

Annex B – Consultation Response Questionnaire

Mandatory Licensing Scheme for Special Procedures in Wales

Your name:	Sara Kovach-Clark
Organisation (if applicable):	Nursing and Midwifery Council (NMC)
Email:	policy@nmc-uk.org
Your address:	Nursing and Midwifery Council 23 Portland Place London W1B 1PZ

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 **19 April 2023**.
The email address for responses or queries is:

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.

	<p>About the NMC</p>
	<p>The NMC is the independent regulator of nursing and midwifery professionals in the UK. We welcome the opportunity to contribute to the consultation on the 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>Please give reasons for your answers when responding.</p>
<p>1.</p>	<p>Do you agree with our proposals to mandate the form and content of a special procedure licence and the premises/vehicle approval certificate within regulations? Is there anything else that should be included in the format of these documents?</p>
	<p>Our overarching role as a regulator is to protect, promote and maintain the health, safety, and wellbeing of the public. We strongly support the aim of improving the safety of non-surgical cosmetic procedures across the UK and ensuring they are performed by appropriately qualified professionals in safe premises.</p> <p>We agree with the policy intent to mandate a national licensing scheme for special procedures and think that the proposal to require practitioners operating in Wales to obtain a licence and for premises to gain approval before they can offer services is a step towards improving standards of infection prevention and control measures across the industry. The proposals have the potential to reduce variation in the sector by introducing consistent standard that individuals and where they perform special procedures will have to meet.</p> <p>The scope of the consultation is limited to acupuncture (including dry needling), body piercing, electrolysis and tattooing (including semi-permanent makeup) and we note there will not be consultation on additional special procedures at this point. However, we think it is important to acknowledge the growing prevalence of other non-surgical cosmetic procedures, such as dermal fillers (lip or face fillers) and botulinum toxins (Botox).</p> <p>These are higher risk procedures as they pierce or penetrate the skin, yet they remain largely unregulated, meaning anyone can carry out these procedures, regardless of their training or qualifications. From a consumer and public protection perspective, this represents a significant issue, as non-surgical cosmetic procedures carry risks which can be severe and result in people suffering serious complications and long term physical or psychological harm and we would encourage the Welsh Government to</p>

	to scope other procedures to consider any need for further regulation.
2.	Do you agree with our proposal to make regulations about further provision (as set out in paragraph 4.13)?
	Agree. This should help to reduce variation and the potential for ambiguity in the licensing scheme across all 22 Welsh local authorities.
3.	Do you agree that nine months is a sufficient transition period? If not, what should it be?
	We have no comments.
4.	Do you agree that the proposed minimum age for applicants for special procedure licences is appropriate?
	We have no comments.
5.	Do you agree with the proposed licensing criteria for special procedure licences and the supporting documents listed? Are there other documents applicants should supply?
	We have no comments.
6.	Do you agree with the proposal that applicants should evidence their competence in the special procedure(s) they wish to perform? If you agree, how should that be demonstrated, and what documentary evidence should be produced?
	Yes, we agree that local authorities need to make sure that applicants applying for a license have the right training, knowledge and skills to enable them to practise safely and effectively.
7.	Do you agree that the current descriptions of relevant offences are sufficient? If not, why?
	We have no comments
8.	Do you agree with the principle of this proposal that regulations should be made to limit the exemptions on members of the listed professional bodies in section 60?
	<p>Any registered nursing and midwifery professionals involved in performing any non-surgical cosmetic procedure are required to always follow the NMC Code. The Code specifies that professionals must have the knowledge, skills and competence for safe practice and be able to demonstrate this through our revalidation process. It is also a requirement, by law, for professionals registered with the NMC to ensure that appropriate indemnity cover is in place for their whole scope of practice. We can take regulatory action to protect the public where individual nursing and midwifery professionals do not practise in line with the NMC Code and standards.</p> <p>Most nursing and midwifery professionals will perform non-surgical procedures safely and effectively and in line with the Code and our standards. However, we agree with the proposal that regulated professionals, including registered nurses and midwives, should not hold blanket exemptions for all four special procedures but regulations should be made to limit their exemptions as outlined in the consultation.</p> <p>We agree that exemptions for nursing and midwifery professionals should apply in cases where any of the four special procedures are considered within the scope of a currently regulated professional's role and are performed within the NHS or privately regulated healthcare services</p>

regulated by Healthcare Inspectorate Wales (HIW). This is because the special procedures are considered 'in scope' of their role and employers have an important role in ensuring that nursing and midwifery professionals are prepared for and maintain proficiency for their role.

These employers are also regulated and inspected to check people are receiving good care. This gives greater assurances to the public who can view information about inspection concerns or notices. We have a commitment with other regulators to consult one another of any issues that might require us to act, so if concerns are raised about a nursing or midwifery professional performing one of the procedures, we would expect to be notified.

