



## **CABINET –16<sup>TH</sup> OCTOBER 2024**

**SUBJECT: PUBLIC HEALTH ACT (WALES) 2017- PART 4 SPECIAL PROCEDURE LICENSING, DELEGATION, FEES AND FUTURE FEE SETTING DETERMINATION.**

**REPORT BY: CORPORATE DIRECTOR FOR ECONOMY AND ENVIRONMENT**

### **1. PURPOSE OF REPORT**

- 1.1 To note the implementation of Part 4 of The Public Health (Wales) Act 2017 (“the Act”) which sets out requirements for a mandatory licensing scheme for practitioners carrying out ‘special procedures’ in Wales.
- 1.2 To obtain additional authorisation for officers under the above Act.
- 1.3 To note that approval will be sought from full Council for the Council’s Monitoring Officer to make the necessary changes to the Council’s Constitution associated with the implementation of Part 4 of the Act.
- 1.4 To determine the fees charged for the Special Procedure licence regime 2024/25.
- 1.5 To approve the delegation and future setting of the above fees falling under the executive functions to the relevant Director or Head of Service in consultation with the relevant Cabinet Member.

### **2. SUMMARY**

- 2.1 The Public Health (Wales) Act 2017 (“the Act”) received Royal Assent on 3 July 2017. Officers within Public Protection were authorised under the Act by Cabinet on 31<sup>st</sup> January 2018 in terms of other functions under the Act brought into force at that time and the Constitution was amended accordingly. That report is referred to in the background papers for information. The purpose of this report is to outline further procedures to be implemented under the Act as follows.
- 2.2 Part 4 of the Act sets out the requirements for a mandatory licensing scheme

for practitioners carrying out 'special procedures' in Wales. 'Special Procedures' include practices such as tattooing, body piercing, acupuncture and electrolysis. The intention of the licensing scheme is to improve and sustain standards of infection prevention and control in the special procedures industry and assure the safety and health of clients and practitioners. Part 4 comes into force on 29<sup>th</sup> November 2024.

- 2.3 Officers within the Public Protection Division require authorisation for additional powers to deal efficiently with applications and enforcement.
- 2.4 The licensing fees for practitioners, premises / vehicles etc are covered by Special Procedures Regulations made under the Act and again, come into force on the 29<sup>th</sup> of November 2024. Fees are required to be approved in advance so that officers can communicate the fees to prospective applicants and start processing applications, as soon as possible after the implementation date.
- 2.5 The Special Procedures Licensing Committee (Wales) Regulations delegate specific functions associated with Practitioner applications to the Licensing Committee established under the Licensing Act 2003, namely the Licensing and Gambling Committee. The terms of reference of this Committee in Part 2 of the Constitution, Article 8 therefore require amendment and will be the subject of a follow-on report to Council.
- 2.6 With the exception of 2.5 above the Regulations are silent upon the issue of the responsibility of the fee setting function and consequently the provisions of S9(D) of the Local Government Act 2000 are triggered and by default the function is exercised by the Executive.
- 2.7 As per the Regulations, fees for these types of licences have been calculated on a collaborative basis across Wales utilising the licensing fee toolkit spreadsheets and principles. Directors of Public Protection Wales (DPPW) has recommended that one set of fees for the whole of Wales be implemented on a cost recovery only basis.

### **3. RECOMMENDATIONS**

- 3.1 That Cabinet note the implementation of Part 4 of the Public Health (Wales) Act 2017.
- 3.2 That Officers within the Public Protection Division be authorised as set out in paragraph 5.9 of this report to deal efficiently with applications and enforcement.
- 3.3 To note that approval will be sought from full Council by the Council's Monitoring Officer to make any necessary amendments to the Constitution to reflect the implementation of Part 4 of the Public Health (Wales) Act 2017 as

detailed in the report.

- 3.4 That the fee structure set out at paragraphs 5.7 of the report is approved for implementation from the 29<sup>th</sup> of November 2024.
- 3.5 That Cabinet approve the delegation of future fee setting arrangements for these licence types falling within the executive function to the relevant Director or Head of Service in consultation with the relevant Cabinet Member.

#### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 To enable officers to deal efficiently with applications under the Act and enforcement.
- 4.2 In order to comply with statutory guidance on licensing fees and to recover a reasonable level of costs incurred by the Council in administering the licensing functions.
- 4.3 The majority of Licensing fees are determined by the Licensing and Gambling and Taxi and General Licensing Committees. Delegated responsibility was approved by Cabinet in July 2023 for other fee types previously the responsibility of the executive (Scrap Metal Dealer, Dog Breeding and Licensing of Activities Involving Animals (LAIA)). Approving the same delegation responsibility for the fees covered by this report would result in a standardised, more streamlined and responsive process for all fees outside the remit of the two Licensing Committees.

