

Response to consultation on draft regulations and statutory guidance for a mandatory licensing scheme for special procedures in Wales

April 2024

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers (AR) programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

- 2.1 We welcome the opportunity to provide comments on the draft regulations and guidance for the proposed licensing scheme for special procedures in Wales.
- 2.2 We [responded](#) to the previous Welsh Government consultation in 2022 welcoming the proposed licensing scheme but highlighting the need for the licensing scheme to fit with the existing regulatory landscape. In particular, we commented on the proposals for exemptions for certain categories of practitioners, including the decision not to allow an exemption for practitioners on an Accredited Register since membership of these registers is voluntary.
- 2.3 We recognise that a number of those on an Accredited Registers may be required to apply for a licence anyway as the majority do not work within Healthcare Inspectorate Wales (HIW) regulated premises. However, we do not think the arguments for not extending an exemption to relevant Accredited Registers practitioners on the basis that membership is voluntary are clear and this decision may have unintended consequences for public protection.
- 2.4 The Accredited Registers scheme is a UK-wide, government-backed mechanism to raise standards amongst the unregulated workforce and provides reassurance to members of the public and employers that

practitioners meet set standards of education and training, comply with codes of practice and promote access to appropriate complaints mechanisms.

- 2.5 Whilst the licence will require practitioners to meet certain criteria including holding of appropriate insurance and basic standards relating to infection prevention, it will not provide any assurance beyond this relating to the wider conduct and competence of the practitioner.
- 2.6 As licensing is therefore an additional rather than an alternative safeguard to the protections provided by an Accredited Register, it will be important that the public is able to differentiate between licence holders in terms of their level of competence. We think the Welsh Government should consider what more it can do to help members of the public establish level of competence amongst those with a licence such as signposting to those that are on a relevant Accredited Register.
- 2.7 The Welsh Government's response to the previous consultation on licensing suggests that registers of unregulated practitioners should seek to work together to achieve statutory regulation. However, it remains the policy of the four UK Governments, including the Welsh Government, to support Accredited Registers as alternative means of assurance when statutory regulation is not deemed necessary, and we would have liked to have seen this reflected. The 2021 four-country consultation on criteria for deciding when statutory regulation is needed stated: *'Where government and the devolved administrations do not consider that statutory regulation of a profession is required for a profession, we encourage organisations that register health and care professionals to seek accreditation from the PSA.'*¹
- 2.8 We have laid out further detail on our answers to the questions on the regulations and guidance.

3. Detailed comments

The special procedure licences (Wales) regulations 202X

Question 1. (a) Do you think these draft regulations adequately set out how individuals are to be licensed?

- 3.1 The draft regulations appear to adequately set out how individuals are to be licensed.

(b) Is there anything unclear, missing that should be included, or included that should not be?

- 3.2 Further to our general comments and those under question 3, we would like the Welsh Government to give further consideration to whether more could be done via the licensing scheme to sign-post the public to practitioners subject to established standards of competence. This would include those on an

¹ <https://www.gov.uk/government/consultations/healthcare-regulation-deciding-when-statutory-regulation-is-appropriate/healthcare-regulation-deciding-when-statutory-regulation-is-appropriate#alternatives-to-statutory-regulation>

Accredited Register. This could be done either on the register of licence holders or within any guidance produced for the public.

- 3.3 If there is no additional information provided to members of the public then there is the risk that the public will conflate the holding of a licence with assurance about the competence of a practitioner which could raise a public protection risk. This applies even where the licence holder is a statutorily regulated professional, as the special procedure may fall outside their core professional education and training.
- 3.4 As noted, the Accredited Registers scheme is a four-country backed alternative to statutory regulation. Whilst the introduction of additional minimum standards (via the licence) for those carrying out the named special procedures is entirely appropriate, it is important that this complements rather than undermines the protections that are already in place.

The special procedures approved premises and vehicles (Wales) regulations 202X

Question 2. (a) Do you think these draft regulations adequately set out how premises and vehicles are to be approved?

- 3.5 The draft regulations appear to adequately set out how premises and vehicles are to be approved.

(b) Is there anything unclear, missing that should be included, or included that should not be?

- 3.6 As drafted, the regulations appear to prohibit home visits unless the treatment is being provided for palliative care purposes. This may raise equalities issues as certain groups of patients such as the elderly or those with severe or long-term health conditions may be less likely to be able to travel to a clinic to receive treatment.

The special procedures exempted individuals (Wales) regulations 202X

Question 3. (a) Do you think these draft regulations adequately set out how the specified individuals are to be exempt?

- 3.7 The draft regulations appear to adequately set out how specified individuals are to be exempt.

(b) Is there anything unclear, missing that should be included, or included that should not be?

- 3.8 As touched on in our general comments we have some concerns about the overall approach to exemptions that the Welsh Government has proposed. This may require changes to how exemptions are described either in the regulations or accompanying guidance.
- 3.9 Although we recognise that practitioners on an Accredited Register may be required to obtain a licence based on other criteria (i.e. working outside of HIW regulated premises), we do not think the rationale that the scheme is voluntary

is logical. As suggested in our original response, we think it should have been possible to define the exemption on the basis that a practitioner remained on the Accredited Register meaning that if they left membership of the register, they would then be required to obtain a licence.

