

## Consultation Response Questionnaire

**Draft Regulations and Statutory Guidance for a mandatory licensing scheme for special procedures in Wales**

<b>Organisation (if applicable):</b>	<b>Nursing and Midwifery Council (NMC)</b>
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**Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:**

Please return this form to reach the Welsh Government no later than **8 April 2024**.  
The email address for responses or queries is:

[SpecialProceduresMailbox@gov.wales](mailto:SpecialProceduresMailbox@gov.wales)

This form can be downloaded or the online response questionnaire accessed from the Welsh Government website here:

<https://www.gov.wales/mandatory-licensing-special-procedures-wales>

**We welcome responses in Welsh or English.**

**Please note:** this mandatory licensing scheme will be introduced on the terms set out in this document and the Regulations. We cannot therefore revisit the subject of the scheme itself or the proposals put forward in the first consultation document.

	<p><b>About the NMC</b></p>
	<p>The <a href="#">NMC</a> is the independent regulator of nurses and midwives in the UK and nursing associates in England. We welcome the opportunity to contribute to the consultation on the draft Regulations and statutory guidance for mandatory licensing of special procedures in Wales.</p> <p>In terms of our response to this consultation, some of the questions fall outside our regulatory remit or area of expertise. We have therefore focused our response on aspects of the consultation that we view as particularly relevant to the nursing and midwifery professionals we regulate, and where we can best offer our experience and support in our role as regulator.</p> <p>Where we do not hold a position on a particular question, we have marked it as ‘we have no comments’.</p>
	<p><b>Please give reasons for your answers when responding.</b></p>
<p><b>1 - The Special Procedure Licences (Wales) Regulations 202X</b></p>	
<p><b>1a</b></p>	<p><b>Do you think these draft Regulations adequately set out how individuals are to be licensed?</b></p>
	<p>We note the ‘Form of application for a special procedure licence’ in Schedule 1 Regulation 3(1) doesn’t ask applicants for any information related to their professional registration and their registration status on professional registers e.g. whether they have any restrictions on their professional practice. The Welsh Government may wish to consider whether it would be helpful to ask applicants for this information as part of an assessment of eligibility for a licence and for making referrals to professional regulators if serious concerns are raised about a registered professional’s fitness to practice. It may also be considered helpful for data monitoring purposes, and if Welsh Government decide to amend the scheme in the future.</p> <p>Schedule 4, Regulation 9 (7) on the client and client consultation state the licence holder must complete a pre-treatment consultation with the client, prior to undertaking the special procedure and a post-treatment consultation after the special procedure is performed. Schedule 5 Regulation 9(5) on conditions for supervisors, states that the supervisor must supervise the trainee whilst the trainee performs the special procedure on a client. We think it’s probably implicit that these must be provided face-to-face, but it would be helpful to clarify whether the Welsh Government could envisage any aspects of the special procedures be delivered remotely e.g. consultations with clients and where appropriate, with the parent or legal guardian of the client, prior to undertaking the special procedures.</p> <p>Consultation document: <a href="#">SI/SR Template (gov.wales)</a></p>