We note that in accordance with Section 75 of the Act, all Welsh local authorities will maintain and publish a register of special procedure practitioners and approved premises/vehicles. Nursing and midwifery professionals exempt from licensing will not appear on the register of special procedure practitioners. Our register does not record training and qualifications that we do not regulate; therefore, individual NMC register entries will not show which nursing and midwifery professionals can operate as special procedure practitioners in Wales. Our register also does not record information related to an individual's practice and the scope of their role. This means we have limited information about who on our register performs non-surgical procedures and the extent of their practice.

We support the proposal that nursing or midwifery professionals performing these activities outside their substantive role, perhaps as a side job, and in a setting not regulated by HIW will be expected to obtain a special procedures license and will appear on the register of special procedure practitioners.

Practitioners perform non-surgical procedures from a variety of other premises, such as their own home or within their client's home, temporary 'pop-up' shops and salons. These premises are not subject to additional regulation by HIW and therefore there is less assurance about the quality and safety of care given. We think introducing a mandatory licensing, applicable to healthcare professionals operating outside settings regulated by HIW, is a proportionate way to demonstrate who is deemed competent to undertake the procedures. It also provides additional information about an individual's practice and any concerns raised can be shared with the relevant professional regulator.

We would expect the licensing scheme and employers to have processes in place to support practitioners in practice, and to act first to deal with any concerns that may arise. However, any issues involving our registrants which might have significant implications or raise fitness to practice concerns should be referred to us.

We think it would be helpful to clarify the regulatory position of nursing associates (NAs) within the scope of these proposals. NAs is a role regulated in England only, but practitioners could opt to perform special

	<p>procedures in Wales. Under the proposals individuals who are registered as nursing associates will require a license to perform special procedures as they cannot conduct these activities in Wales whilst relying on their professional NMC registration. However, they would still be required to act in accordance with the NMC Code and we could take regulatory action through our fitness to practice process if there are any professional conduct issues. We would therefore expect to be notified if any concerns were raised about a licensed practitioner who was also registered as a nursing associate in England.</p>
9.	<p>Do you agree with the principle of this proposal that regulations should be made under section 69 to apply exemptions to premises at which exempt members of these professional bodies will practise?</p>
	<p>We agree with the proposal that any NHS setting, or a privately regulated healthcare service regulated by HIW, should be exempt from the requirement to obtain a premises approval certificate where exempt practitioners operate. This is because they are already regulated and subject to inspection so additional licensing would risk duplication in regulation.</p>
10.	<p>Do these exemption principles for individuals and premises adequately protect the safety and health of the client?</p>
	<p>Yes, we are supportive of the proposal that the exemption principles for individuals will only be granted to regulated professionals. As a regulator we protect the public and inspire confidence in the professions we regulate by:</p> <ul style="list-style-type: none"> • Setting and maintaining professional and education standards for registered nurses, midwives and nursing associates • Maintaining the register of nursing and midwifery professionals eligible to practise in the UK; and • Taking regulatory action to protect the public if serious concerns are raised about an individual registrant's conduct or performance. <p>Regulation provides assurances to the public, users of services, employers and others that regulated professionals are safe to practise and can be held to account for their decisions and actions.</p>
11.	<p>Do you agree with the principle of this proposal that the statutory registered HCPC named professions of chiropodists/podiatrists; physiotherapists; prosthetists/orthotists should be exempt? Are there other professions on this register that should have an exemption?</p>
	<p>We have no comments.</p>
12.	<p>Do you agree with the principle of the proposal that members of voluntary registers accredited by the PSA should not be exempt?</p>
	<p>We agree that only healthcare professionals who meet the criteria set out for exemptions should not have to obtain a special procedure licence. Therefore, members of voluntary registers should not be exempt.</p>
13.	<p>Do you have any comments on the example mandatory licensing conditions for all special procedures as set out in Annex D1?</p>
	<p>We have no comments.</p>
14.	<p>Do you agree the specific mandatory licensing conditions at Annex D1 are proportionate to the risks presented by each type of special procedure?</p>

