal is to take effect. Once the designation is withdrawn the prohibition on the performance of the special procedure will come to an end.

### ***Section 62 - Licensing criteria***

111. This section requires the Welsh Ministers to make regulations that set out the licensing criteria. The licensing criteria will set out all the requirements that must be met in order for an application for a special procedure licence to be granted. There must be licensing criteria which relate to an individual's (an "applicant") knowledge of –
- infection control and first aid, in the context of the special procedure to which the application relates;
  - duties imposed, under or by virtue of Part 4 of this Act, on a person authorised to perform the special procedure to which the application relates. An example of these duties is the requirements for age verification in relation to tattooing and intimate piercing.
112. The licensing criteria may, amongst other things, relate to an individual's eligibility for a licence; the premises or vehicle from which a special procedure is to be performed and the equipment used in (or in connection with) the performance of a special procedure.
113. The licensing criteria may also cover such things as standards of competence to perform a special procedure. This may include the applicable training undertaken by the applicant or their knowledge of the special procedure.
114. Regulations made under this section may require the local authority to undertake an inspection of the premises or vehicle identified in the application before a licence is issued or renewed. This is to enable the local authority to determine the premises' or vehicle's compliance with the licensing criteria. The regulations may also make different provision for different descriptions of premises and vehicles; for different special procedures; and for the different circumstances in which a special procedure is performed. These circumstances may include the frequency, regularity or period during which a procedure is performed. The licensing criteria may also address the basis upon which the special procedure will be performed, and specify the requirements in relation to each practice.
115. The basis upon which a special procedure is performed are: on a peripatetic basis (i.e. the applicant plans to practice a special procedure in various different premises, for example clients' homes); on a fixed site basis (for example from a specified clinic or studio); on a mobile basis (if the special procedure is performed in a vehicle); or on a temporary basis (if the special procedure will be performed in the course of an entertainment, exhibition or other event that does not exceed seven days). The regulations will therefore set out the criteria that must be met in relation to the practice of all special procedures, in all settings.

### ***Section 63 - Mandatory licensing conditions***

116. This section requires the Welsh Ministers to make regulations that set out the mandatory licensing conditions. The mandatory licensing conditions will detail the requirements that the holder of a special procedure licence must adhere to in order to retain their licence. The mandatory licensing conditions may differ depending on the procedure being performed and the basis upon which it is being performed i.e. peripatetically or from a fixed location. Subsections (2) and (3) set out the elements that the mandatory licensing conditions must relate to and the requirements that must be included in the regulations. These include requirements on the verification of the age of an individual on whom a special procedure is to be performed in relation to tattooing and intimate piercing; infection control practices; standards of hygiene; and how the licence holder

must maintain their records. The regulations must also include a condition preventing a licence holder from performing a special procedure on an individual who is, or appears to be, intoxicated, by virtue of drink, drugs, or any other means.

117. The mandatory licensing conditions may (among other things) make further provision relating to premises or vehicles (including the cleaning and maintenance of the premises or vehicle from which a special procedure is performed, or where the equipment or material is stored or prepared). The conditions may also cover how a licence holder must display their licence, the information the licence holder must provide to the local authority in the case of conviction of a relevant offence, when an application for variation of a licence is to be made and when a licence must be returned.
118. The mandatory licensing conditions may also specify the way in which a special procedure is to be performed. This will include the equipment that should be used, how the procedure should be performed and the requirements in relation to the protective clothing worn by the licence holder. Provisions relating to information provided by the licence holder or to a licence holder before and after a special procedure is carried out may also be specified, for example aftercare advice.
119. The mandatory licensing conditions may also specify standards of competence relevant to performing a special procedure, including standards related to qualifications or experience, or to the performance of a special procedure on a specified part of an individual's body. So for instance if a procedure were carried out on a particularly vulnerable or sensitive part of a person's body, specified training or qualifications could be required.
120. The regulations may provide that different mandatory licensing conditions apply in relation to different purposes. For example, there may be different mandatory licensing conditions for different premises and vehicles, for different special procedures, and to take account of the different circumstances in which a special procedure is practiced.

