

Welsh Government inks new regulations for Acupuncture, Body piercing, Electrolysis and Tattooing

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Wales is set to be the first UK nation to introduce a mandatory national licensing scheme for tattoo artists and those working in body piercing, acupuncture and electrolysis.

In January 2023, the Welsh government launched a consultation seeking views on establishing a mandatory licensing scheme for “special procedures” carried out in Wales, namely:

- Acupuncture,
- Body piercing,
- Electrolysis, and
- Tattooing, including semi-permanent make up and microblading.

The consultation was instigated due to the number of reported adverse health effects associated with the procedures, including blood-borne viral infections and bacterial skin infections, often resulting from poor hygiene practices and insufficient consultation prior to the procedure being performed. This consultation closed in April 2023.

A second Welsh Government consultation proposes draft regulations and statutory guidance in relation to the scheme for special procedures as set out in the Public Health (Wales) Act 2017 Pt 4 and Sch.3.

The draft regulations provide the detail required to establish and operate a mandatory licensing scheme for practitioners of acupuncture, body piercing, electrolysis and tattooing and the approval of premises and vehicles in which these procedures are performed.

Under the scheme, it will be an offence for any practitioner to carry out a special procedure without a licence (unless they are exempt), and premises/vehicles where the licensed practitioner operates will also require approval. Applications for a special procedure licence need to be made to the local authority, who in turn must maintain a register of those individuals who are licensed.

The consultation also includes draft statutory guidance for local authorities on how they are to determine a “person’s fitness to perform a special procedure” for the purpose of being granted a new licence or renewal of a licence or for the purpose of revoking a licence, where this has been called into question. It is the intention that the regulations, if passed, will come into force, and the mandatory scheme to go live for applications, on a date to be confirmed in October 2024. Comments are required by 8 April 2024. [You can respond online here.](#)

Applicants wishing to obtain a licence to carry out special procedures must provide (amongst other things) evidence of insurance that provides cover for treatments, such as treatment indemnity insurance.

“Insurance cover” (“sicrwydd yswiriant”) is defined in the [Special Procedure Licences \(Wales\) draft regulations](#) as “a valid policy of insurance which was issued by an authorised insurer to insure the applicant in respect of any liability which may be incurred by them, in respect of illness, infection, injury and/or noninfectious adverse health effects such as allergic reactions, arising from the performance of a special procedure”.

The application process for premises and vehicles where practitioners operate requires evidence of public liability insurance cover. There must be a valid policy of insurance issued by an authorised insurer for “any public liability which may occur at the premises or vehicle in

the course of a special procedure being performed” and “The certificate holder must ensure that the insurance cover for the premises or vehicle remains valid and takes into account the range of special procedures offered for the duration of the approval period”. Read more in the [Special Procedures Approved Premises and Vehicles \(Wales\) draft regulations](#).

What does this mean for insurers?

The draft regulations require practitioners to have indemnity insurance in place in relation to performance of special procedures and public liability insurance.

The scheme aims to improve standards, improve protections for the public and build confidence in the industry. All procedures have some risks and these risks are greater when the person carrying out the procedure is not sufficiently knowledgeable or trained or when the procedure is carried out at unsuitable premises or using unsuitable products.

The draft regulations require licence holders to continue to develop, update and maintain their knowledge of infection prevention and control and their skills for the procedure they are licensed to perform.

There are new requirements that licence holders must meet in carrying out procedures.

Examples of these include:

- Increased record keeping requirements including a requirement to record, respond to and maintain an incident register. This register must include details of any incident.
- If the licence holder has any concerns regarding the health of the client, then they should not proceed without medical advice or approval from the client’s General Practitioner or medical consultant. A copy of this information must be included in the licence holder’s written records for the client.
- Requirements around the use of equipment, instruments and products including maintaining records of service and validation and covering fixtures of items of furniture not changed between each client.
- Requirement to complete a pre-treatment consultation including a full explanation of the process, risks and contraindications of the special procedure and medical history. A pre-treatment consultation form must be signed by the licence holder and countersigned by the client.
- Requirement to complete a post-treatment consultation with the client after the special procedure is performed including an explanation of aftercare requirements in an easy to understand format, both verbally and in writing. Contact details of the licence holder must be included, and a copy of the advice must be included in the licence holder’s written records for the client.
- There are also requirements specific to various procedure types. For example, Tattooists must ensure that all products such as antiseptic creams, petroleum jelly, lubricating gel, tattoo stencils are single use or dispensed using a clean, single use instrument to a clean, single use receptacle. Products must also be labelled with the date of opening and disposed of in accordance with the manufacturer’s instructions.

These requirements (and others set out in the draft regulations) are likely to raise standards. They will create a higher standard of care with a more difficult test for practitioners to meet, as formulated in the cases of *Bolam* and *Montgomery v Lanarkshire Health Board*. Industry practice and opinion can be key to an assessment as to what 'reasonable skill and care' may mean in any profession.

The Act will give local authorities powers to take formal action against licence holders in cases where they breach their licensing conditions or the requirements of the Act, including revoking a special procedure licence. Some policy wordings may provide cover in relation to such actions.

Consumer protection is at the heart of these proposals and to ensure adequate compensation is available should things go wrong is an important element of the package. There is increasing concern about the nature of indemnity arrangements, particularly discretionary schemes, and the potential risk this causes for consumers.

This scheme should in theory give consumers confidence that the licenced premises will provide a safe service but that there will be appropriate indemnity in place should they suffer an adverse outcome. However, making sure the cover afforded is appropriate to meet the new regulations will be important for practitioners, insurers and the Licencing Authority. There is currently no mention of any minimum limit of indemnity or minimum policy wording requirement. The wording of the draft regulations is wide and perhaps ambiguous – they refer to insurance covering “any liability which may be incurred by [practitioners]” and “for any public liability which may occur”. Clearly, insurance in respect of ‘any liability’ (i.e. without limitation) will not be commercially available. Time will tell as to whether further clarity is given as to permissible exclusions and limitations.

Insurers are advised to check their policies and consider whether they are suitable to comply with the new regulatory requirements where applicable.

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