

Consultation on Amendments to the Regulation of Independent Health Care

Respondent Information Form

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

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Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
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Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Questionnaire

Question 1

Do you agree that further regulation of independent health care services in Scotland is needed?

- Yes
- No
- Don't know

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament.

Our purpose is to improve outcomes for current and future consumers and our strategic objectives are:

- to enhance understanding and awareness of consumer issues by strengthening the evidence base
- to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
- to enable the active participation of consumers in a fairer economy by improving access to information and support.

Consumer Scotland generally welcomes these proposals to further regulate independent health care services in Scotland. The proposals will assist in ensuring consumers can access healthcare safely, that standards are consistent across providers and that independent health care providers can be held accountable.

Previous Scottish Government consultations have explored the need for further regulation. In 2020, the Scottish Government ran a [consultation on the regulation of non-surgical cosmetic procedures](#). According to the [consultation analysis published on 7 July 2022](#), 98-100% of respondents supported further regulation of non-surgical cosmetic procedures. We are aware that in its [response to the consultation analysis](#), also published on 7 July 2022, the Scottish Government committed to working with other UK nations to inform the development of separate proposals to regulate the administration of dermal fillers and we welcome this.

We believe that this regulation is timely in the light of recent [research by YouGov](#) which shows that one in eight Britons have paid for private health services in the last year. The [Consumer Protection Survey](#) showed that 23% of UK consumers had purchased or used a private medical or dental product or service in the 12 months to April 2021. This survey also revealed that the sector had a 10% incidence of consumer detriment, with a median net monetised detriment of £101. It furthermore found that the private medical and dental care sector was within the top 10 sectors where incident numbers were perceived as being at least somewhat affected by the pandemic. It was also the sector most likely to result in a negative resolution where consumers experienced detriment.

Consumer Scotland supports the proposed measures to fill existing regulatory gaps by ensuring the regulation of all health professionals, including independent medical agencies, including those operating exclusively online but headquartered in Scotland. We also agree that providing for de-registration of providers on non-payment of registration fees will encourage independent medical services to register and therefore to uphold industry standards. We believe this will lead to higher quality of service with clearer pathways to redress for consumers who are unhappy with services.

Please give reasons for your response in the box below. Please be as specific as you can, and include any resources or references to evidence on this topic that we should consider.

Question 2

Do you agree that independent health care services provided by pharmacists and pharmacy technicians which are not provided from a registered pharmacy or under the terms of an NHS contract should be regulated by Healthcare Improvement Scotland?

- Yes
 No
 Don't know

Please give reasons for your response in the box below. Please be as specific as you can, and include any resources or references to evidence on this topic that we should consider.

Consumer Scotland agrees with this proposal.

Services provided in an independent clinic by medical practitioners, dental practitioners, registered nurses, registered midwives and dental care professionals are already being regulated. Currently, pharmacists and pharmacy technicians are the only health care professionals who are not being regulated when carrying out work under the same circumstances.

Inclusion of pharmacists and pharmacy technicians would ensure consistency of treatment of these services, and make it easier for the public to understand what regulation applies and where to turn in the event of a problem. It will provide the public with an equivalent level of protection when compared to other health care professionals providing health care services in independent clinics.

As the consultation document states, the importance of exploring this is further increased by the rapid rise in independent health care services being provided by pharmaceutical professionals, with this rising from 8 to potentially 26 services since 2020.

Question 3

Do you agree that independent medical agencies where services are provided by a medical practitioner, dental practitioner, registered nurse, registered midwife, dental care professional, pharmacist or pharmacy technician should be regulated by Healthcare Improvement Scotland?

- Yes
 No
 Don't know

Please give reasons for your response in the box below. Please be as specific as you can, and include any resources or references to evidence on this topic that we should consider.

The National Health Service (Scotland) Act 1978 defines an independent medical agency as “an undertaking which is neither an independent clinic nor an undertaking comprised in a hospital and which consists of or includes the provision of services, other than in pursuance of this Act, by a medical practitioner”.

Consumer Scotland is of the view that this proposal would ensure consistency in the provision on independent medical agency services, across a range of services. For patient safety reasons it therefore makes sense to extend the regulation of services provided by all medical professionals to include independent medical agencies. This consistency is likely to ensure the regulatory system is easier to understand and that redress systems are less complicated and fragmented for consumers.

Question 4

Do you agree that unregulated independent medical agencies operating entirely online and headquartered in Scotland, should be regulated by Healthcare Improvement Scotland?

- Yes
 No
 Don't know

Please give reasons for your response in the box below. Please be as specific as you can, and include any resources or references to evidence on this topic that we should consider.

Independent medical agencies operating entirely online and headquartered in England, Wales and Northern Ireland are already being regulated, but those operating from Scotland are not. This discrepancy potentially subjects consumers in Scotland to a standard of care that is not in line with that received by those in the rest of the UK.

