

NEATH PORT TALBOT COUNCIL

Cabinet

2nd October 2024

Report of the Head of Legal and Democratic Services – Craig Griffiths

Matter for Decision

Wards Affected: All

Public Health (Wales) Act 2017 - Special Procedures Licensing

Purpose of the Report

1. To seek approval from members to set an appropriate fee structure and scheme of delegated authority for the Public Health (Wales) Act 2017 ("the Act") in respect of special procedure licensing.
2. The question of whether a function is an executive function [i.e. one for Cabinet] or a Council function of the Licensing Committee, is determined by either the relevant legislation itself or by the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007, made by Welsh Government.
3. In this instance the Act specifically delegates certain functions to the Licensing Committee [established under Section 6 of the Licensing Act 2003], whilst being silent on other functions. This means that by virtue of Section 13 of the Local Government Act 2000, where the Act is silent, some functions, by default, become the responsibility of an Executive under a local authority's executive arrangements.

Executive Summary

4. This report seeks to obtain approval from cabinet to set an appropriate fee structure and scheme of delegated authority for the Public Health (Wales) Act 2017 in respect of special procedure licensing.
5. Fees for the special procedure licensing regime have been calculated by the Special Procedures Implementation Group ("SPIG") and approved by Public Protection Wales ("PPW") to be consistently applied by local authorities across Wales.
6. Where the Act is silent on where the delegation of powers rests (and therefore defaults to an executive function), it is proposed that these powers be delegated to the Director of Strategy and Corporate Services, the Head of Legal Services, and the Legal Regulatory Manager.

Background

7. 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.
8. The Public Health (Wales) Act 2017 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)
9. Section 76 of Part 4 of the Public Health (Wales) Act 2017 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 for new application and renewal fees were endorsed by PPW in November 2023 and are based on the principles of Hemmings case law; the variation and other fees were endorsed by PPW in August 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.
10. 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.
11. Each local authority is required to approve fees as per the following table.

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

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
Approved Premises Variation (Structural Change)	£189
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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Delegated Authority

12. In order to deal efficiently with applications and enforcement, it is proposed that the powers listed below be delegated to:
- The Director of Strategy and Corporate Services and the Director of Environment,
 - The Head of Legal and Democratic Services and the Head of Planning and Public Protection,
 - The Legal Regulatory Manager, the General Environmental Health Manager and the Trading Standards, Food and Health Protection Manager.
13. Section 61(1) - Power to designate an individual performing a special procedure to be licensed.
Section 65(3) - Power to issue a Special Procedures Licence where all the applicable licensing criteria is met.
Section 67 - Power to renew a Special Procedures Licence where all the applicable licensing criteria is met.
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.

14. The officers specified at paragraph 13 above be deemed authorised officers for the purposes of Sections 98 to 107 and shall have the power to nominate any supplementary officers as appropriate.

Financial Implications

15. The national fees concerning the new licensing scheme have been calculated based on the principles of cost recovery. 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. The licence fees can be adjusted where a deficit or surplus is identified which is in accordance with the case law R(on the application of Hemmings(t/a Simply Pleasures Ltd) and others) v Westminster City Council [2015].

Integrated Impact Assessment

16. This report is only to approve an appropriate fee structure and scheme of delegated authority for the Public Health (Wales) Act 2017 in respect of special procedure licensing. An integrated impact assessment is therefore considered unnecessary.

Legal Impacts

17. The Public Health (Wales) Act 2017 will place a statutory duty on local authorities in Wales to administer and enforce the special procedures licensing scheme. To ensure that the Local Authority can fulfil this statutory obligation efficiently, an appropriate fee structure and scheme of delegated powers is required to be adopted.

Risk Management

18. Not Applicable

Consultation

19. There is no requirement under the constitution for external consultation on this item.

Recommendation

20. It is recommended that members approve the proposed fee structure as set out in the table at paragraph 21 below and the scheme of delegated powers set out at paragraphs 22 and 23 below.

21. Table of proposed fees.

Licence Type	New	Renewal
Special Procedures Licence (3yr licence)	£203 (£159 Application £44 Compliance)	£189 (£148 Application £41 Compliance)
Approved Premises Certificate (3yr licence)	£385 (£244 Application £141 Compliance)	£345 (£204 Application £141 Compliance)
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Replacement Licence	£13
Approved Premises Temporary Approval (Ancillary Event)	£385
Approved Premises Temporary Approval (Convention / Main Purpose)	£680

22. In order to deal efficiently with applications and enforcement, it is proposed that the powers listed below be delegated to:

- The Director of Strategy and Corporate Services and the Director of Environment,
 - The Head of Legal and Democratic Services and the Head of Planning and Public Protection,
 - The Legal Regulatory Manager, the General Environmental Health Manager and the Trading Standards, Food and Health Protection Manager.
23. Section 61(1) - Power to designate an individual performing a special procedure to be licensed.
 Section 65(3) - Power to issue a Special Procedures Licence where all the applicable licensing criteria is met.
 Section 67 - Power to renew a Special Procedures Licence where all the applicable licensing criteria is met.
 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.

The officers specified at paragraph 23 above be deemed authorised officers for the purposes of Sections 98 to 107 and shall have the power to nominate any supplementary officers as appropriate.

Implementation of Decision

24. The decision is proposed for implementation after the 3-day call in period.

Appendices

25. Not Applicable

List of Background Papers

26. None

Officer Contact

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