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

121. Before regulations under section 62 or 63 are made, this section requires the Welsh Ministers to consider whether there are people who appear to represent the interests of those likely to be affected by them, and to consult appropriately with them. This ensures that those who are affected by the regulations are consulted and have their views considered.

#### ***Section 65 - Mandatory grant or refusal of application for special procedure licence***

122. This section outlines the circumstances under which a local authority must grant or refuse an application for a special procedure licence. The detail of how a licence application must be made is set out in Schedule 3 (see commentary below).
123. The local authority must grant the special procedure licence application if (and only if) it is satisfied that all the applicable licensing criteria are met in respect of the performance of the special procedure, thereby authorising the performance of the procedure on that basis, and at or in the premises or vehicle specified in the application. If an application relates to more than one procedure, and/or more than one set of premises, but the criteria are not met in respect of each procedure and/or set of premises, the authority must grant the application, but only in respect of those procedures and/or premises in relation to which the criteria are met.
124. If the local authority is not satisfied that all the applicable licensing criteria are met, it must give notice to the applicant that the application has been refused. The process the local authority must follow in relation to providing notice and communicating with the applicant (including the process available to them for making representations) is provided in Schedule 3. The licensing committee of the authority (or one of its sub-

committees) will consider the application and make a decision. The applicant may appeal against the local authority's decision to the magistrates' court.

### ***Section 66 - Discretion to grant application for special procedure licence***

125. The requirement on the local authority to grant an application does not apply in the case of an applicant who has been convicted of a relevant offence. The relevant offences are provided under subsection (8). A regulation-making power is available in subsection (10) to amend the list of relevant offences by adding, varying or removing a description of offence.
126. If an applicant has been convicted of a relevant offence, the local authority retains the discretion to grant a special procedures licence, if it thinks fit, having regard to the nature of the offence and any special procedure to which the application relates. The test is whether the circumstances are such that the applicant's fitness to perform a special procedure has been called into question to such an extent that the licence should not be granted. The local authority may decide not to issue a licence, in which case it must provide notice to the applicant that the application has been refused. A conviction for a relevant offence is to be disregarded by the local authority if it is spent for the purposes of the [Rehabilitation of Offenders Act 1974 \(c.53\)](#). Pursuant to subsection (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.

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

127. This section clarifies that sections 65, 66 and 68 apply for the purposes of an application to renew a special procedure licence in the same way as if the application was for the issue of a licence.

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

128. This section provides discretion for the local authority to revoke a special procedure licence (or revoke it in so far as it relates to the performance of a particular special procedure), if it is satisfied that the conditions in subsection (2), (3) or (4) are met.
129. The first set of conditions (set out in subsection (2)) are (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. The second set of conditions (set out in subsection (3)) relate to convictions for a relevant offence and also provide a basis upon which a local authority can revoke a special procedure licence, for example if the local authority was unaware of the conviction for a relevant offence at the time of granting the licence, or where the conviction did not precede the issuing of the licence. The third set of conditions (set out in subsection (4)) relate to a statement made by the licence holder in connection with an application that was false or misleading. If the authority would not have issued the licence had it known that the statement was false or misleading, or it would not have issued the licence in full, the licence may be revoked.
130. The section also provides that a revocation will come into effect following the expiry of the period for bringing an appeal or further appeal in respect of the revocation, or the withdrawal of any appeal or further appeal. Further detail on the procedure for revocations is provided in Schedule 3. For commentary, see Schedule 3 below.

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

131. This section establishes that a person carrying on a business in which a special procedure is performed must comply with two requirements. The first requirement is that the procedure is performed at premises or in a vehicle that has been approved by the

local authority under section 70. The second requirement ensures that once approved, there is compliance with the mandatory approval conditions (provided at section 70(3)).