Ensuring consistency across the UK in this respect should increase the regulatory protection available to consumers in Scotland of these services and Consumer Scotland supports this.

Question 5

Do you agree that Healthcare Improvement Scotland should be able to cancel the registration of any independent health care service that fails to pay its continuation fees after a certain period of time?

- Yes
 No
 Don't know

Please give reasons for your response in the box below. Please be as specific as you can, and include any resources or references to evidence on this topic that we should consider.

Healthcare Improvement Scotland's [Independent Healthcare Services Fees](#) information booklet 2023/24 clarifies that:

"The fee covers a variety of areas of regulatory activity such as inspection, risk assessment, information gathering, complaints investigation and enforcement."

Independent health services pay to receive services that help ensure compliance with regulations consistency of standards across the sector. It is important that any failure to pay continuation fees is accompanied by appropriate sanctions in order to incentivise payment of fees and ensure the system is funded adequately.

Consumer Scotland supports processes that are robust, proportionate and fair. Any deregistration process should include an initial dialogue with the health care service in question to ascertain why fees have not been paid. While we recommend exploring options to allow flexible payment options, businesses' financial circumstances should be secondary to the safety of service users.

Question 6

What are your views on how further regulation of independent health care in Scotland might affect the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sex?

Please give reasons for your response in the box below. Please be as specific as you can, and include any resources or references to evidence on this topic that we should consider.

Particularly in regard to services provided online, providers must put the right safeguards in place to ascertain whether a consumer is a minor, is elderly, pregnant, or has any other circumstances or characteristics which may make the prescription of certain medication or services unsuitable. We welcome this.

Question 7

The Fairer Scotland Duty places a legal responsibility on certain public bodies in Scotland to actively consider how they can reduce inequalities caused mainly by people's financial situation. What are your views on how further regulation of independent health care in Scotland might affect this inequality?

Please give reasons for your response in the box below. Please be as specific as you can, and include any resources or references to evidence on this topic that we should consider.

Consumer Scotland works to enhance fairness, inclusion, prosperity, and wellbeing. As such, we welcome the application of the Fairer Scotland Duty to this consultation process.

We are aware that many clinics offer payment plans, including some at a 0% interest rate, to accommodate those unable to pay the full treatment price immediately.

We are not aware of any evidence that the proposals to charge registration fees will lead to clinics passing these costs on to consumers through significant price increases or of these proposals increasing such a risk.

In general, consumers are becoming more likely to access a mix of services, through both NHS and independent services and it is important that regulations are consistent and that consumers receive equivalent protections throughout these differing models.

Question 8

What are your views on how further regulation of independent health care in Scotland might affect access to safe, high-quality public services in island communities?

Please give reasons for your response in the box below. Please be as specific as you can, and include any resources or references to evidence on this topic that we should consider.

Consumer Scotland welcomes the consideration of the impact of regulation on consumers living in island communities, in line with the requirements of the [Islands \(Scotland\) Act 2018](#).

Those in rural and island communities tend to have less choice in services or goods due to a lack of competition within smaller geographical markets. This includes access to independent health care, and a lack of competition can lead to consumers in such communities experiencing less choice in provision. This may result in a risk that a lack of competition has an adverse effect on standards of care.

While independent health care services are not public services, regulation will provide the necessary accountability to ensure that services available to consumers in remote, rural and island communities are safe and of high quality, with an appropriate complaints system in place.

Question 9

What are your views on how further regulation of independent health care in Scotland might affect respecting, protecting and fulfilling the rights of children and young people as set out in the UN Convention on the Rights of the Child?

Please give reasons for your response in the box below. Please be as specific as you can, and include any resources or references to evidence on this topic that we should consider.

No comment.

Please provide any further comments on the proposals set out in this consultation in the box below.

In its July 2022 response to the analysis of the 2020 consultation, the Scottish Government committed to exploring how practitioners who are not qualified health care professionals and who provide non-surgical cosmetic procedures such as the administration of dermal filler, can best be regulated. We note that the Scottish Government will work with other UK nations as similar proposals are being developed following the passing of the UK Health and Care Act 2022. Consumer Scotland welcomes the development of such proposals.

In this regard we note that tattoo and skin piercing artists as well as acupuncturists and electrolysis technicians are subject to strict and detailed regulation by the [Civic Government \(Scotland\) Act 1982 \(Licensing of Skin Piercing and Tattooing\) Order 2006](#) and they require a licence to practice.

The Scottish Government has expressed an intention to explore a similar system or an expansion of the Order. Before doing so, Consumer Scotland believes it will be necessary to consider enforcement arrangements and resources and would encourage the Scottish Government to undertake early engagement with trading standards and local authorities in relation to this aspect.