<b>1b</b>	<b>Is there anything unclear, missing that should be included, or included that should not be?</b>
	<p>We note the 'Form of application for a special procedure licence' in schedule 1 <a href="#">SI/SR Template (gov.wales)</a> doesn't ask applicants to set out what qualifications they have to perform the procedures. It would be helpful to understand what the education and training requirements are for a person applying for a special license and how the competency of applicants will be assessed. This will help to ensure that only people with the appropriate knowledge, skills and competence are able to obtain a licence and carry out the special procedures.</p> <p>It is a requirement of the <a href="#">NMC Code</a> which contains the professional standards of practice and behaviour that nursing and midwifery professionals work within the limits of their knowledge, skills and competence, and to complete the necessary education and training before carrying out a new task.</p>
<b>2 - The Special Procedures Approved Premises and Vehicles (Wales) Regulations 202X</b>	
<b>2a</b>	<b>Do you think these draft Regulations adequately set out how premises and vehicles are to be approved?</b>
	We have no comments
<b>2b</b>	<b>Is there anything unclear, missing that should be included, or included that should not be?</b>
	We have no comments
<b>3 - The Special Procedures Exempted Individuals (Wales) Regulations 202X</b>	
<b>3a</b>	<b>Do you think these draft Regulations adequately set out how the specified individuals are to be exempt?</b>
	Yes, we think the regulations are clear, but we think further consideration may be needed on the practical implementation on how individuals are to be exempted. Please see our response to question 3b.
<b>3b</b>	<b>Is there anything unclear, missing that should be included, or included that should not be?</b>
	<p>The statutory instrument that sets out the structure of the register of nurses, midwives and nursing associates, and the protected titles which may only be used by persons on the Nursing and Midwifery Council register is the <a href="#">Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004</a>. The protected titles are 'Registered nurse', 'Midwife', 'Nursing associate' and 'Specialist community public health nurse'. 'Nurse' is not a title protected in law.</p> <p>In paragraph 2(1) of the Interpretation section and in Schedule 2 Regulation 4 of the draft regulations we would advise replacing the term 'nurse' ('nyrs') with 'registered nurse' to reflect the protected title.</p> <p>A Specialist Community Public Health Nurse (SCPHN) means a registered nurse (first level) or midwife who is also registered in the Specialist Community Public Health Nurses' Part of the register. We would suggest</p>

removing the reference in the interpretation of 'nurse' in paragraph 2(1) because a SCPHN's primary registration must be a registered nurse or midwife first.

As stated in our [response](#) to the previous consultation (April 2023), we support the intention not to exempt registered professionals who are not performing the special procedures in a regulated healthcare establishment from the requirement to be licensed. The exemption will only apply to regulated professionals working in any NHS setting or privately regulated health care services regulated by HIW where the special procedures are considered 'in scope' of their role. Employers have an important role in ensuring nursing and midwifery professionals are prepared for and maintain proficiency for their role.

We think paragraph 4(b) in the section 'Specified special procedures for the purposes of section 60(1) of the Act for members of certain professions unless certain conditions are met' is clear, but we suggest there should be consideration of the practical impacts of this.

We can use a range of possible sanctions following a fitness to practice meeting or hearing which finds a nursing or midwifery professional's fitness to practice is impaired. Possible sanctions include:

- No sanction – this is where the complaint has already been dealt with so there is no longer an issue which presents a risk to the public.
- Caution order – which is like a warning and is published on our register and can last between one and five years.
- Conditions of practice order - if a nurse, midwife or nursing associate receives conditions of practice, they're still allowed to work, but there are restrictions to what they can do. Conditions last between one to three years.
- Suspension order - if a nurse, midwife or nursing associate receives a suspension, they can't work during this period. Suspensions can last anywhere between one and 12 months. After this time, a suspension can expire or be looked at again.
- Striking-off order - if the panel decide to strike the nurse, midwife or nursing associate off the register, they're taken off the register and can't work as a registered professional. They can apply to re-join the register after five years.

A sanction or condition could be in respect of something totally unrelated to the special procedure so we question whether it would it be proportionate to require these professionals to obtain a licence when they would be performing the special procedure in a regulated independent healthcare environment? If the restriction did relate to the performance of the special procedure, it would be helpful to understand whether any consideration has been given to whether the presence of regulatory restrictions would be sufficient to mitigate any risk the licensing is seeking to address for someone working a regulated location? We think there should be further consideration of the practical implications of the proposed approach and how the licensing scheme