132. The approval requirements will also apply in the case of an exhibition, entertainment or other event to which members of the public have access, and at which a special procedure is performed by a person in the course of business. In these circumstances, the person who organises the exhibition, entertainment or event is responsible for ensuring the premises is approved and the applicable mandatory conditions of approval are complied with. Subsection (7) clarifies that it is the premises itself, rather than the individual businesses operating from that premises, which must be approved. An example may be where an exhibition taking place in a hotel is attended by individual businesses operating at tables. In this instance, the hotel premises would be required to be approved rather than the individual businesses operating from those stalls.
133. Subsection (8) provides the Welsh Ministers with a regulation-making power to exempt certain premises or vehicles from the approval requirements. The premises or vehicle may be described in the regulations by way of reference to the persons by whom they are managed or controlled; the nature of activities carried on at or in them; the different circumstances in which a special procedure is performed at or in them; or the numbers of individuals performing special procedures. This may enable for example, the premises from which a special procedure is performed by an exempted individual to also be exempted, for example performance of a procedure by a doctor in a hospital setting.

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

134. This section enables a local authority to issue an approval certificate, thereby approving a premises or vehicle so that a special procedure (or a number of special procedures) may be performed there. The approval will last for either a maximum of seven days (if it relates to procedures carried out on a temporary basis (i.e. in the course of an entertainment, exhibition or other event)), or three years. The period for which the approval is valid must be specified on the approval certificate. The premises must be in the local authority's area and the vehicle must be considered to be driven, used or kept in the area of the local authority, in order for the local authority to approve it.
135. Subsection (3) requires the Welsh Ministers to make regulations in relation to the approval of premises and vehicles. These regulations must cover the criteria to be met in order for an application to be granted, the circumstances in which an application is to be granted, and the process for an applicant to appeal against a refusal of an application. In addition, the regulations will specify the conditions (the "mandatory approval conditions") which must be complied with in order for the approval to be retained. These conditions may include the facilities available at the premises or vehicle, such as suitable hand cleansing facilities, and provide details about displaying an approval certificate at an approved premises or vehicle. The purpose of the display of approval certificates is to improve transparency in relation to the practice of special procedures, and to enable consumers to identify that the premises or vehicle has been approved by the local authority.
136. The regulations may also make provision about the way in which an application for approval is made and is dealt with (including the payment of a fee), the circumstances in which an application must not be granted, or may be granted at the local authority's discretion, and the process that will apply to the renewal of an approval. In addition, the regulations may make provision about how a local authority determines the amount of fee payable by an applicant when applying for a premises or vehicle approval, as well as detail about the consequences of failing to comply with the requirement to pay a fee (such as a revocation of approval).
137. The regulations may also make different provision for different descriptions of premises and vehicles; for different special procedures; and for the different circumstances in which a special procedure is performed.

### ***Section 71 - Approval certificates***

138. This section provides details about the form and content of approval certificates. The approval certificate must state the date the premises or vehicle was approved by the local authority (the “approval date”); the special procedure for which the premises or vehicle is approved; and the date upon which the approval will expire. If the approval certificate relates to a premises, it must also state the address of the premises it covers. In the case of a vehicle, the approval certificate must state the registration number of the vehicle, if it has one, or otherwise identify the vehicle in whatever way the local authority considers appropriate. Subsection (4) enables the Welsh Ministers to make further provision by way of regulations about the form and content of approval certificates.

### ***Section 72 - Voluntary termination of approval***

139. This section provides flexibility to a person who holds a special procedure premises or vehicle approval to voluntarily terminate the approval, for example if their circumstances change. The person may give notice to the local authority which issued the approval, specifying the date upon which the approval is to expire.
140. The local authority must take reasonable steps to bring the notice of voluntary termination to persons it thinks likely to be affected by it, for example licence holders listed as operating from the premises or vehicle referred to in the notice. This is intended to avoid a situation where a practitioner continues to work at a premises or vehicle that they are not aware is no longer approved - as if they were to do so, they would be committing a criminal offence.
141. Subsection (5) provides that the Welsh Ministers may make further provisions about the notice in regulations, including about the information to be included in the notice.

