

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Public Health (Wales) Act 2017 which was passed by the National Assembly for Wales on 16 May 2017 and received Royal Assent on 3 July 2017. They have been prepared by the Health and Social Services Group of the Welsh Government to assist the reader of the Act.
2. The Explanatory Notes should be read in conjunction with the Act but are not part of it. They are not meant to be a comprehensive description of the Act. Where an individual section of the Act does not seem to require any explanation or comment, none is given.

### **POLICY BACKGROUND**

3. The health and well-being of the population of Wales is continuing to improve. In general, people are living longer and enjoy better health than ever before. However, Wales still faces a number of specific and significant health challenges. These range from overarching demographic challenges such as an ageing population and continuing inequalities in health, to more discrete ones posed by lifestyle choices and contemporary developments within society.
4. Legislation has historically played an important role in improving and protecting health. Legislation in areas as varied as the ban on smoking in enclosed public places and wearing seat-belts has been seen to make significant contributions to health and well-being.
5. This Act was developed following consultation on a Public Health White Paper, which included a series of legislative proposals to address a number of public health issues in Wales. The focus of the Act is on shaping social conditions that are conducive to good health, and where possible, avoiding health harms that can be averted.

### **GENERAL OVERVIEW OF THE ACT**

6. The Act includes provisions in a number of discrete policy areas, all of which aim to address contemporary challenges to health and well-being in Wales.
7. The Act is comprised of 127 sections (within 9 Parts) and 4 Schedules.
  - Part 1 – Overview
  - Part 2 requires the Welsh Ministers to publish and review a national strategy on preventing obesity and reducing obesity levels in Wales.
  - Part 3 - Tobacco and Nicotine Products
    - Chapter 1: Restricts smoking in enclosed and substantially enclosed workplaces and public places, and in outdoor care settings for children, school grounds, hospital grounds and public playgrounds. It also gives the Welsh Ministers power to extend the restrictions to other premises, and to vehicles;

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

- Chapter 2: Establishes a national register of retailers of tobacco and nicotine products;
- Chapter 3: Provides the Welsh Ministers with a regulation making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales;
- Chapter 4: Prohibits the handing over of tobacco or nicotine products (when delivered or collected in connection with their sale) to an unaccompanied person under the age of 18;
- Part 4 provides for the creation of a mandatory licensing scheme for individuals performing specified ‘special procedures’, namely acupuncture, body piercing, electrolysis and tattooing;
- Part 5 introduces a prohibition on the intimate piercing of persons under the age of 18 years;
- Part 6 contains provisions about the carrying out of health impact assessments by public bodies;
- Part 7 changes the arrangements for determining applications for entry onto a Local Health Board’s pharmaceutical list, to a system based on the assessed needs of local communities;
- Part 8 requires local authorities to prepare a local toilets strategy in order to plan how they will meet the needs of their communities for access to toilets for public use; and
- Part 9 contains miscellaneous provisions about the use of fixed penalty receipts in respect of food hygiene rating offences, and a number of general provisions, including in relation to regulations, interpretation, powers to make consequential and transitional provisions, and coming into force arrangements.

## **COMMENTARY ON SECTIONS**

### **Part 1**

#### **Overview**

8. **Section 1** provides an overview of the main provisions of the Act. It summarises the subjects covered in each subsequent Part.

### **Part 2**

#### **Obesity**

##### ***Section 2 - National strategy on preventing and reducing obesity: publication and review***

9. This section places a requirement on the Welsh Ministers to publish a national strategy on preventing obesity and reducing obesity levels in Wales. The strategy must set out objectives which will contribute both to preventing obesity and reducing obesity levels, as well as actions for achieving the objectives.
10. The section also provides detail about how the national strategy is to be reviewed and consulted upon. The Welsh Ministers can revise the strategy at any time, but if they do so, they must publish the revised version as soon as is reasonably practicable. The strategy must be reviewed three years after it is first published, and after each subsequent three year period. In developing the strategy and before each review, the Welsh Ministers must consult appropriate stakeholders.

### ***Section 3 - Implementation of national strategy***

11. This section provides further detail about how the national strategy on preventing and reducing obesity is to be implemented and reported upon. The Welsh Ministers must take all reasonable steps to achieve the objectives set out in the most recent version of the strategy, and must publish a progress report following each review of the strategy.

## **Part 3**

### **Tobacco and Nicotine Products**

#### ***Chapter 1 - Smoking***

12. This Chapter contains provisions that make enclosed and substantially enclosed public premises and shared workplaces smoke-free, as well as some specific non-enclosed premises. These are referred to as ‘smoke-free premises’. For the purpose of this Chapter, ‘smoke-free’ means that smoking is not permitted, unless the premises are exempted by regulations made under section 16 of the Act.
13. This Chapter restates Chapter 1 of Part 1 of the Health Act 2006 (“Smoke-Free Premises, Places and Vehicles”) in relation to Wales, with some minor modifications. It also brings additional settings into the smoke-free regime in Wales, namely outdoor care settings for children, school grounds, hospital grounds and public playgrounds.
14. Regulations can also provide for additional premises to be smoke-free in certain circumstances. These additional smoke-free premises do not need to be enclosed or substantially enclosed. Regulations may also provide for vehicles to be smoke-free; such vehicles are referred to as ‘smoke-free vehicles’ in this Chapter.

#### ***Section 4 - Smoking***

15. This section provides the definition of “smoking” for Chapter 1 of Part 3 of the Act. The definition covers the smoking of cigarettes, pipes, cigars, herbal cigarettes and waterpipes (often known as hookah or shisha pipes) etc. It does not encompass “e-cigarettes”.

#### ***Section 5 - Offence of smoking in smoke-free premises or vehicle***

16. This section makes it a criminal offence to smoke in smoke-free premises or in a smoke-free vehicle. The offence may only be tried in the magistrates’ court and is punishable on conviction by a fine not exceeding level 1 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982. A fixed penalty notice may be issued by an authorised officer instead of prosecution (see section 27).

#### ***Section 6 - Offence of failing to prevent smoking in smoke-free premises***

17. This section requires managers of smoke-free workplaces, public premises and outdoor care settings for children to take reasonable steps to prevent smoking in those places. The Welsh Ministers may make regulations imposing corresponding duties in respect of smoke-free school grounds, hospital grounds and public playgrounds, and any additional smoke-free premises and smoke-free vehicles designated by the Welsh Ministers under sections 13 or 15. Any person who fails to comply with these duties is committing an offence. The offence may only be tried in the magistrates’ court and is punishable on conviction by a fine not exceeding level 4 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982.

#### ***Section 7 - Workplaces***

18. This section details what is meant by “workplaces” in the context of the smoke-free premises in this Chapter. A “workplace” is a place that is used as a place of work by

more than one person (irrespective of whether such people work there at the same time), or is a place of work for one person but is somewhere that the public may have access to for certain purposes. For instance, a shop where only one person works would be a workplace for the purposes of the Chapter. Where only parts of the premises are used as a place of work, only those parts are smoke-free. In all cases, only those areas that are enclosed or substantially enclosed are smoke-free. All workplaces are smoke-free all of the time, except that a dwelling used as a workplace is smoke-free only when being used as such. So for instance if a person uses their home as a workplace, and members of the public might come to it to obtain the goods or services offered, his/her home will be smoke-free only in the parts of it used as a workplace, and only when those parts are being used by the person for work.

### ***Section 8 - Premises that are open to the public***

19. This section details what is meant by “premises that are open to the public” in the context of smoke-free premises in this Chapter. It includes all premises that are open to the public or a section of the public (irrespective of whether this is by invitation or not, or whether there is a charge for entry or not). So, for example, places of worship, private members’ clubs and all licensed premises would be open to the public for the purposes of this Chapter. Where only parts of the premises are open to the public, only those parts are smoke-free. All such premises are smoke-free only when open to the public and only in those areas that are enclosed or substantially enclosed.

### ***Section 9 - Outdoor care settings for children***

20. This section provides that outdoor care settings for children in Wales are smoke-free premises. It provides details about what is meant by “outdoor care settings for children” in the context of smoke-free premises in this Chapter.
21. The areas covered by this section are the outdoor areas of those premises which are covered by Part 2 of the Children and Families (Wales) Measure 2010. These are premises which provide day care or child minding for a child or children under the age of 12.
22. The outdoor areas are only smoke-free when the premises are being used for day care or child minding. In the case of child minders providing care in their own homes, the outdoor areas are only smoke-free if one or more of the children are in the outdoor area.