#### **5. THE REPORT**

- 5.1 The current legislative framework for Special Procedures is inadequate. The Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') is the primary means of enforcing standards in this sector through the application of a registration scheme. However, the requirement for local authorities to adopt this scheme is voluntary and those that have adopted it cannot refuse registration of the individual or premises unless they have been convicted of an offence under Part VIII of the 1982 Act. Importantly, the 1982 Act does not require a 'competency test' for those performing the procedures to demonstrate an appropriate knowledge of hygiene and infection control.
- 5.2 The Public Health (Wales) Act 2017 ("the Act") received Royal Assent on 3 July 2017. Part 4 of the Act set out the requirements for a mandatory licensing scheme for practitioners carrying out 'special procedures' in Wales. The intention of the licensing scheme is to improve and sustain standards of infection prevention and control in the special procedures industry and assure the safety and health of clients and practitioners alike. The four special procedures are specified and are:

acupuncture (including dry needling)  
body piercing

electrolysis  
tattooing (including semi-permanent make-up)

- 5.3 The licensing scheme has an implementation date of the 29<sup>th</sup> of November 2024 and each authority in Wales is required to approve a standard set of fees to process new applications and subsequent renewals, variations for adding a procedure, change of premises layout, change of details, replacement licence and temporary special procedures licences and temporary approved premises certificates. Existing practitioners and premises / vehicle owners / operators registered under the 1982 Act will qualify for a 'transitional licence' or 'transitional approved premises / vehicle approval certificate (if they submit their new applications within three months from the coming into force date.) The purpose of this is to show members of the public that the individual or business had previously been part of a registration scheme and operated to a certain standard. This allows applicants and businesses to continue to trade whilst applications are processed. Once the local authority has determined the application the 'transitional' licence or approval certificate will no longer apply.

Local authorities have 9 months from the coming into force date to process all submitted transitional applications.

- 5.4 There are currently 1400 individuals registered to carry out special procedures within the borough. However, as these are "one off" registrations covering over ten years of registrations a significant number will no longer be doing so and will not require a licence under the new regime. After checking alternative sources of premises records it is anticipated that applications are likely to be received from 133 Premises for Premises Approval Certificates. This is the number of premises believed to be currently operating within Caerphilly CBC area. Licences for Special Procedures and Premises Approval certificates are for three years so there will be low levels of income in the intervening years, with only additional income from new applications.
- 5.5 The All-Wales Licensing Expert Panel devised a fee calculator toolkit that has been approved by the Directors of Public Protection in Wales. In principle, the toolkit calculates two elements, which cover the costs to the authority for the provision of the service and the cost of processing and producing a licence. The cost of provision of the service increases proportionally dependant on the period of the licence, whereas the licence processing cost is not affected by the period of the licence.
- 5.6 Section 76 of Part 4 of the Act allows local authorities that have issued a Special Procedures licence or an Approved premises certificate to charge a fee. The amount of fee to be charged by a local authority is to be determined having had regard to the costs incurred or expected to be incurred by the authority. The national fees new application and renewal fees were endorsed by the Directors of Public Protection Wales (DPPW) in November 2023 for implementation in 2024 and are based on the principles of Hemmings case law. The variation or other fees were endorsed by DPPW in July 2024. As

required by Regulations these fees will collectively be reviewed after one year from implementation and at the end of each subsequent three-year period.

- 5.7 Total fees for practitioners and Premises are divided into application fee and compliance fee which is payable once the application has been granted. The application fee covers the cost of processing the application, inspection and issuing documentation. The compliance fee is a reasonable contribution to the running of the Licensing scheme, advising licence holders, following up complaints, additional inspections and ongoing support.

Each local authority is required to approve fees as per the following tables.

<b>Licence Type</b>	<b>New</b>	<b>Renewal</b>
Special Procedures Practitioner (3yr licence)	£203 £159 Application £44 Compliance	£189 £148 Application £41 Compliance
Approved Premises Certificate (including vehicles) (3 yr licence)	£385 £244 Application £141 Compliance	£345 £204 Application £141 Compliance

<b>Licence Type</b>	<b>Fee</b>
Special Procedure Licence Variation – Add Procedure	£131
Special Procedure Licence Variation – change of detail	£26
Replacement Licence	£13
Temporary Special Procedure licence	£92
Special Procedure approved premises variation - Add Procedure	£189
Special Procedure approved premises variation – Structural Change	£189
Special Procedure approved premises - change of detail	£26
Replacement Licence	£13
Approved Premises Temporary Approval (Ancillary Event)	£385

Approved Premises Temporary Approval (Convention / Main Purpose)	£680
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5.8 The majority of Licensing fees are determined by the Licensing and Gambling and Taxi and General Licensing Committees. Delegated responsibility was approved by Cabinet in July 2023 for other fee types previously the responsibility of the executive (Scrap Metal Dealer, Dog Breeding and Licensing of Activities Involving Animals (LAIA). Approving the same delegation responsibility for the fees covered by this report would result in a standardised, more streamlined and responsive process for all fees outside the remit of the two Licensing Committees.

5.9 In order to deal efficiently with applications and enforcement, it is proposed that the following powers are delegated to officers within the Public Protection Division.