### ***Section 73 - Revocation of approval***

142. This section provides the local authority with the ability to revoke a premises or vehicle approval if it is satisfied that both the conditions in subsection (2) are met. These conditions are that the mandatory approval conditions that apply to the premises or vehicle (as required by section 70(3)) have not been complied with, and that this non-compliance presents or could present, significant risk of harm to human health. In order to revoke the approval, the local authority must serve a notice on the person who applied for it.
143. [Schedule 3](#) outlines the process for the revocation of the approval. This process is the same as that for revocation of a special procedure licence (as provided by section 68) and provides that the person may appeal against the local authority’s decision to the magistrates’ court.
144. The date from which the revocation will have effect is provided for in subsection (4). This takes into account the appeal mechanisms and timescales set out in [Schedule 3](#).

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

145. This section requires a local authority to give notice to a person in respect of a revocation, or a proposed revocation, of a premises or vehicle approval. The local authority must also take reasonable steps for bringing the notice to the attention of anyone it thinks likely to be affected by it (for example, licence holders listed as operating from the affected premises or vehicle). This is intended to avoid a situation where a licence holder continues to work at a premises or vehicle that they are not aware is no longer approved - as if they were to do so, they would be committing a criminal offence.

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

146. **Section 75** requires a local authority to maintain and publish a register containing details of all valid special procedure licences issued by it, as well as details of all those premises and vehicles currently approved by it. This is to allow members of the public to view the details of licence holders and/or approved premises or vehicles in their area. The purpose is to improve transparency in relation to the practice of special procedures, and to provide consumer confidence.
147. Subsections (2) and (3) specify the information that must be provided in the register in relation to licences and approvals. In respect of licences, subsection (2) requires that the register must contain information including the name of the licence holder, the date the licence was issued, the special procedure authorised by the licence and the period that the licence is valid for (i.e. seven days or three years). If the licence relates to the performance of a special procedure in a specific premises or vehicle, the register must contain relevant information relating to the approval.
148. For premises and vehicle approvals, subsection (3) requires that the register contains information such as the name of the person holding the approval, the date the approval was issued and its period of validity, as well as the special procedure authorised to be performed on those premises or vehicle. Specific information such as the premises address or the vehicle's registration number is also required.
149. Subsection (4) provides that the local authority maintaining the register may include other information as it considers appropriate.
150. Although each local authority is required by this section to maintain and publish its own register, subsection (5) enables the Welsh Ministers to arrange for a central register to be published by one appointed local authority. As the Welsh Ministers may require all local authorities in Wales to participate in and provide their information to the appointed local authority, this central register would contain information on all currently valid licences and approvals in Wales. The Welsh Ministers may also require all local authorities to contribute towards the costs of such a central register.

***Section 76 - Fees***

151. This section provides a local authority with the ability to charge a fee to the holder of a special procedure licence or a premises or vehicle approval. The fee may be applied either periodically or otherwise for as long as the licence/approval has effect. Regulations may make provision about the way in which a local authority is to determine the amount of the fee, having regard to the costs incurred or expected to be incurred by the authority, as well as the way the fee is paid, repaid or recovered if unpaid.

***Section 77 - Stop notices***

152. If the local authority is aware of an individual performing a special procedure in its area without a licence, or who is carrying on a business from a premises or vehicle that has not been approved, the local authority may issue that individual with a stop notice. The aim of the stop notice is to prohibit the carrying out of the special procedure specified in the notice.
153. Breach of the stop notice is an offence (as provided by section 82(4)) and is punishable by an unlimited fine.
154. The stop notice must be provided to the person concerned and contain the information required in subsections (4) and (5). This includes the reason for the stop notice, details of the prohibition and notifying the person subject to the notice of their right to appeal against it (see section 81). The stop notice will apply anywhere in Wales and will be effective until the person obtains the relevant licence or approval.