### ***Section 10 - School grounds***

23. This section provides that school grounds in Wales are smoke-free premises. It provides details about what is meant by “school grounds” in the context of smoke-free premises in this Chapter.
24. Grounds being used by a school but that do not adjoin the school are smoke-free only when, and in those parts, being used for the provision of education or childcare (subsection (3)). So for example, if a school has a sports field that is for its sole use, but which is across the road from the school, the sports field will be smoke-free only when being used for educational or childcare purposes. “Childcare” is defined in section 28.
25. But if the sports field adjoins the school, it will be smoke-free when it is being used for the purpose of education or childcare, or when the school itself is being used for education or childcare (subsection (2)). So, in this instance the sports field will be smoke-free both during school hours, and if (for example) there is an after-school club in the school hall, while the club is being held.
26. Schools that provide residential accommodation to pupils may designate an area where smoking is allowed. The Welsh Ministers may specify in regulations conditions relating to any such designation, for example about the size or location of the designated area. Premises which are used to any extent as a dwelling are not smoke-free under this

section, so, for instance, the garden of a caretaker's house within the school grounds would not be smoke-free.

### ***Section 11 - Hospital grounds***

27. This section provides that hospital grounds in Wales are smoke-free premises. It provides details about what is meant by "hospital grounds" in the context of smoke-free premises in this Chapter. It includes all grounds that adjoin the hospital, are used by or occupied by it, and are not enclosed or substantially enclosed. An area may be designated within the hospital grounds where smoking is allowed. The Welsh Ministers may specify in regulations conditions relating to any designation, for example about the size or location of any designated area.
28. There is an exemption from the smoke-free requirements for the grounds of adult care homes and of adult hospices, and for dwellings. So if, for instance, a member of staff has accommodation provided within the grounds of the hospital, the garden of his/her home will not be smoke-free. Nor will the garden of an adult hospice be smoke free.

### ***Section 12 - Public playgrounds***

29. This section provides that outdoor public playgrounds in Wales are smoke-free premises. It provides details about what is meant by "public playgrounds" in the context of smoke-free premises in this Chapter. Outdoor premises will amount to a playground if they meet the requirements specified in subsection (4). These requirements focus on local authority involvement, the purpose for which the premises are used, and the presence of playground equipment. Premises that amount to a playground are smoke-free within a boundary if there is one, or in the absence of a boundary, then within 5 metres of playground equipment. "Playground equipment" is defined in section 28.

### ***Section 13 - Additional smoke-free premises***

30. This section gives the Welsh Ministers a power to make regulations to designate additional smoke-free premises. These premises do not need to be enclosed or substantially enclosed (i.e. they may be open spaces). The Welsh Ministers can only designate additional smoke-free premises if they are satisfied that designating those premises as smoke-free is likely to contribute towards the promotion of the health of the people of Wales.
31. The regulations made by the Welsh Ministers may also provide for exemptions to the smoke-free status of any additional smoke-free premises. The regulations may, for example, allow the person in charge of the premises to designate areas in which smoking is to be permitted. The designation would have to be in accordance with any conditions set out in the regulations.
32. Premises used wholly or mainly as a dwelling cannot be made smoke-free using this regulation-making power.

### ***Section 14 - Further provision about additional smoke-free premises: dwellings***

33. This section limits the Welsh Ministers' power to designate premises used partly as dwellings as additional smoke-free premises. Dwellings may only be designated as smoke-free by the Welsh Ministers to the extent that they are not enclosed or substantially enclosed and are workplaces or open to the public. They may only be made smoke-free when being used as workplaces or are open to the public; and in those areas which are being used as workplaces or are open to the public.

### ***Section 15 - Smoke-free vehicles***

34. This section gives the Welsh Ministers a power to make regulations providing for vehicles to be smoke-free.

35. An equivalent power to make regulations applying to vehicles for the purposes of smoke-free premises under the Health Act 2006 is included at section 5 of that Act. Regulation 4 of the Smoke-free Premises etc. (Wales) Regulations 2007, made in exercise of the power at section 5 of the Health Act 2006, sets out that enclosed vehicles shall be smoke-free if used for transport of members of the public, or as a workplace for more than one person. These regulations stay in place until regulations are made using the powers in this section of this Act.
36. The Welsh Ministers can only designate a vehicle as being smoke-free where they are satisfied that designating that vehicle is likely to contribute towards the promotion of the health of the people of Wales.

### ***Section 16 - Smoke-free premises: exemptions***

37. This section gives the Welsh Ministers a power to make regulations to exempt premises or places in Wales from the requirement to be smoke-free. These regulations may exempt defined premises or specific areas within premises. For example, a designated bedroom within a hotel or a designated room in a research or testing facility could be exempted from the smoke-free requirements.
38. An equivalent power to exempt premises, for the purposes of smoke-free premises under the Health Act 2006, is included at section 3 of that Act. Regulation 3 of the Smoke-free Premises etc. (Wales) Regulations 2007, made in exercise of the power at section 3 of the Health Act 2006, sets out the premises within which managers may designate smoking rooms (i.e. may designate rooms as being exempt from the smoke-free requirements of the Health Act 2006). Exemptions currently apply to specific rooms within care homes, adult hospices, mental health units, research or testing facilities, hotels, guesthouses, inns, hostels and members' clubs. These regulations stay in place until regulations are made using the powers in this section of this Act.

### ***Section 17 - Signs: smoke-free premises***

39. This section requires a person who occupies or manages smoke-free premises to display smoke-free signs in accordance with regulations. Requirements for smoke-free signs may include details about how they are to be displayed, specifications regarding the dimensions of the sign, the minimum text size and font, any graphic or symbol that must be included and any mandatory warning message that must be included. The Welsh Ministers may also make regulations that place a corresponding duty on those who occupy or manage additional smoke-free premises (section 13) and smoke-free vehicles (section 15). Regulations may also require signs to be displayed in areas designated as not smoke-free. Regulations made under this section cannot require smoke-free signs to be displayed in premises used as dwellings.
40. Failure to comply with these requirements is an offence. The offence may only be tried in the magistrates' court and is punishable on conviction by 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. A fixed penalty notice may be issued by an authorised officer instead of prosecution. Section 27 contains more details on fixed penalty notices.

### ***Section 18 - Enforcement authorities***

41. This section names local authorities as the enforcement authorities for this Chapter. It also allows for the police to be named in regulations as an additional enforcement authority in relation to the smoking restrictions for vehicles.
42. The section also places a duty on enforcement authorities to enforce the smoke-free provisions in this Chapter. Enforcement authorities may arrange to transfer a particular case to another enforcement authority, for example, where those enforcement authorities are investigating the same person for offences relating to smoke-free premises and vehicles.

43. The meaning of the term “authorised officer” is also set out in this section. An authorised officer is any person authorised by the enforcement authority to carry out its enforcement functions. An authorised officer may or may not be an officer of the enforcement authority.

### ***Section 19 - Powers of entry***

44. This section confers powers on an authorised officer to enter any premises in Wales, apart from premises used wholly or mainly as a dwelling, at any reasonable time if they consider it necessary to investigate an offence in this Chapter. The section applies to a vehicle as if it were premises.
45. Authorised officers must not use force to enter premises or vehicles when exercising their power under this section. Authorised officers must present evidence of their authority before entering any premises or vehicles if they are asked to do so. 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 20 - Warrant to enter dwelling***

46. This section provides that a justice of the peace may issue a warrant to enable an authorised officer to enter a premises used wholly or mainly as a dwelling in certain circumstances. A warrant may be issued only where the justice of the peace is satisfied that there are reasonable grounds to believe that an offence has been committed at the premises, and that it is necessary to enter the premises for the purpose of establishing whether such an offence has been committed. Entry may be obtained by force if need be. This section applies to a vehicle as if it were premises.

### ***Section 21 - Warrant to enter other premises***

47. This section provides that a justice of the peace may issue a warrant to enable an authorised officer to enter any premises, including vehicles, in Wales, if they consider it necessary in relation to an offence in this Chapter. This excludes premises used wholly or mainly as dwellings which are dealt with in section 20. The section sets out the circumstances in which a warrant may be issued. Entry may be obtained by force if need be.