Section 65(2) - Power to issue a refusal notice (not all licensing criteria are met)

Section 65(3) - Power to issue a Special Procedures Licence where all the applicable licensing criteria is met.

Section 66(3) - Power to issue a notice of refusal (following relevant offence)

Section 67 - Power to renew a Special Procedures Licence where all the applicable licensing criteria is met.

Section 68(1) – Power to issue a notice of revocation for Special Procedures licence.

Section 70(1) - Power to issue an approval certificate for a premises or vehicle.

Section 70(1) - Power to renew an approval certificate for a premises or vehicle.

Section 70(1) - Power to refuse an approval certificate for a premises or vehicle.

Section 72(4) - Power to take reasonable steps for bringing a voluntary termination notice to the attention of appropriate persons.

Section 77(2) - Power to issue a stop notice.

Section 78(1) - Power to issue a remedial action notice in respect of a Special Procedures Licence.

Section 79(1) - Power to issue a remedial action notice in respect of an Approved Premises Certificate.

Section 80(2) - Power to issue a completion certificate in respect of a Special Procedure Licence or an Approved Premises Certificate.

Section 97 - Power to carry out enforcement action and consultation in respect of intimate piercing.

Schedule 3 Paragraph 15(3) - Power to issue a warning notice.

Sections 98 to 107-general enforcement powers

5.10 The Special Procedures Licensing Committee (Wales) Regulations 2024

delegate specific functions associated with Practitioner applications to the Licensing Committee established under the Licensing Act 2003, namely the Licensing and Gambling Committee. The terms of reference of Part 2 of the Constitution, Article 8 and Part B, Responsibility for Functions require amendment after consideration by Council.

## **5.11 CONCLUSION**

5.11.1 It is proposed that Cabinet approve the level of fees set out in this report ahead of the coming into force date. It is also proposed that future fee setting arrangements for licence types contained within the executive function are delegated to the relevant Director or Head of Service in consultation with the relevant Cabinet Member. Also, that officers are given delegated powers as per paragraph 5.9 above.

## **6. ASSUMPTIONS**

6.1 It is impossible to predict with great certainty the number of applications that will be made in relation to Special Procedures licences. Once registered under the Local Government (Miscellaneous Provisions) Act 1982, there was no obligation to notify the issuing authority as to whether an individual was practising or to renew or surrender the registration held. It is believed that there are 133 businesses currently operating and performing special procedures in the borough. It is envisaged that these will make an application to continue to provide special procedures at their premises.

## **7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT**

7.1 Welsh Government has introduced a statutory scheme applicable across all local authorities in Wales and a requirement to set one suite of fees applicable across the whole of Wales. Welsh Government as part of the implementation process has released a number of consultations including Regulatory Impact Assessments and Integrated Impact Assessments. As every authority in Wales has a duty to implement the mandatory licensing regime and the standardised fees an additional IIA for CCBC has not been completed.

## **8. FINANCIAL IMPLICATIONS**

8.1 If the proposed fees are implemented by Cabinet, it is estimated that there will be an initial income of £51,000 from the transition of existing premises registration holders to the new licensing regime. There is a great deal of uncertainty with the amount for practitioners at the current time as numbers are unknown. Fees have been determined on a cost recovery basis taking into consideration the increase in workload and as specified by Welsh Government will be standardised across Wales. Licences are for a three-year period so adjustments will need to be made to the Licensing budget to cover the intervening years. There is currently a deficit between the cost of providing the Licensing service and the total income generated. Some fees are set by

Central Government e.g. Licensing Act 2003 which make up a significant proportion of fee income for the service and do not cover the cost of providing the service.

## **9. PERSONNEL IMPLICATIONS**

- 9.1 Officers currently administer and enforce existing controls on tattooing and other procedures. This legislation increases the types of procedures that require a licence and includes vehicles as well as premises. There will be a significant increase in workload for Licensing and Environmental Health officers concentrated into the first few months after implementation and in future years. This has been included in the fee setting process. All existing personnel and premises currently registered with the authority who wish to apply for a licence will require an inspection before the licence is issued.

## **10. CONSULTATIONS**

- 10.1 The views of the listed consultees have been reflected within this report.
- 10.2 Welsh Government has consulted widely whilst preparing for implementation including existing registration holders, associated membership/professional bodies as well as the general public, health professionals and local authorities. The latter included specific questions on fees setting and criteria. Responses have been considered at each stage of the process and various Local Authority working groups were involved. As the scheme is mandatory and fees standardised across all local authorities no additional local consultation was deemed necessary.

## **11. STATUTORY POWER**

- 11.1 Public Health Act 2017, The Special Procedure Licences (Wales) Regulations 2024.

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Consultees: Councillor Philippa Leonard, Cabinet Member for Planning and Public Protection  
Councillor Andrew Whitcombe, Chair, Housing and Environment Scrutiny  
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Background Papers:

[Link to - Local Government Association Licensing Fees Guidance](#)

Amendment to Public Protection Authorisations 31st January 2018.