***Section 78 - Special procedure licences: licence holder remedial action notices***

155. If a local authority becomes aware that a licence holder is breaching an applicable mandatory licensing condition, it may issue the licence holder with a remedial action notice. This must specify the matters giving rise to the breach and the steps that the licence holder must take to secure compliance with the applicable mandatory licensing conditions. If the authority is satisfied that the breach of the mandatory licensing condition presents, or could present, significant risk of harm to human health, the notice may also prohibit the performance of a special procedure until the steps specified in the notice have been taken. The prohibition may relate to the performance of the special procedure in an area of Wales (for example the local authority's area) or may extend to all of Wales.
156. The notice must specify the compliance period (which must not be less than 14 days) within which the licence holder should take the steps specified in it. If the local authority is satisfied that the steps specified in the notice have been taken, it must issue the licence holder with a completion certificate to discharge the notice, as required by section 80.
157. The remedial action notice must also provide details of the licence holder's right to appeal to the magistrates' court against the local authority's decision.
158. Whilst contravention of the remedial action notice is an offence (as provided by section 82(5)) and is punishable by an unlimited fine, the local authority must not begin proceedings against the licence holder until the compliance period has expired. If the licence holder takes the steps specified in the notice within the compliance period, no proceedings for an offence can be taken by the local authority. The local authority will, however, be able to undertake proceedings if the licence holder continues to practice a special procedure despite the prohibition placed upon their practice. In addition to the remedial action notice, the local authority may also revoke a special procedure licence if the licence holder fails to comply with an applicable mandatory licensing condition.

***Section 79 - Approved premises and vehicles: premises remedial action notices***

159. Similarly to the provisions set out in section 78, this section provides the local authority with the ability to issue a remedial action notice to a person in respect of an approved premises or vehicle. The notice may be issued if the local authority is satisfied that the person is breaching an applicable mandatory condition of approval. The remedial action notice must specify the reason(s) for the breach and the steps that the licence holder must take to secure compliance. If the authority is satisfied that the breach of the mandatory condition of approval presents, or could present, significant risk of harm to human health, the notice may also prohibit the performance of the special procedure at the premises or in the vehicle, until the steps specified in the notice have been taken. In this case, the local authority must take reasonable steps to bring the notice to the attention of anyone it thinks is likely to be affected by it (for example, licence holders listed as operating from the premises or vehicle). This ensures that people who perform special procedures from the premises/vehicle do not inadvertently commit an offence by breaching the prohibition.
160. The notice must specify the compliance period (which must not be less than 14 days) within which the licence holder should take the steps specified in it. If the local authority is satisfied that the steps specified in the notice have been taken, it must issue the licence holder with a completion certificate to discharge the notice, as required by section 80.
161. The notice must also provide details of the person's right to appeal to the magistrates' court against the local authority's decision to issue a remedial action notice. Contravention of the notice is an offence (as provided for by section 82(6)) and is punishable by an unlimited fine. However, the local authority must not begin proceedings until the compliance period has expired.

162. If the person takes the steps specified in the remedial notice within the compliance period, no proceedings for an offence can be taken by the local authority. The local authority will, however, be able to undertake proceedings if the person continues to practice the special procedure from the premises or vehicle specified in the notice, despite the prohibition. In addition to the remedial action notice, the local authority may also revoke a premises or vehicle approval if the person fails to comply with a mandatory approval condition.

### ***Section 80 - Completion certificate***

163. If a local authority is satisfied that the steps specified in a remedial action notice it has issued under section 78 or 79 have been taken, it must provide the person with a certificate (a “completion certificate”) discharging the notice. This ensures that both the person who was subject to the notice and the local authority are aware that the remedial action notice has been complied with, and have a record of the steps which have been taken. The local authority must also take reasonable steps to bring the completion certificate or notice to the attention of anyone it thinks is likely to be affected.
164. The section also provides that a person subject to the notice may apply to the local authority for a completion certificate at any time. The process and the information required for this will be specified by the local authority. If the local authority refuses the application, it must give notice of this to the person. In addition, the reasons for the refusal and information about the appeals process (see section 81) must be provided to the person.

### ***Section 81 - Appeals***

165. This section provides a person with a right to appeal to the magistrates’ court against a local authority’s decision under section 77, 78 or 79. An appeal against the local authority’s decision to refuse an application for a completion certificate (section 80(5)) may also be made. The magistrates’ court may take any of the actions specified in subsection (5); these include upholding the notice or refusal, quashing or varying the notice, or referring the case to the local authority to dispose of in accordance with directions given by the court.
166. If the local authority’s decision is varied or quashed, the magistrates’ court may order the local authority to compensate the person for loss suffered as a result of the notice. For example, the person could be compensated for a loss of income due to the local authority’s decision to prevent them from working.
167. An appeal to the Crown Court may be made by either the person or the local authority against a decision of a magistrate’s court.