### ***Section 22 - Supplementary provision about powers of entry***

48. This section enables an authorised officer entering premises under section 19, 20 or 21 to take with them any other persons or equipment as the officer considers appropriate. It also requires that if the occupier of premises that an authorised officer is authorised to enter under sections 20 or 21 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. It 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 23 - Powers of inspection etc.***

49. This section confers power on authorised officers to carry out inspections of premises and vehicles. Officers may request items, inspect them, take samples from them and/or take the item(s) and/or samples from the premises. For example, officers may wish to review CCTV footage of the premises, retain smoking debris for evidence purposes, or take documents or copies of documents. They may also request information and help

from any person but that person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales. The authorised officer may analyse any samples taken. The authorised officer must leave a statement detailing any items that have been taken, and identifying the person to whom a request for the return of property may be made. The provisions in this section also apply to a vehicle.

#### ***Section 24 - Obstruction etc. of officers***

50. This section provides that any person who intentionally obstructs an authorised officer from carrying out their functions under this Chapter is committing an offence. Any person who fails without reasonable cause to provide the officer with facilities that are reasonably required by the officer to carry out their functions is committing an offence. However, a person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales. The offence may only be tried in the magistrates' court and is punishable on conviction by a fine not exceeding level 3 on the standard scale. The levels on the standard scale are set out at section 37 of the Criminal Justice Act 1982.

#### ***Section 25 - Retained property: appeals***

51. 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 premises by an authorised officer under section 23(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 26 - Appropriated property: compensation***

52. This section provides a right for a person affected by the taking possession of property under section 23(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 enforcement authority to pay compensation to the applicant.

#### ***Section 27 - Fixed penalty notices***

53. This section allows authorised officers to issue fixed penalty notices (FPNs) to persons believed to have committed certain offences under this Chapter. A fixed penalty can be issued for the following offences:
- smoking in smoke-free premises or vehicles;
  - failing to comply with signage requirements.
54. FPNs may be issued to a person, partnership or an unincorporated association. Payment of the FPN discharges the person believed to have committed an offence from being convicted for the offence in court. The section also introduces Schedule 1 on fixed penalties (for commentary on this, see Schedule 1 below).

#### ***Section 28 - Interpretation of this Chapter***

55. This section sets out the meaning of key terms used in this Chapter.
56. The section also provides that the Welsh Ministers may make regulations to define what is meant by "enclosed", "substantially enclosed" and "not enclosed or substantially enclosed" for the purposes of this Chapter.



## ***Chapter 2 - Retailers of Tobacco and Nicotine Products***

57. This Chapter contains provisions to establish a national register of retailers of tobacco and nicotine products. All retailers who sell either tobacco products, nicotine products or both from premises to the general public in Wales will be required to register in order to sell them. This includes those selling from moveable structures. The register will not capture businesses which only sell to other retailers, traders or businesses.

### ***Section 30 - Duty to maintain register of retailers of tobacco and nicotine products***

58. This section establishes a register of retailers of tobacco and nicotine products, which will contain details of businesses with premises in Wales selling those products to the general public. The section places a duty on the registration authority to maintain the register. Regulations made by the Welsh Ministers will specify a body, for example a local authority, to act as the registration authority.
59. The register may include other appropriate information provided within the application form for entry onto the register (see section 31).

### ***Sections 31 and 32 - Application for entry in the register and Grant of application***

60. **Section 31** enables retailers to apply to be on the register of retailers of tobacco and nicotine products, and outlines the information required in any application. The registration authority can only refuse an application if the applicant is subject to a Restricted Sales Order under section 12B of the Children and Young Person's Act 1933. Premises cannot be added to the register if they are currently subject to a Restricted Premises Order under section 12A of the Children and Young Persons Act 1933. If the application covers multiple premises then only the premises not subject to a Restricted Premises Order will be added to the register.
61. A Restricted Premises Order is an order made by a magistrates' court that prohibits retail premises from selling tobacco or nicotine products for a period of up to 12 months. A court can only issue a Restricted Premises Order if it is satisfied that a person convicted of a tobacco or nicotine offence on the premises in question has also committed other tobacco or nicotine offences on at least two previous occasions within a period of two years. A tobacco offence is defined in section 12D of the Children and Young Persons Act 1933 and includes selling tobacco to a person under the age of 18. On 1 October 2015 the definition of tobacco offences was amended to include an offence under section 92 of the Children and Families Act 2014 (prohibition of sale of nicotine products to persons under 18).
62. A Restricted Sales Order prohibits a named person who has been convicted of a tobacco offence from selling tobacco or nicotine products for a period up to 12 months. As with a Restricted Premises Order, a magistrates' court can only make a Restricted Sales Order if it is satisfied that the named person has also committed other tobacco or nicotine offences on at least two previous occasions within a period of two years.
63. The Welsh Ministers may, through regulations, require additional information to be provided when submitting an application for inclusion in the register, and may make provisions for a fee to be paid when submitting an application.

### ***Section 33 - Duty to give notice of certain changes***

64. This section places a duty on retailers to inform the registration authority within 28 days of changes in circumstances which are relevant to an entry contained in the register, for example if they no longer sell tobacco or nicotine products from the premises included on the register. In addition, if a local authority becomes aware of any relevant changes to the retailers of these products, it must inform the registration authority.

### ***Section 34 - Duty to revise the register***

65. This section sets out details of when the registration authority must make changes to the register and the process it must follow in doing this.
66. The Welsh Ministers may, by regulations, allow the registration authority to charge a fee for revising the register.

### ***Section 35 - Access to the register***

67. Under this section the registration authority must publish a list of all the persons and premises on the register of retailers of tobacco and nicotine products. Where the business is carried on from a vehicle, stall, tent or other moveable structure, the list must indicate each local authority in which it operates.

### ***Section 36 - Excepted premises***

68. This section gives the Welsh Ministers a regulation-making power to exempt premises from having to register on the register of retailers of tobacco and nicotine products. For example, this power could be used to exempt members clubs where membership is restricted to over-18s and sale of tobacco or nicotine products is restricted to full members only.

### ***Section 37 - Moveable structures etc.***

69. This section gives the Welsh Ministers a regulation-making power to modify how this Chapter applies in relation to premises which consist of a vehicle, stall, tent or moveable structure. For example, this could be to require additional information (perhaps a vehicle number-plate, or other identification) to be provided when submitting an application for inclusion in the register in relation to these types of premises.

### ***Section 38 - Offences***

70. This section creates offences in relation to the register. Subsections (6) and (7) set out the different levels of penalty for the offences. The fine for the offence of carrying on a tobacco or nicotine business without being registered is not limited by any levels on the standard scale, so its amount will be determined by the magistrates' court. The other offences are punishable by a fine not exceeding level 2 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982. A fixed penalty notice may be issued by an authorised officer in place of a fine. Section 49 contains more details on fixed penalty notices.

### ***Section 39 - Authorised officers***

71. This section clarifies that any references to authorised officers in this Chapter are to an officer authorised by a local authority, whether or not they are an officer of the local authority.

### ***Section 40 - Powers of entry***

72. This section outlines the circumstances when an authorised officer may enter premises in Wales for the purpose of enforcing provisions relating to the register of retailers of tobacco and nicotine products.
73. Authorised officers must not use force to enter premises when exercising their power under this section. If they are asked to do so, authorised officers must present evidence of their authority before entering any premises. 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.

***Sections 41 and 42 - Warrant to enter dwelling and Warrant to enter other premises***

74. These sections set out the circumstances in which a justice of the peace may issue a warrant to enter domestic premises or business premises in Wales for the purpose of enforcing provisions relating to the register of retailers of tobacco and nicotine products. A warrant remains in force for 28 days commencing on the date the justice of the peace issued it, and entry may be obtained by force if need be. A warrant can be issued in a format other than a hard copy document, such as an electronic version.

***Section 43 - Supplementary provision about powers of entry***

75. This section enables an authorised officer entering premises under section 40, 41 or 42 to take with them any other persons or equipment as the officer considers appropriate. It also requires that if the occupier of premises that an authorised officer is authorised to enter under sections 41 or 42 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. If the premises are unoccupied or the occupier is temporarily absent, there is a requirement that 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 44 - Powers of inspection etc.***

76. This section allows for authorised officers to carry out inspections on premises. In doing so authorised officers may request and inspect items, take samples from them and/or take the item(s), documents or copies of documents from the premises. They may also request information and help from any person that may help them carry out their functions, but that person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales. The authorised officer may analyse any samples taken. The authorised officer must leave a statement detailing any items that have been taken and identifying the person to whom a request for the return of the property may be made.