	We have no comments
15.	Do you agree that the creation of a trainee licence is a proportionate way of dealing with trainees on regulated courses and apprentices following regulated and unregulated apprenticeships? If you don't agree, how should they be dealt with?
	We have no comments.
16.	Do you agree that the minimum age for a practitioner to perform any of the special procedures should be 18?
	We think this is sensible, but it is unlikely that anyone on the NMC register would be under 18. Typically, applicants for nursing or midwifery degrees will need qualifications at Level 3 (A level or equivalent) which are most often taken by students aged between 16 and 19. Full-time nursing or midwifery degree programmes normally take a minimum of 3 years.
17.	Do you agree that the minimum age for a client to obtain any of the special procedures (notwithstanding the proposed exceptions listed) should be 18?
	We have no comments
18.	Do you agree that the outlined obtaining of consent and accompaniment by a parent/guardian for procedures for people under 18 where not otherwise prohibited provides sufficient safeguards?
	The NMC Code requires nursing and midwifery professionals to always act in the best interest of people. They must make sure they have obtained and recorded informed consent before carrying out any action.
19.	Do you agree that 16 is an appropriate age for a person to obtain a piercing of the eyebrow, lip, nose or ear cartilage without parental/guardian consent?
	We have no comment
20.	Should piercings to any other part of the face be permitted from the age of 16? If so, why?
	We have no comment.
21.	Do you agree that prohibiting the tattooing of eyeballs in the tattooing licensing conditions is sufficient to prevent this from being performed by licensed practitioners?
	We have no comment
22.	Is the proposal to require in licensing conditions that practitioners discuss the impact of facial and other visible procedures with clients and record the discussion sufficient to address the concerns?
	We do not have a position specifically on practitioners advising clients about the impact of visible procedures including the possibility of job-related discrimination. However, a core part of obtaining consent and a professional's duty is making sure clients or users of services are aware of the potential risks, complications and side effects of any procedure. Professionals must discuss options with clients and assess whether the requested procedure is appropriate and likely to meet their needs. Clients should be given the time, information and advice they need to make informed and voluntary decisions about whether to go ahead with a procedure. This should be documented before any procedure is carried out.

23.	Do you agree with the proposed definition for ‘object’ as it applies to body piercing?
	We have no comment
24.	Do you agree that prohibiting the use of a scalpel or similar bladed instrument in the body piercing licensing conditions is sufficient to prevent body modifications that extend beyond a body piercing procedure?
	We have no comment.
25.	Do you agree with the proposed approval criteria for premises/vehicle approval applications and the supporting documents listed? Are there other documents applicants should supply?
	We have no comment.
26.	Do you agree that holders of trainee special procedure licences should not be able to apply for a premises/vehicle approval certificate in their own right or be nominated as the person in charge of a premises on an application?
	We have no comments.
27.	Do you agree with the proposals about appealing against the refusal of an application for premises and vehicle approvals as set out in paragraph 11.19?
	We have no comments
28.	Do you agree that the approval certificate should also include the name of the responsible person and the maximum number of workstations in that premises/vehicle?
	We have no comments
29.	Do you have any comments on the example mandatory premises/vehicle approval conditions set out in Annex D2?
	We have no comments.
30.	We propose that we make regulations under section 70 of the Act relating to the variation and renewal process for premises approval certificates to make them consistent with the variation and renewal process for special procedure licences. Do you agree?
	We have no comments.
31.	Should temporary approvals for premises and vehicles be subject to the same mandatory approval conditions as all premises and vehicles? If not, what specific mandatory approval conditions (if any) should apply to temporary approvals for premises and vehicles?
	We have no comments.
32.	Do you agree that requiring the same licensing criteria for a temporary special procedure licence as for a three-year licence is proportionate?
	We have no comments.
33.	Do you think that it is proportionate for an event organiser applying for a temporary premises approval certificate to meet the same approval criteria as for a three-year premises approval certificate?
	We have no comments.
34.	Do you agree that all premises/vehicles linked to temporary events/exhibitions must be approved by the local authority? If not, why not?
	We have no comments

35.	Should all premises/vehicles linked to temporary events/exhibitions be subject to mandatory approval conditions?
	We have no comments.
36.	Do you agree further information should be set out within a temporary approval certificate (as suggested in paragraph 13.12)? What other information should be required (if any)?
	We have no comments.
37.	Do you agree that the fees in relation to licence application fees should be determined in the way outlined in paragraphs 15.3 and 15.4?
	We have no comments.
38.	Do you agree that the fees in relation to premises/vehicle approval application fees should be determined in the way outlined in paragraphs 15.5 and 15.6?
	We have no comments
39.	Do you agree that the regulations should make provision on how local authorities should determine the amount of fee charged to a licence or premises/vehicle approval holder under section 76 in the way outlined in paragraphs 15.7 – 15.9?
	We have no comments
40.	Do you agree with our proposal regarding recovery of section 76 unpaid fees in the way outlined in paragraph 15.10?
	We have no comments.
41.	We would like to know your views on the effects that the mandatory licensing scheme for Special Procedures in Wales would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?
	We have no comments.
42.	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 <ul style="list-style-type: none"> • 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 • 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.
	We have no comments.
43.	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.
	We have no comments.