### ***Section 82 - Offences***

168. This section sets out the offences which apply in relation to this Part of the Act. Amongst others, offences will be committed if a person fails to comply with the licensing or approval conditions, or fails to comply with enforcement action ordered by a local authority such as a stop notice or a remedial action notice, without reasonable cause. There is also an offence for making a false or misleading statement (including if the person knows or is reckless as to whether it is false or misleading) when applying for a licence or approval of a premises or vehicle.
169. Upon conviction, a person found guilty of an offence under this section is liable to an unlimited fine.

### ***Section 83 - Authorised officers***

170. This section clarifies that any references to authorised officers in sections 84 to 92 are to any person authorised to exercise functions of a local authority, whether or not they are an officer of the local authority.

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

171. **Section 84** enables an authorised officer to enter premises (excluding premises used wholly or mainly as a dwelling) at any reasonable time, if the officer has reason to believe that a special procedure has been, is being, or is likely to be performed at the premises, or that material or equipment relating to a special procedure is stored or prepared at the premises. The power to enter premises does not enable the authorised officer to enter by force. If required, an authorised officer must, before entering the premises, show evidence of their authorisation. The power of entry also applies to a vehicle.
172. Section 67(9) of the Police and Criminal Evidence Act 1984 provides that, while acting in the course of their enforcement functions, authorised officers of the enforcement authority must have regard to the relevant code of practice made under that Act. Therefore, authorised officers must have regard to the PACE Code of Practice B in the exercise of their enforcement functions.

### ***Section 85 - Warrant to enter dwelling***

173. If access to premises which are wholly or mainly used as a dwelling is necessary for the enforcement of this Part of the Act, a written application must be made by the local authority to a justice of the peace. Section 85 enables a justice of the peace to issue a warrant, thereby authorising an authorised officer to enter the dwelling, if needs be by force. A warrant can be issued in a format other than a hard copy document, such as an electronic version. The warrant will be in force for 28 days beginning on the date it was signed by the justice of the peace. This section also applies to a vehicle.

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

174. If access to premises that are not only used wholly or mainly as a dwelling is necessary, section 86 enables a justice of the peace to issue a warrant authorising any authorised officer to enter the premises, if needs be by force. The warrant can be obtained by making a written application to a justice of the peace. The premises to which entry is being sought must be used for business purposes, or for both business and as a dwelling. In the case of premises used wholly or mainly as a dwelling a warrant must be sought under section 85. This section also applies to a vehicle.
175. In order for a warrant to be issued, one or more of the requirements set out in subsections (3) to (6) must be met. The requirements include that a request to enter the premises has been, or is likely to be, refused and notice of intention to apply for a warrant has been given; that an application for admission, or the giving of notice of an intention to apply for a warrant is likely to defeat the purpose of the entry; that the premises are unoccupied; or that the occupier is temporarily absent, and awaiting their return is likely to defeat the purpose of the entry. Once the warrant is issued, it will be in force for 28 days beginning on the date it was issued by the justice of the peace.

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

176. This section enables an authorised officer entering premises under section 84, 85 or 86 to take with them any other persons or equipment as the officer considers appropriate, for example equipment used to examine electronic records. It also requires that if the occupier of premises that an authorised officers is authorised to enter under sections 85 or 86 is present at the time the authorised officer seeks to execute the warrant, the occupier must be told the officer's name; the officer must produce documentary

evidence that the officer is an authorised officer; the officer must produce the warrant and supply the occupier with a copy of it. The section also requires that if the premises are unoccupied or the occupier is temporarily absent, the authorised officer must leave the premises as effectively secured against unauthorised entry as the officer found them. The provisions in this section also apply to a vehicle.