***Section 45 - Obstruction etc. of officers***

77. This section provides that any person who intentionally obstructs an authorised officer from carrying out their function under this Chapter is committing an offence. Any person who fails without reasonable cause to provide the officer with facilities that are reasonably required by the officer to carry out their functions, fails to give information without reasonable cause, or gives a false or misleading statement is also committing an offence. However, a person is not required to answer any questions or produce any document which they would be entitled to refuse to answer or produce in the course of court proceedings in England and Wales. The offence may only be tried in the magistrates' court and is punishable on conviction by 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 46 - Power to make test purchases***

78. This section provides that an authorised officer may make purchases and secure the provision of services if the officer considers it necessary for the purpose of enforcement in relation to this Chapter.

***Section 47 - Retained property: appeals***

79. 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 44(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 48 - Appropriated property: compensation***

80. This section provides a right for a person affected by the taking possession of property under section 44(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 49 - Fixed penalty notices***

81. This section provides details about when an authorised officer can issue a fixed penalty notice (FPN) in respect of an offence associated with the register. A fixed penalty can be issued for the following offences:-
- A registered person carrying on a tobacco or nicotine business in premises other than those noted in the person's entry on the register;
  - A registered person carrying on a tobacco or nicotine business at premises consisting of a moveable structure, such as a stall or vehicle, in a local authority area other than the ones noted in the person's entry on the register; and
  - A registered person failing to comply with section 33 (duty to give notice of certain changes).
82. FPNs may be issued to a person, partnership or an unincorporated association. Payment of the FPN discharges the person believed to have committed an offence from being convicted for the offence in court. The section also refers to Schedule 1 on fixed penalties (for commentary on this, see Schedule 1 below).

#### ***Section 50 - Interpretation of this Chapter***

83. This section sets out the meaning of key terms used in this Chapter.

### ***Chapter 3: Prohibition on Sale of Tobacco and Nicotine Products***

#### ***Section 51 - Restricted premises orders: tobacco or nicotine offence***

84. This section amends section 12D of the Children and Young Persons Act 1933. That provision sets out a number of offences that are a "tobacco or nicotine offence" for the purposes of section 12A of that Act. Restricted premises orders and restricted sale orders may be made in respect of persons who have been convicted of tobacco or nicotine offences. The amendment to section 12D provides the Welsh Ministers with a regulation-making power to add new offences to those which may be used to support an application to make a restricted premises order.

### ***Chapter 4: Handing Over of Tobacco Etc. to Persons under 18***

#### ***Sections 52 and 53 - Offence of handing over tobacco etc. to persons under 18 and Arrangements in connection with handing over tobacco etc.***

85. **Section 52** makes it an offence to hand over tobacco, cigarette papers or nicotine products during the course of a delivery of goods, to a person who is under the age of 18. The offence applies unless they are accompanied by someone who is aged 18 or older, or the handing over takes place as part of their trade, profession, business or employment (for example, where an employee hands tobacco or nicotine products to a colleague aged under 18 to take to another part of a shop).

86. In order to avoid committing an offence, where tobacco, cigarette papers or nicotine products are included in a purchase of goods (whether on their own or as part of a larger purchase), the person delivering the goods might, for example, need to remove any tobacco, cigarette papers or nicotine products from the delivery if not satisfied the person receiving the goods is aged 18 or over.
87. The offence also covers any tobacco, cigarette papers or nicotine products which have been purchased remotely (for example by telephone or via the internet) for collection from premises in Wales (often referred to as “click and collect”).
88. The offence may only be tried in the magistrates’ court and is punishable on conviction by a fine not exceeding level 4 on the standard scale. The levels on the standard scale are set out in section 37 of the Criminal Justice Act 1982.
89. No offence is committed if the tobacco, cigarette papers or nicotine products are wrapped and sealed or the accused could not reasonably have suspected from the person’s appearance that they were under the age of 18. For example the products could be sealed in an envelope, or wrapped in brown paper and sealed with tape. The parcel must also have on it the address of the person to whom the parcel should be delivered.

### ***Section 54 - Enforcement***

90. Section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 requires local authorities to consider, at least once a year, whether it is appropriate for them to carry out a programme of enforcement action relating to various tobacco related offences. A programme of enforcement involves bringing prosecutions, investigating complaints and taking measures to reduce offences.
91. **Section 54** amends section 5 of the 1991 Act to make the offence of handing over tobacco, cigarette papers or nicotine products to a person under the age of 18, as detailed in section 52, one of the offences in respect of which a local authority in Wales must consider a programme of enforcement.

### ***Section 55 - Interpretation of this Chapter***

92. This section sets out the meaning of key terms used in this Chapter.
93. “Nicotine product” is defined by reference to regulations made under section 92 of the Children and Families Act 2014. That provision allows the Secretary of State to make regulations prohibiting the sale of nicotine products to persons aged under 18 in England and Wales. The offence under section 52 applies to nicotine products that, in accordance with those regulations, are prohibited for sale to those under 18.
94. Regulations under section 92 of the 2014 Act may make different provision in respect of certain nicotine products. For example, some nicotine products may be prohibited for sale to those under 16 only. Defining “nicotine product” by reference to regulations under section 92 of the 2014 Act ensures that the offence under section 52 is committed only if the nicotine product in question is prohibited for sale to the person under 18 to whom it is handed over.

## **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 the 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 procedures 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.

## **Part 5**

### **Intimate Piercing**

#### ***Section 95 - Offence of performing or making arrangements to perform an intimate piercing on a child***

190. This section makes it an offence to perform an intimate piercing on a child in Wales. It also makes it an offence to make arrangements to perform an intimate piercing on a child in Wales. A child for the purposes of this Part of the Act is any person who is under the age of 18. A person convicted of either offence is liable on summary conviction to an unlimited fine.
191. A person charged with the offence of performing an intimate piercing on a child in Wales may put forward a defence that they believed the person was aged over 18. The accused would need to show that they either took reasonable steps to establish the person's age (for example by requesting proof of age and that the evidence provided would have convinced a reasonable person), or that nobody could reasonably have suspected that the person was under the age of 18 from their appearance. If a person is charged with an offence under this section due to the actions of another person, it will be a defence to show that the accused took reasonable precautions and exercised due diligence to avoid committing the offence, for example by providing training to staff or putting systems in place to avoid committing the offence.

#### ***Section 96 - What is an intimate piercing?***

192. An intimate piercing is a body piercing performed on an intimate body part. The definition of "body piercing" is provided in section 94 and 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.

193. The intimate body parts are listed in subsection (2) and include the breast (including the nipple and areola), buttocks, genitals and tongue. The list captures parts of both the male and female anatomy. Mucous membranes are included in the definition as the surface of intimate body parts such as the vulva may comprise skin or mucous membranes.
194. The offences created by this section do not apply to intimate piercings of a person under the age of 18 if they occur in the course of a medical procedure carried out by a registered medical practitioner, a registered nurse or a registered midwife. A medical procedure is defined as any procedure carried out for the purposes of or in connection with the diagnosis, prevention, monitoring, treatment or alleviation of disease, ill-health, disability or other physical or mental abnormality, or birth control.

### ***Section 97 - Enforcement action by local authorities***

195. This section enables a local authority to undertake enforcement action in relation to this Part of the Act. A local authority may:
- bring prosecutions in respect of offences under section 95;
  - investigate complaints in relation to alleged offences under section 95;
  - take other steps with a view to reducing the incidence of offences in its area. These may include actions such as communicating with and educating body piercing practitioners, or undertaking test purchasing inspections to assess compliance.
196. Subsection (2) requires a local authority to consider at least once every 12 months a programme of enforcement action aimed at preventing the intimate piercing offences set out in section 95. A local authority must also, to the extent that it considers it appropriate to do so, carry out such a programme of enforcement action. This enforcement action may involve any or all of the steps referred to in subsection (1).
197. In undertaking its enforcement action, a local authority must carry out such consultation as it considers appropriate with the police.

### ***Section 98 - Authorised officers***

198. The section clarifies that any reference to authorised officers in this Part is to any person authorised by a local authority, whether or not they are an officer of the local authority.

