



Law Society
of Scotland

Consultation Response

Regulation of non-surgical cosmetic procedures

June 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Health and Medical Law and Licensing Law sub-committees welcome the opportunity to consider and respond to the Scottish Government consultation: *Regulation of non-surgical cosmetic procedures*.¹ The sub-committees have the following comments to put forward for consideration.

1. Do you agree that further regulation of non-surgical cosmetic procedures is needed?

Yes. We agree that it is in the public interest for non-surgical cosmetic procedures that pierce/penetrate the skin to be carried out only by those with appropriate training, skill and indemnity working in clean and hygienic premises. Statutory regulation would appear to be the most appropriate way to achieve this. We welcome the move to minimise the risk to members of the public undergoing such non-surgical cosmetic procedures.

2. Do you agree that the carrying out of non-surgical cosmetic procedures (that pierce/penetrate the skin) by individuals who are not qualified healthcare professionals should be licenced under Part 1 of the Civic Government (Scotland) Act 1982?

We note that the proposals set out in the consultation document would bring the regulation of those who are not qualified healthcare professionals delivering non-surgical cosmetic procedures within the scope of the existing licensing regime set out in Part 1 of the Civil Government (Scotland) Act 1982 (1982 Act). We note that this would be analogous with the licensing regime for tattoo parlours and skin piercing, which has been operating for several years, and that it is envisaged that such a licensing regime for non-surgical

¹ <https://www.gov.scot/publications/consultation-regulation-independent-healthcare/>

cosmetic procedures could be implemented without the need for primary legislation. We understand that the aim is to achieve a proportionate level of risk-based regulation which promotes patient safety, is enforceable, and which seeks to minimise the risk of unregulated providers continuing to operate by avoiding a blanket ban on procedures being carried out by non-healthcare professionals.

Whilst we are not in principle opposed to such a licensing regime under the 1982 Act, it is important that secondary legislation sets out robust standards for the granting of licences and for continued inspection and enforcement, including in response to complaints or concerns raised by members of the public. The consultation paper refers to “licensing backed with rigorous implementation guides (specific conditions) to ensure best practice in all circumstances”. Details of the specific conditions envisaged are not set out in the consultation document, and further clarification is required. It is not clear who will be tasked with developing these conditions. We note the role of the Scottish Cosmetic Intervention Group in developing proposals for regulation to date, and the role of the Scottish Licensing of Skin Piercing and Tattooing Working Group in overseeing the development of implementation guidance and the national licence conditions in respect of skin piercing and tattooing.² It is crucial that any group tasked with developing such conditions and implementation guidance is properly resourced.

We note that “when considering an application for a licence the relevant local authority would be required to refuse it if they think that the applicant is not a fit and proper person or is disqualified from holding a licence.” We also note that the proposals “intend to make it a requirement that an applicant's knowledge, skill, training and experience is taken into account when determining whether they are a fit and proper person to hold a licence.” One of the challenges under the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 (as amended by Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Amendment Order 2006) was how to recognise or define a “fit and proper person.” There is a need to identify what satisfies appropriate or acceptable “knowledge, skill, training and experience.” This applies equally to the proposed introduction of licensing of non-surgical cosmetic procedures that pierce/penetrate the skin. Training standards need to be specifically defined by reference to appropriate credit frameworks (for example SVQ or NVQ levels), and the bar set high enough to ensure that anyone providing non-surgical cosmetic procedures that pierce/penetrate the skin is competent and appropriately trained to do so. The level of training should be similar to that required for healthcare professionals providing these procedures.

Consideration should also be given to introducing mechanisms which ensure that those providing non-surgical cosmetic procedures have not only achieved a minimum level of skill and competence prior to a licence being granted, but also continue to maintain and develop their skills on an ongoing basis during the period of the licence and at renewal.

We also suggest that it should be a requirement of any licence being granted that the applicant is able to evidence appropriate indemnity insurance for the activities being undertaken.

² https://www.rehis.com/sites/default/files/bn030_skin_piercing_and_tattooing.pdf

We note that the proposals would require local authority Environment Health Officers (EHOs) to visit and inspect the premises before a licence is granted. We note that EHOs currently undertake a wide range of functions. It would be important that EHOs receive appropriate training in advance of any legislation coming into force to ensure that they are equipped to undertake inspection of premises where non-surgical cosmetic procedures are to be carried out.

There is also a need to acknowledge the likely additional workload on EHOs who will have the responsibility of inspecting premises. Accordingly, local authorities must be properly resourced and funded to carry out what will become an additional aspect of their licensing remit.

We note that the consultation is silent as to the processes for applying for or renewing a licence. It is important to provide estimates as to the number of applications for licences which will be received when such legislation comes into effect. Again, this has implications for resources within local authorities.

We also note that the consultation paper is silent as to the administration of prescribed non-surgical cosmetic treatments. It is not clear whether the licensing regime will extend only to non-prescription treatments. We understand that prescription treatments would usually be prescribed and administered by or under the supervision of healthcare professionals in settings regulated by HIS, and we note the proposals to extend this regulation to services provided by registered pharmacy professionals (see question 3 below). We also note existing guidance from the GMC³ and others which states that non-surgical cosmetic medicinal products should not be prescribed remotely. However, care must be taken to ensure that there are no gaps in the law such that prescribed non-surgical cosmetic treatments could be prescribed by a healthcare professional, remotely or otherwise, and administered by a non-regulated provider falling outwith the scope of the licensing regime. If the administration of prescribed treatments is to fall within the scope of the proposed licensing regime in certain circumstances, then consideration should be given to how EHOs would assess the fitness and properness of the prescriber, as well as the individual administering the treatment.

We understand that non-surgical cosmetic procedures may currently be carried out in customers' homes by providers working on a mobile basis. An effective licensing regime would need to either accommodate these types of providers with appropriate safeguards, or make it clear that such mobile services are not permitted. Consideration would need to be given to the practicalities of enforcement, the stated aim of avoiding "undue financial difficulties for reputable small businesses, if this can be avoided", and the risks of potentially driving unregulated providers "underground".

³ <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/prescribing-and-managing-medicines-and-devices/remote-prescribing-via-telephone-video-link-or-online>

3. Do you agree that services provided by pharmacists who undertake independent healthcare practices (including non-surgical cosmetic procedures), outwith the terms of an NHS contract should be regulated by Healthcare Improvement Scotland?

This appears to be a sensible proposal to address a gap in existing regulation.

4. Do you have any other comments?

We consider that it would be essential that any further regulation of non-surgical cosmetic procedures in Scotland as is being proposed needs to be accompanied by a high-profile public awareness campaign. We suggest that such a campaign is aimed both at ensuring those currently providing non-surgical cosmetic procedures are aware of the requirements to obtain a licence, and that the public are empowered to seek proof of such licence when engaging their services and to report non-compliance via appropriate and accessible channels.

We also note that Scotland is the first part of the UK to seek to regulate non-surgical cosmetic procedures provided by those who are not healthcare professionals. We would suggest that it is important that regulation in Scotland is compatible with any regulation that may subsequently be introduced in other parts of the UK, to avoid cross-border 'tourism'. We also suggest that consideration is given to mechanisms to ensure that providers operating in Scotland are not able to base themselves in the rest of the UK to avoid regulation.

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