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

177. Once an authorised officer has gained entry to premises, they may undertake inspections and examinations for the purposes of the local authority's functions in relation to special procedures. This may include inspecting and examining the premises, viewing and retaining closed-circuit television records and obtaining copies of documents, such as procedure records and consent documents. The authorised officer may also require the production of or take possession of anything and retain it for as long as the officer considers necessary for the purpose of exercising the authority's functions. In this instance, however, the officer must leave a statement at the premises containing the particulars of what has been taken, and identify the person to whom a request for the return of the property may be made.
178. The authorised officer may also require any person to provide them with information, or afford facilities and assistance with respect to matters within the person's control. This may include providing an account of events, or supplying information that is stored on a computer or other device. However, a person is not required to answer any question or produce any document which they would be entitled to refuse to answer or produce during proceedings in a court in England and Wales. This section also applies to a vehicle.

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

179. This section provides that a person commits an offence if they intentionally obstruct an authorised officer from exercising their functions under sections 84 to 88. They will also commit an offence if, without reasonable cause, they fail to provide an authorised officer with facilities that are reasonably required under section 88(1), or they fail to comply with a requirement under section 88(1)(b) or (d) such as producing CCTV footage or providing information.
180. A person found guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982.

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

181. An authorised officer may make purchases and arrangements, and secure the provision of services if the officer considers it necessary for the purpose of the local authority's functions in relation to special procedures. This includes enlisting the assistance of a person to ascertain if a special procedure is being performed from a premises or vehicle in contravention of the requirements in this Part of the Act.

### ***Section 91 - Retained property: appeals***

182. This section provides an additional safeguard relating to the powers of entry and inspection provisions. It enables a person with an interest in anything taken away from the premises by an authorised officer under section 88(1)(c) to apply to a magistrates' court for an order requesting the release of the property. Depending on the court's consideration of an application, it may make an order requiring the release of the retained property.

***Section 92 - Appropriated property: compensation***

183. This section provides a right for a person affected by the taking possession of property under section 88(1)(c) to apply to a magistrates' court for compensation. Where the circumstances set out in subsection (2) are satisfied (i.e. that the person has suffered loss or damage as a consequence of the property being taken and the loss or damage is not due to their neglect or failure to act), the court may order the local authority to pay compensation to the applicant.

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

184. This section enables the Welsh Ministers to amend, via regulations, the list of special procedures in section 57 which are subject to the licensing system. Before making regulations under this power, subsection (4) requires the Welsh Ministers to consider whether there are people who appear to represent the interests of those likely to be affected by them, and to consult with them as appropriate. This ensures that those who are affected by the regulations are consulted and have their views considered.
185. **Section 93** allows the list of special procedures in section 57 to be amended – this includes adding or removing a type or description of procedure to or from the list, or varying the description of a procedure already contained in the list. Amongst other things, a special procedure may be described by reference to the individual who carries out the procedure, or the individual on whom it is carried out. In order for a procedure to be added to the list, the Welsh Ministers must consider that it is performed for aesthetic or therapeutic purposes, and the performance of the procedure is capable of causing harm to human health. Harm to human health is defined in section 94(5) and includes harm to an individual's physical or mental health.
186. This regulation-making power allows the list of special procedures to remain up to date, thereby ensuring the system takes account of and responds to changing practices and trends.

***Section 94 - Interpretation of this Part***

187. This section sets out the meaning of the key terms used in this Part, including the meaning of acupuncture, body piercing, electrolysis and tattooing. The definition of tattooing includes micro pigmentation. The definition of body piercing means the perforation (including puncture or incision) of an individual's skin or mucous membrane, with a view to enabling jewellery or another object to be attached to, implanted in or removed from the individual's body. Objects will be prescribed in regulations and may include for example, a bead.
188. Subsection (4) provides details on the meaning of the different bases (i.e. fixed site basis, mobile basis, peripatetic basis and temporary basis) referred to in the Part in relation to the practice of a special procedure. For example, different licensing criteria may be applied to these different bases by virtue of regulations made under section 62(5).
189. Subsection (5) provides a definition of the term "harm to human health". This includes harm to an individual's physical health arising through physical injury or exposure to an infection, and harm to an individual's mental health. Any procedure considered for addition to the list of special procedures (and therefore captured by the provisions in this Part) must be capable of causing harm to human health. For example, a procedure may be considered for inclusion in the list if it is capable of causing physical injury.