### ***Section 99 - Powers of entry***

199. This section enables a constable or an authorised officer to enter premises (excluding premises used wholly or mainly as a dwelling, for which see section 100) at any reasonable time, if there are reasonable grounds to believe that an offence under section 95 has been committed and entry is necessary to ascertain whether or not such an offence has taken place. The references in these enforcement provisions to a constable reflect the sensitive nature of the offence, investigation of which could require photographic evidence and/or personal examinations. This power to enter premises does not enable the constable or authorised officer to enter by force. If required, an authorised officer must, before entering the premises, show evidence of their authorisation by the local authority. The power to enter premises (as provided by sections 100 to 103) covers any place and any vehicle (other than an aircraft and hovercraft), stall or moveable structure.
200. 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 100 - Warrant to enter dwelling***

201. If access to premises used wholly or mainly as a dwelling is necessary because there are reasonable grounds to believe that an offence under section 95 has been committed, and entry is required to ascertain whether or not such an offence has taken place, a written application must be made to a justice of the peace. This section enables a justice of the peace to issue a warrant authorising a constable or authorised officer to enter the dwelling, if need 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.

***Section 101 - Warrant to enter other premises***

202. If access to premises that are not used wholly or mainly as a dwelling is required because there are reasonable grounds to believe that an offence under section 95 has been committed, and entry is necessary to ascertain whether or not such an offence has taken place, section 101 enables a justice of the peace to issue a warrant authorising a constable or authorised officer to enter such premises, if needs be by force. The warrant can be obtained by making an application to a justice of the peace. The premises to which entry is being sought under this section 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 100.
203. 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 requesting to enter, or giving 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 the occupier's return is likely to defeat the object 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 102 - Supplementary provision about powers of entry***

204. This section enables authorised officers or constables entering premises under sections 99, 100 and 101 to take with them any other persons or equipment as appropriate to ascertain whether an offence under section 95 has been committed, for example equipment used to examine electronic records. It also requires that if the occupier of premises that an authorised officer is authorised to enter under sections 100 or 101 is present at the time the authorised officer seeks to execute the warrant, the occupier must be told the officer's name; if not a constable in uniform the officer must produce documentary evidence that the officer is a constable or authorised officer; the officer must produce the warrant and supply the occupier with a copy of it. In addition, the section requires that if the premises are unoccupied or the occupier is temporarily absent, those authorised to enter the premises must leave it as effectively secured against unauthorised entry as they found them.

***Section 103 - Powers of inspection etc.***

205. Once a constable or an authorised officer has gained entry to premises, they may undertake inspections and examinations to ascertain whether an offence under section 95 has been committed. This may include inspecting and examining the premises, viewing closed-circuit television records and obtaining copies of documents, such as procedure records and consent documents. The constable or authorised officer may also take possession of anything on the premises, and retain it for as long as necessary. The constable or authorised officer may also require any person to provide them with information, or afford facilities and assistance within their control. This may include providing an account of events, or supplying information that is stored on a computer or other device. If a constable or authorised officer takes anything away from

the premises, they must leave a statement at the premises containing the particulars of what has been taken and identifying the person to whom a request for the return of the property may be made. 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.

#### ***Section 104 - Obstruction etc. of constable or officer***

206. This section provides that a person commits an offence if they intentionally obstruct a constable or an authorised officer from entering premises when they are authorised to do so. They will also commit an offence if, without reasonable cause, they fail to provide facilities or comply with any requirements required of them under section 103 (i.e. to provide a constable or an authorised officer with anything on the premises or with facilities, assistance or information (for example access to electronic records) that the constable or authorised officer reasonably requires).
207. 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 105 - Power to make test purchases***

208. An authorised officer may make purchases and arrangements, and secure the provision of services if the officer considers it necessary for the purpose of enforcement of the offences. This includes enlisting the assistance of a young person to ascertain if a person is offering and/or making arrangements to intimately pierce those under the age of 18.

#### ***Section 106 - Retained property: appeals***

209. 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 103(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 107 - Appropriated property: compensation***

210. This section provides a right for a person affected by the taking possession of property under section 103(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 person.

### **Part 6**

#### **Health Impact Assessments**

#### ***Section 108 - Requirement to carry out health impact assessments***

211. This section defines a health impact assessment (HIA) as an assessment of the likely effect, both in the short and long term, of a proposed action on the physical and mental health of all or some of the people of Wales. It requires the Welsh Ministers to make regulations about the carrying out of such assessments by public bodies. These regulations must specify the circumstances in which a HIA is to be carried out and how it is done.

212. This section also enables the regulations to require Public Health Wales NHS Trust who have expertise in this area to assist another public body in carrying out a HIA, with the potential for those regulations to specify how and when such assistance might be given.

### ***Section 109 - Health impact assessments: publication and taking into account***

213. Where a public body has carried out a HIA in accordance with regulations made under section 108, this section requires the public body to publish the assessment and to take into account its findings when exercising those of its functions in connection with which the assessment was carried out. The regulations may specify how and when the results of a HIA are to be published.
214. In taking the HIA into account, this section requires the public body to act in accordance with the sustainable development principle as defined in section 5 of the Well-being of Future Generations (Wales) Act 2015. This means that the body must take certain things into account in order to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

### ***Section 110 - Meaning of “public body”***

215. This section sets out the public bodies to which the regulations on carrying out HIAs will apply.
216. The section also gives the Welsh Ministers the power by regulations to amend the list of public bodies by adding to the list, or amending or removing a public body (or description of body) which is already listed. Bodies may be added to the list only if they exercise functions of a public nature. If a body whose functions comprise a mixture of functions of a public nature and other functions were added to the list of public bodies, subsection (4) would operate to prevent the provisions of this Part of the Act from applying to those other functions.

## **Part 7**

### **Pharmaceutical Services**

217. This Part introduces changes to the way in which Local Health Boards (“LHBs”) determine applications to provide NHS pharmaceutical services. The principal changes require LHBs to prepare and publish a pharmaceutical needs assessment for their area, and to determine applications for entry onto the pharmaceutical list (or applications to amend entries on the pharmaceutical list) by reference to whether or not the application meets a need for a service or services identified in the assessment. Each LHB maintains a pharmaceutical list which includes details of the persons whose applications to provide NHS pharmaceutical services have been approved and the location from which they provide those services.
218. This new “control of entry test” replaces the test in section 83 of the National Health Service (Wales) Act 2006 (‘the 2006 Act’), which requires LHBs to determine whether it is “necessary or expedient” to grant the application in question. Further changes authorise LHBs to remove a person from its pharmaceutical list for very serious or persistent breaches of terms and conditions of service.

### ***Section 111 - Pharmaceutical needs assessments***

219. This section inserts section 82A into the 2006 Act which makes provision for a new duty for LHBs in Wales to prepare and publish an assessment of need for pharmaceutical services.
220. Section 82A(2) places a duty upon each LHB to keep its most recently published assessment under review and revise it as and when it is appropriate to do so.

221. Section 82A(3) requires the Welsh Ministers to make regulations providing for:
- the date by which a LHB must publish its first assessment of pharmaceutical needs. This is to ensure that all LHBs have an assessment prepared and published by a set date and there is a smooth transition from the previous arrangements to these arrangements for determining applications;
  - the circumstances in which a LHB is to revise its assessment. Regulations could, for example, require a LHB to review, and if appropriate revise, its assessment if there are significant changes to the demographics of an area which could have an impact upon the need for pharmaceutical services. Regulations could also stipulate that a LHB is required to revise its assessment every, for example, three years in order to ensure that the information remains up to date; and
  - the way in which an assessment is to be published. This could, for example, include a requirement to place a copy of the assessment on the LHB's website as well as making hard copies available in NHS pharmacies and GP surgeries, so that the assessment is accessible to people living in the LHB's area.
222. Regulations may also make provision about the preparation, publication, review and revision of an assessment under subsection (1) including, but not limited to:
- the information to be contained in an assessment. For example, regulations could specify that an assessment must contain information on the demography of the people in its area, any seasonal trends, age profiles and information about the provision of General Medical Services in the area;
  - the extent to which an assessment is to take account of likely future needs and of other matters. For example, regulations could specify that an assessment must consider the impact of planned housing or commercial developments;
  - the consultation to be carried out in connection with an assessment. For example, regulations may require LHBs to consult specified persons about specified matters when preparing their assessment. LHBs may, for example, be required to consult with local authorities, patient and community groups and local professional representative committees; and
  - procedural requirements.
223. [Section 111\(2\)](#) provides that the first time the Welsh Ministers make regulations about pharmaceutical needs assessments under section 82A of the 2006 Act, these will be subject to the affirmative procedure, meaning they must be laid before, and approved by, the National Assembly for Wales. Subsequent regulations will be subject to the negative procedure.