	<p>interacts with regulatory processes and powers already in place to restrict the practice of professionals on our register following a fitness to practice case.</p> <p>In January 2024 the Welsh Government announced its intention to introduce a regulated band 4 nursing role for the NHS in Wales and a full public consultation is expected to be undertaken later this year. Until the time when a new band 4 role is introduced in Wales, it's important to note that the nursing associate role is regulated in England only. As stated in our response to the previous consultation, individuals registered as a nursing associate (NA) could decide to perform special procedures in Wales. Paragraph 4(a) indicates that NAs could be exempt if they are performing the special procedure in a regulated independent healthcare establishment. We think the Welsh Government needs to consider and be explicit on whether regulation by the NMC is sufficient to exempt individuals who hold registration as NA and work in healthcare roles within regulated locations in Wales from the licensing scheme.</p> <p>Consultation document: <a href="#">SI/SR Template (gov.wales)</a></p>
<b>4 - The Special Procedure Licensing Committees (Wales) Regulations 202X</b>	
<b>4a</b>	<b>Do you think these draft Regulations adequately set out how licensing committees are to operate for the purposes of this mandatory licensing scheme?</b>
	<p>We have no comments</p> <p>Consultation document: <a href="#">SI/SR Template (gov.wales)</a></p>
<b>4b</b>	<b>Is there anything unclear, missing that should be included, or included that should not be?</b>
	We have no comments
<b>5 - The Prescribed Objects for Body Piercing (Wales) Regulations 202X</b>	
<b>5a</b>	<b>Do you think these draft Regulations provide an adequate definition of 'object' for the purposes of non-intimate body piercing within this licensing scheme?</b>
	<p>We have no comments</p> <p>Consultation document: <a href="#">SI/SR Template (gov.wales)</a></p>
<b>5b</b>	<b>Is there anything unclear, missing that should be included, or included that should not be?</b>
	We have no comments
<b>6 - Statutory Guidance</b>	
<b>6a</b>	<b>Do you think the draft Statutory Guidance adequately explains how a local authority should determine a 'person's fitness to perform a special procedure' for licensing purposes under the mandatory licensing scheme, where this has been called into question?</b>
	We have been unable to clearly identify details about how applicants will be assessed as having the right training, knowledge, and skill to perform any of the procedures safely and effectively and what the appropriate training and preparation looks like.

	<p>We think it would be helpful to have clarity on this point to ensure that the introduction of a licensing scheme will act as an effective public protection mechanism.</p> <p>A core part of our role as a regulator is to promote high education and professional standards for nursing and midwifery professionals. Our standards are set out in the Code and a nurse, midwife or nursing associate must make sure that their skills, knowledge, education or behaviour don't fall below these standards needed to deliver safe, effective and kind care. If they meet these standards, this is what we call being fit to practise.</p> <p>Consultation document: <a href="#">Consultation on draft regulations and statutory guidance for a mandatory licensing scheme for special procedures in Wales [HTML]   GOV.WALES</a></p>
<b>6b</b>	<b>Is there anything unclear in the draft Statutory Guidance that should be explained further?</b>
	<p>We note a lot of prescriptive detail is included within the draft regulations e.g. Schedule 7 Regulation 9 (7) paragraph 3 says a license holder must thoroughly wash and dry their hands immediately before and after performing acupuncture on each client. We think this level of detail will need to be communicated outside the regulations to ensure that licence holders know what is expected of them, so they don't fall foul of the regulations and clients accessing the special procedures know what to look for.</p>
<b>6c</b>	<b>Is there anything in relation to determining a 'person's fitness to perform a special procedure' that is unclear or missing from the draft Statutory Guidance?</b>
	We have no further comments
<b>Statutory Questions</b>	
<b>7</b>	<p><b>We would like to know your views on the effects that the mandatory licensing scheme for Special Procedures in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.</b></p> <p><b>What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?</b></p>
	<p>Our assumption is that information to help the members of the public to understand the requirements of the new system and what they should be looking for to keep themselves safe will be available in Welsh and English language. It is important that people considering undergoing any of the special procedures in Wales are easily able to access and understand the requirements in their preferred language.</p>
<b>8</b>	<p><b>Please also explain how you believe the proposed mandatory licensing scheme for Special Procedures in Wales could be formulated or changed so as to have</b></p> <ul style="list-style-type: none"> <li><b>positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and</b></li> </ul>

	<ul style="list-style-type: none"><li>• <b>no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.</b></li></ul>
	We have no comments
<b>9</b>	<b>We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.</b>
	We have no comments