- 3.10 The proposed approach to exemptions will have the effect of exempting individuals who may in effect have a lower level of competence than those on the relevant Accredited Register (for example the British Acupuncture Council) whose members will not be exempt.
- 3.11 We have suggested in our answer to question 1 that further signposting may be needed within information provided to the public about the meaning of a licence to avoid the public conflating it with a mark of competence. However, clearer information may also be needed about the basis on which a professional is exempt from the requirement to obtain a licence.
- 3.12 The Welsh Government's exemption proposals place reliance on the safeguards arising from being a statutorily regulated professional i.e. a registrant of one of the listed statutory regulators² and the two additional professions which are on the Health and Care Professions Council (HCPC) register (chiropodist/podiatrist and physiotherapist) – these last two are to be treated as exempt from being licensed specifically from the requirement to obtain a special procedure licence in relation to acupuncture.
- 3.13 Whilst we recognise that the fact of being registered with a statutory regulator brings a professional within the fitness to practice process, it is important to note that although the statutory regulators such as the HCPC require professionals to work within their scope of practice they generally do not define scope of practice themselves. This is instead often left to the professional bodies. These are membership organisations of which many (but not all) registrants are members. Membership of professional bodies is separate from the legal requirement to be registered with the regulator for certain professions and is entirely voluntary and therefore should not be conflated with the safeguards provided by being on a statutory register itself.
- 3.14 Although the regulator may be able to take action if a complaint was raised against a registrant in the course of carrying out a special procedure, it should be made clear to members of the public that just because someone is registered with a statutory regulator this does not necessarily convey any assurance regarding their competence to carry out the special procedure in question.

² • the General Medical Council
• the General Dental Council
• the General Optical Council
• the General Osteopathic Council
• the General Chiropractic Council
• the General Pharmaceutical Council
• subject to Section 26(6), the Pharmaceutical Society of Northern Ireland
• the Nursing and Midwifery Council

The special procedure licensing committees (Wales) regulations 202X

Question 4. (a) Do you think these draft regulations adequately set out how licensing committees are to operate for the purposes of this mandatory licensing scheme?

3.15 No comments.

(b) Is there anything unclear, missing that should be included, or included that should not be?

3.16 No comments.

The prescribed objects for body piercing (Wales) regulations 202X

Question 5. (a) Do you think these draft regulations provide an adequate definition of 'object' for the purposes of non-intimate body piercing within this licensing scheme?

3.17 No comments.

(b) Is there anything unclear, missing that should be included, or included that should not be?

3.18 No comments.

Statutory guidance

Question 6. (a) Do you think the draft statutory guidance adequately explains how a local authority should determine a 'person's fitness to perform a special procedure' for licensing purposes under the mandatory licensing scheme, where this has been called into question?

3.19 The guidance appears to adequately explain how a local authority should determine a person's fitness to perform a special procedure under the licensing scheme.

(b) Is there anything unclear in the draft statutory guidance that should be explained further?

3.20 The draft guidance is relatively narrowly focussed on the specific circumstances of deciding whether a person is fit to perform a special procedure under the licensing scheme. Whilst we recognise this is the primary purpose of the guidance, we would have liked to see further information about how local authorities should seek to operate the licensing scheme to maximise public protection.

3.21 Further to other points we have raised in our response, this may include:

- Providing clarity to the public on what the licence conveys (and what it does not) and signposting the public to further information to help them choose a practitioner amongst those who hold a licence, for example if a practitioner is also a member of a relevant Accredited Register.

- Providing clarity on what is conveyed by an exemption, to assist members of the public in deciding whether to seek treatment from an exempt individual.

(c) Is there anything in relation to determining a ‘person’s fitness to perform a special procedure’ that is unclear or missing from the draft statutory guidance?

3.22 No further comments.

Statutory questions

Question 7. We would like to know your views on the effects that the mandatory licensing scheme for special procedures in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

- ***What effects do you think there would be?***
- ***How could positive effects be increased, or negative effects be mitigated?***

3.23 No comments.

Question 8. Please also explain how you believe the proposed mandatory licensing scheme for special procedures in Wales could be formulated or changed so as to have:

- ***positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language***
- ***no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language***

3.24 No comments.

Question 9. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

3.25 The Welsh Government’s response to the previous consultation included a reference to the fragmented nature of the sector and a suggestion that it only considered statutory regulation a suitable safeguard: *‘It is for the acupuncture profession to work together to decide what the acceptable level of training and practice should be and to press the UK Parliament for compulsory registration.’*³ This appears to be at odds with the Government’s intention

³ [Consultation – summary of response: Mandatory Licensing of Special Procedures in Wales \(gov.wales\)](https://gov.wales)

when establishing the Accredited Registers programme; for there to be a mechanism to help the public to differentiate between the range of different bodies operating in relation to acupuncture to choose a safe and competent practitioner. It also appears contrary to the four-country position that Accredited Registers are a legitimate alternative to statutory regulation for lower-risk groups.

- 3.26 It is important that the overall effect of the introduction of the licensing scheme is to raise levels of public protection and complement what is already in place and we hope that the suggestions that we have made will be helpful in achieving this.

4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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