### ***Section 112 - Pharmaceutical lists***

224. This section amends sections 83 and 84 of the 2006 Act. Section 83 of that Act sets out the principal regulation-making powers governing the provision of NHS pharmaceutical services in Wales, whilst section 84 provides for rights of appeal resulting from decisions made under section 83.
225. Section 83(2)(c) of the 2006 Act sets out the legislative criteria which a LHB must apply when considering applications to be included on a LHB's pharmaceutical list and applications for changes to the list. These criteria are often referred to as the "control of entry test".
226. Subsections (2) and (3) modify the "control of entry test" that LHBs are required to apply when considering applications to join their pharmaceutical list. Subsection (2) removes the requirement for LHBs to consider whether it is "necessary or expedient" to grant the application in order to secure "adequate" provision of pharmaceutical services within the neighbourhood.

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

227. In its place, subsection (3) inserts the new subsection (2B) into the 2006 Act which provides that a LHB may grant an application where it is satisfied, having regard to its most recently published pharmaceutical needs assessment, and any matters that are specified in regulations, that to grant the application would meet the need(s) identified within its assessment. This means that the “control of entry test” will be clearly based on meeting assessed local pharmaceutical needs.
228. [Section 112\(3\)](#) also inserts a new subsection (2A) into section 83 of the 2006 Act, which permits the Welsh Ministers to specify, in regulations, persons, or the description of persons, who are not to be included within a pharmaceutical list.
229. [Section 112\(3\)](#) also inserts a new subsection (2C) into the 2006 Act which makes additional provision in cases where a LHB is satisfied that an application meets the criteria for grant of the application required under subsection (2B). First, new subsection (2C) provides that the regulations may set out the procedure which the LHB must follow when determining an application for inclusion in a pharmaceutical list. For example, the regulations may provide that a LHB must seek representations from local patient representative bodies and other key interested parties. Second, new subsection (2C) provides that the regulations may stipulate certain matters which a LHB must or must not take into consideration when deciding whether or not to grant an application under subsection (2B).
230. Subsections (4), (5) and (6) modify the existing provisions which enable regulations to specify the circumstances in which two or more applications are considered together by a LHB.
231. Subsection (4) inserts a new subsection (3A) into the 2006 Act to provide that the regulations may prescribe the circumstances in which two or more applications may be considered together by a LHB. Subsection (5) amends section 83(4) of the 2006 Act to create a general power to make provision for the case where two or more applications, taken individually, meet the test under the new subsection (2B), but, taken together, do not.
232. [Section 112\(7\)](#) inserts a new subsection (6)(za) into section 83 of the 2006 Act, which permits the regulations to prescribe the circumstances in which LHBs may invite applications for inclusion in their pharmaceutical list. This will enable a LHB, if it is not receiving applications to provide the pharmaceutical services which are required to meet needs identified in its pharmaceutical needs assessment, to actively seek applications that will fulfil those needs.
233. [Section 112\(7\)\(b\)](#) inserts a new subsection (6)(fa) into section 83 of the 2006 Act, which permits the regulations to prescribe the timescale within which a LHB must determine applications for inclusion in or amendment to an inclusion in the pharmaceutical list.
234. [Section 112\(7\)\(d\)](#) makes amendments to section 83(6)(g) of the 2006 Act so that regulations under section 83 may provide grounds for removal of a person from the pharmaceutical list that are not connected with a person’s fitness to practise. This power enables LHBs to remove pharmacists from the pharmaceutical list for serious and/or persistent breaches to their terms and conditions of service. Before removing a person from the pharmaceutical list an LHB must first issue the person with a notice describing the alleged breach (a so called “breach notice”) and any action required by the person to rectify it. A person may only be removed from the pharmaceutical list where they fail to comply with the requirements stipulated in a breach notice. Appeals against removal from the pharmaceutical list will be to the Welsh Ministers.
235. [Section 112\(9\)](#) inserts subsection (10A) which requires LHBs to provide reasons for their decisions as to any matters covered within section 83.
236. The remaining subsections amend section 84 of the 2006 Act, which deals with appeals against decisions made by LHBs under the regulations provided for in section 83.



237. **Section 112(10)** amends section 84 of the 2006 Act so as to ensure that appeals against a LHB's determination of an application for inclusion in a pharmaceutical list are heard by the First Tier Tribunal only if they are on fitness to practise grounds. This removes the requirement relating to redetermination so that the First Tier Tribunal is not limited in the way it determines the appeal, for example, it could remit the matter back to the LHB. Appeals on other grounds are to be made to the Welsh Ministers – including appeals against a removal from the list for breaches of terms and conditions of service.
238. **Section 112(11)** provides that if regulations made under section 83 of the 2006 Act include provision for removal of a person or an entry in respect of premises from a pharmaceutical list, the regulations must require LHBs to give a pharmacist notice of their intention to remove him/her from the list, together with their reasons for this. The regulations must also set out the rights that a pharmacist will have to make representations prior to a LHB taking such a decision.
239. **Section 112(12)** removes text relating to section 83(6)(d) of the 2006 Act from the table in Schedule 6 (repeals and revocations) of the Health Act 2009.

## **Part 8**

### **Provision of Toilets**

#### ***Section 113 - Local toilets strategies: preparation and review***

240. This section places a duty on each local authority in Wales to prepare and publish a local toilets strategy for its area.
241. An authority's strategy must include an assessment of the need for toilets, including changing facilities for babies and changing places for disabled people, in its area to be available for use by the public. The strategy will also set out how the authority plans to meet those needs. The strategy will also include any other information which the authority considers appropriate.
242. A local authority's first strategy must be published no later than 12 months following the commencement of this section. Following publication of the first strategy, an authority may review its strategy at any time, but it must review it no later than 12 months after each ordinary election of councillors to the authority.
243. When a local authority undertakes a review, it must publish a statement of the steps it has taken in accordance with its strategy for the period from the date the strategy was last published to the date of the review. If during a review of its strategy, a local authority considers a change is needed, it must make the changes and publish its revised strategy.
244. The Welsh Ministers must issue guidance to local authorities about the matters which they should take into consideration when preparing, reviewing, consulting on, or publishing a local toilets strategy. The guidance must cover a number of specific matters including assessing the need for toilets by users of highways and active travel routes, and collaboration between local authorities.

#### ***Section 114 - Local toilets strategies: interim progress statement***

245. This section places a duty on a local authority that has published a local toilets strategy, or carried out a mandatory review of a strategy, to prepare and publish an interim progress statement.
246. Each interim progress statement will review progress made by an authority in implementing its strategy during a two year-period, defined by subsection (3) as the "statement period".

247. The statement period in a case where an authority's most recently published strategy has not been reviewed under section 113 will begin on the date of publication. In the case of the first interim progress statement to be produced, the two year statement period will run from the date of publication of the first strategy, unless the strategy is revised before the end of the two year period, in which case the two year statement period will begin to run again from the date of the publication of the revised strategy. The date of any subsequent publication of a revised strategy – whether following a mandatory review or a review an authority chooses to carry out – would mark the beginning of another statement period.
248. The statement period in the case of a mandatory review of a strategy begins on the date the local authority last reviewed that strategy.
249. An interim progress statement must be published by an authority no later than six months after the last day of the relevant statement period.
250. The Welsh Ministers must issue guidance to local authorities about the matters which they should take into consideration when preparing an interim progress statement.

### ***Section 115 - Local toilets strategies: consultation***

251. This section sets out what a local authority must do with regard to consultation before publishing its local toilets strategy or its revised strategy.
252. The section does not specify categories of people with whom a local authority should consult. It will be for each local authority to decide who, in its opinion, is likely to be interested in the provision of local toilets. Similarly, neither the timescale for consultation nor the methods to be used are specified. It will be for a local authority to decide the timescale for an effective consultation and the appropriate consultation method to be used to engage with those interested in the provision of local toilets, having regard to any guidance issued under section 113 by the Welsh Ministers.

### ***Section 116 - Local authority power to provide public toilets***

253. This section provides that local authorities in Wales may provide public toilets in any part of their areas. It restates the powers previously conferred on local authorities under section 87 of the Public Health Act 1936 in relation to the provision of public toilets and the power to charge for the use of the toilets that they provide.
254. In this section, and unlike the preceding sections, the term “local authority” includes a community council. When deciding whether to provide toilets, where toilets are to be provided, or deciding the type of toilets to be provided, a local authority must have regard to the local toilets strategy that is in place for its area. In the case of a community council, the relevant toilets strategy will be the strategy for the council of the county or county borough in which the community is located. A local authority may charge fees for the use of toilets that it provides under this section.
255. If toilets are to be on or under land adjoining, or in the vicinity of, a highway or proposed highway, the relevant highway authority must consent to the provision of the toilets. In some cases, the local authority will be the highway authority, so no consent will be required. The definition of “highway” in this section is the same as in section 328 of the Highways Act 1980; this definition captures bridges in cases where a highway passes over a bridge and tunnels in cases where a highway passes through a tunnel.

### ***Section 117 - Power to make byelaws in relation to toilets***

256. Subsection (1) enables a local authority which provides toilets to make byelaws relating to the conduct of persons using or entering the toilets. As with section 116 above, this restates the power previously conferred on local authorities under section 87 of the Public Health Act 1936 to make such byelaws.

257. “Local authority” in this section includes a community council. If a community council makes such byelaws, any relevant byelaws made by a county or county borough council under section 2 of the Local Government Byelaws (Wales) Act 2012 in relation to the toilets will not apply for as long as the relevant community council’s byelaws remain in force.

### ***Section 118 - Consequential amendments***

258. This section gives effect to Schedule 4, which makes consequential amendments in relation to the provision of toilets. See Schedule 4 below for further information.

## **Part 9**

### **Miscellaneous and General**

#### ***Section 119 - Fixed penalty receipts for food hygiene rating offences***

259. This section amends section 22 of the Food Hygiene Rating (Wales) Act 2013. That section regulates the use of monies received by county and county borough councils in Wales in payment of fixed penalties in connection with various offences relevant to the mandatory display of food hygiene rating stickers required by the 2013 Act.
260. Section 22 of the 2013 Act requires councils to pay monies received to the Welsh Ministers; this section instead enables a council to use fixed penalty receipts for the purpose of its functions relating to the enforcement of the provisions of the 2013 Act, and regulations made under it.

#### ***Sections 120 and 121 - Offences by bodies corporate, partnerships and other unincorporated associations***

261. These sections make provision in connection with offences committed, or alleged to have been committed, under the Act by a body corporate; a partnership; or other unincorporated association (“relevant bodies”).
262. **Section 120** makes it possible, in the circumstances described in subsection (2), for individuals holding positions of responsibility within a relevant body (the “senior officers” defined by the section) to be criminally liable for an offence committed by the body.
263. **Section 121** makes provision about and in connection with bringing proceedings against partnerships or other unincorporated associations.

#### ***Section 122 - Giving notices***

264. This section provides detail about how a notice is to be given from a person to another person under the Act or regulations made under it. It imposes requirements in relation to the form of the notice (it must be in writing) and the method by which a notice may be delivered. This provides clarity for both the person giving the notice and the person receiving the notice.

#### ***Section 123 - Regulations***

265. This section explains that powers to make regulations under this Act are to be exercised by statutory instrument (which means that certain procedural and other requirements contained in the Statutory Instruments Act 1946 apply to regulations made under the Act), and sets out the procedure, in terms of the National Assembly for Wales’ involvement, to be followed in making regulations under different sections of the Act.

#### ***Section 124 - Interpretation***

266. This section defines general terms which apply throughout the Act.

***Section 125 - Power to make consequential and transitional etc. provision***

267. This section permits the Welsh Ministers to make supplementary, incidental, consequential, transitional, transitory or saving provision in regulations. Such provision must be for the purposes of the Act, in consequence of such a provision, or be necessary to give full effect to them. For example, time limited arrangements may be needed to allow appropriate time for a practitioner of a special procedure to comply with the new requirements introduced by the Act.

***Section 126 - Coming into force***

268. Subsection (1) of this section sets out the provisions of the Act that come into effect on the date of Royal Assent. Any provision which is not mentioned in subsection (1) will come into force on a day specified by a commencement order made by the Welsh Ministers. Different dates may be specified.

***Section 127 - Short title***

269. This provides that the short title of the Act is the Public Health (Wales) Act 2017.

***Schedule 1 - Fixed penalties***

270. [Schedule 1](#) contains provisions relating to fixed penalties and fixed penalty notices. These include the contents of the penalty notice form, powers for the Welsh Ministers to make regulations to set the penalty and discounted amounts, and the periods for payment of the penalty and discounted amounts. Paragraphs 15 and 16 enable a person to request to be tried for the offence in court instead of paying the fixed penalty. Paragraph 17 permits authorised officers of the issuing authority to withdraw a fixed penalty notice. Paragraph 18 provides that receipts for fixed penalty notices relating to smoking can only be used for the enforcement of provisions in Chapter 1 and 2 of Part 3 of this Act.

***Schedule 2 - Smoking: consequential amendments***

271. [Schedule 2](#) makes consequential amendments in relation to smoking. These amendments:

- Disapply Chapter 1 of Part 1 of the Health Act 2006 in relation to Wales because Chapter 1 of Part 3 of the Public Health (Wales) Act 2017 restates those provisions in relation to Wales. Chapter 1 of the Health Act 2006 remains in force in relation to England; and
- Amend section 91 of the Children and Families Act 2014, which modifies section 9 of, and Schedule 1 to, the Health Act 2006. The amendment inserts a new paragraph at subsection (5)(c) of section 91 of the Children and Families Act 2014. This maintains the Welsh Ministers' powers to make regulations to specify the form of fixed penalty notices in relation to an offence under that section (in relation to the offence of buying or attempting to buy tobacco for a person aged under 18).

***Schedule 3 - Further provision in connection with special procedure licences***

272. [Paragraphs 1-4](#) set out the process that an applicant for a special procedure licence must follow, including the information that they must provide to the local authority to obtain a licence. In the application, the applicant must specify the special procedure(s) to which the application relates and provide details of the basis that the procedure is to be performed (i.e. peripatetic basis (i.e. the applicant plans to practice a special procedure in various different premises, for example clients' homes), fixed site basis, mobile basis, temporary basis, or otherwise). If the procedure is intended to be performed at a set premises or vehicle, details of that premises or vehicle must be provided in the application.

273. The application must also include the details of the applicant (including their full name, date of birth, address and contact details) together with other required information including, for example, information about any offence they have been convicted of. The application is to be accompanied by whatever fee is required by the authority. In setting this fee, the local authority must have regard to the costs incurred or expected to be incurred by it in connection with dealing with applications. In considering the application, the local authority may require further information to be provided by the applicant including information necessary to verify their identity. Paragraph 4(4) provides the Welsh Ministers with a regulation-making power to make further provision about the way in which a local authority is to determine the amount of fee that is to accompany an application, and the procedure for dealing with applications. This may include the way an application is made, the information to be provided in the application and the way in which an application is to be dealt with by the authority.
274. Paragraph 5 specifies the content of a special procedure licence. The licence must, amongst other things, state the name of the licence holder, name the authority by which the licence is issued and state the special procedure that is authorised by the licence. The period that the licence is valid for must also be included; in the case of a temporary licence that is valid for no more than seven days, this must be specified on the licence. If required by section 59, the licence must also include the details of the approved premises or vehicle from which the licence holder is authorised to perform special procedures. Paragraph 5(3) provides the Welsh Ministers with a regulation-making power to make further provision about the form and contents of special procedure licences. These regulations may include, amongst other things, information about the applicable mandatory licensing conditions that the holder of the special procedure licence must adhere to. These mandatory licensing conditions may relate to the condition (i.e. cleanliness, maintenance and standards of hygiene) of the premises or vehicle from which the special procedure is performed or where the equipment or material is stored or prepared.
275. Paragraphs 6 and 7 enable the licence holder to apply to the local authority for a copy of their licence if it is mislaid, stolen or damaged. As the mandatory licensing conditions may require the licence to be displayed, the licence holder may require a copy of the licence in order to comply with that requirement. The application must be made in any way the local authority requires and must be accompanied by whatever fee has been set by the authority. If the local authority is satisfied that the licence has been mislaid, stolen or damaged, the local authority must grant the application and issue a copy of the licence to the applicant as soon as practicable. In the case of a mislaid or stolen licence, the local authority must also be satisfied that the loss or theft has been reported to the police. The copy of the licence must be certified by the local authority as a true copy and will be treated as being the original licence.
276. Paragraph 8(1) provides details of the circumstances under which a licence expires. These include the end of the licence period, the voluntary termination of a licence, or the date that the revocation by the local authority (as provided by section 68) of the licence takes effect. A licence will also expire once withdrawal of an individual's designation under section 61 takes effect.
277. Paragraph 9 enables a licence holder to apply to a local authority for the renewal of their special procedure licence. The application must be submitted to the same local authority that granted the original licence and must be made in whatever way and contain whatever information is required by the local authority. The application must also include the fee set by the local authority.
278. Paragraph 10 provides that a licence does not expire during the time that the local authority is considering the application for renewal, during the appeal period available in respect of an application for renewal, or whilst an appeal is pending.
279. Paragraphs 11, 12 and 13 enable a special procedure licence to be varied upon application from the licence holder. For example, a variation may be applied for

because the licence holder wishes to add, amend or remove a description of special procedure from their licence. The variation may also be required to add reference to an approved premises or vehicle from which the licence holder intends to perform special procedures, or to remove a premises or vehicle previously identified on the licence. If the licence holder is applying to add a special procedure to their licence, the licence holder must specify the special procedure they wish to be added and meet the licensing criteria in relation to that procedure. The variation cannot however transfer the licence from the licence holder to another individual or extend the licence period. The application must be made in whatever way is required by the local authority and be accompanied by whatever fee is set by the local authority.

280. If a licence holder intends to terminate their licence, paragraph 14 enables the licence holder to give notice to the local authority of this. In giving notice, the licence holder must state the date with which the licence is to cease to have effect. Subject to any earlier expiry under paragraph 8(1)(a), (b) or (d), the licence will cease to have effect on the date specified in the notice.
281. [Paragraph 15](#) provides that where a local authority proposes to give notice to an applicant, licence holder or individual (referred to as “A”), A has the right to make representations to the local authority licensing committee. The notice may relate to:
- the refusal of an application for a licence under section 65(2) or 66(3) (including under any of those provisions as applying in respect of the application by virtue of section 67 or paragraph 13);
  - the intention to revoke a licence (section 68); or
  - the designation of an individual under section 61(1), requiring them to have a licence.
282. Before a decision is taken by the local authority, it must provide a warning notice to A that sets out what it intends to do and why. The warning notice must state that within the period specified (which must not be less than 14 days) A may either make representations or inform the local authority that he/she wishes to make representations about the proposal. If A wishes to, the local authority must enable A to make representations (including oral representations if A or his/her representative wishes to do so) and it must consider those representations. If A does not wish to make representations, or does not inform the local authority that he wishes to make representations within the specified period, the local authority may take the steps specified in the warning notice.
283. Having complied with the requirements in paragraph 15, paragraph 16 enables the local authority to take the action set out in the warning notice and to issue a notice of decision. The notice of decision must set out the local authority’s reasons for giving it. Similarly, if the local authority decides not to take the action set out in the warning notice, it is also required to notify the applicant or licence holder of its decision. This ensures that an applicant or licence holder is informed of the outcome in all scenarios. The notice of decision must also state that A may appeal the decision and provide details of the period within which an appeal may be brought. In the case of a revocation under section 68, the notice of decision must also state the date on which (in the absence of an appeal) the revocation will take effect.
284. [Paragraph 18](#) provides that an applicant, licence holder or individual may appeal to a magistrates’ court against the local authority’s decision (as taken under paragraph 16). The appeal must be made within 21 days of the local authority’s notice of decision. On hearing the appeal, the magistrates’ court may confirm, quash or vary the decision made by the local authority; alternatively, the magistrates’ court could remit the case to be considered by the local authority in accordance with directions given by the magistrates’ court. The magistrates’ court may also make an order for costs incurred to be paid.

These may be the costs incurred by the applicant or the local authority in defending its decision.

285. [Paragraph 19](#) provides that an appeal against the decision of the magistrates' court under paragraph 18 may be brought to the Crown Court. The Crown Court may confirm, vary or reverse the magistrates' court's decision or require that the case is considered by the magistrates' court or the local authority in accordance with the directions given by the Crown Court.
286. If on appeal under paragraphs 18 and 19, the local authority's decision is varied or reversed, the magistrates' court or the Crown Court may order the local authority to compensate the applicant, licence holder or person subject to designation under section 61, for loss suffered as a result of the decision. For example, the person could be compensated for a loss of income due to the local authority's decision to prevent them from working whilst the appeal was ongoing.
287. During the time that an appeal under paragraphs 18 and 19 is taking place, the decision made or the notice given by the local authority continues to have effect. Therefore, if it is the local authority's decision to revoke a licence under section 68, the decision will remain in force until the court makes its determination.
288. [Paragraph 21](#) delegates the specified functions of a local authority to the licensing committee of the local authority. This allows the licensing committee to make the decisions in relation to those functions listed under paragraph 21(1). Whilst the functions remain functions of the local authority, requiring the licensing committee (or one of its sub-committees) to take the decision provides a level of oversight. Committees and their members have experience in taking licensing decisions which may affect people's livelihood. In taking a decision, the licensing committee will be required to hear any representations provided by 'A' following the issuing of a warning notice by the local authority under paragraph 15. The functions of the licensing committee are provided to it by section 6 of the Licensing Act 2003. In addition to enabling the licensing committee to take decisions in relation to specific areas, these functions enable the licensing committee to refer specified decisions to the local authority and to sub-delegate decision making.
289. [Paragraph 21\(4\)](#) provides the Welsh Ministers with a regulation-making power to make provision about the procedures applicable to licensing committees and their sub-committees for the purpose of the exercise of the delegated functions under this paragraph, including public access and the availability of records. Subject to any regulations made by the Welsh Ministers, paragraph 21(5) enables each licensing committee and its sub-committees to regulate its own procedure.
290. [Paragraph 22](#) repeals provisions in Part 8 of the Local Government (Miscellaneous Provisions) Act 1982 in relation to Wales. This means that the registration system available under that Act which covers acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis will no longer apply. References to sections 14 and 15 of the Local Government (Miscellaneous Provisions) Act 1982 will also be removed from the Schedule to the Local Government Byelaws (Wales) Act 2012. As these provisions will no longer apply, local authorities will be unable to run parallel systems which address the same concerns, thereby providing clarity for both local authorities and practitioners as to the scheme in operation.

#### ***Schedule 4 - Provision of toilets: consequential amendments***

291. [Schedule 4](#) makes consequential amendments in relation to the provision made by Part 8 in relation to toilets. These amendments:
- i. Disapply section 87 of the Public Health Act 1936 in relation to local authorities in Wales because this Act restates the powers previously conferred on those authorities by section 87 of the 1936 Act in relation to:

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

- the provision of public toilets;
  - the power to make byelaws as to the conduct of persons using or entering the toilets; and
  - the power to charge for the use of the toilets that they provide.
- ii. Insert a reference to section 116 of this Act in section 114 of the Highways Act 1980 to ensure that the powers in that section are not prejudiced by the provisions in section 116. Section 117 confers a power on local authorities to provide public sanitary conveniences for users of roads where they are the highway authority.
- iii. Insert a reference to section 117 of this Act in the tables in Parts 1 and 2 of Schedule 1 to the Local Government Byelaws (Wales) Act 2012, so that the byelaws council councils, county borough councils and community councils may make in exercise of their power under section 117 are not subject to confirmation by the Welsh Ministers, and so that fixed penalties may be issued by authorities in relation to breaches of these byelaws. As such, these changes preserve the current position under the 2012 Act in relation to local authority byelaws about toilets but replace references to section 87 of the Public Health Act 1936 with references to the relevant section of this Act.

## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

292. The following table sets out the dates for each stage of the Act’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales’ website at:

<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16155>

<i>Stage</i>	<i>Date</i>
Introduced	7 November 2016
Stage 1 - Debate	28 February 2017
Stage 2 Scrutiny Committee – consideration of amendments	23 March 2017
Stage 3 Plenary – consideration of amendments	9 May 2017
Stage 4 Approved by the Assembly	16 May 2017
Royal Assent	3 July 2017