



Law Society
of Scotland

Consultation response

Amendments to the regulation of independent health care

April 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Health and Medical Law Sub-Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: *Amendments to the regulation of independent health care*.¹ The sub-committee has the following comments to put forward for consideration.

Questions

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

Yes

We agree that it is in the public interest for independent healthcare services to be further regulated in Scotland in order to address the existing gap in regulation with regards to independent healthcare services provided by pharmacists and pharmacy technicians outwith the terms of an NHS contract, and independent medical agencies including online-only services. Evidence to date indicates that independent health care services, which as the consultation notes are increasingly online, are under-regulated and this creates real risks for patients and consumers. Health care services, whether they are provided by independent or state bodies, ought to be safe, appropriate and carried out by those with the right qualifications. Regulation by Healthcare Improvement Scotland in our view would be the most appropriate way to address this regulatory gap, and we welcome the move to minimise risk posed to the public accessing such independent health care services.

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

¹ [Amendments to the regulation of independent health care - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.citizen.gov.scot/consultations/amendments-to-the-regulation-of-independent-health-care)

Scotland?

Yes

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

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

In the consultation it is noted that the proposed approach is in line with Wales and Northern Ireland. We support this, and further support regulation that is harmonised where appropriate with the other three nations in the UK to limit any regulatory divergence, 'medical tourism' or pharmacy shopping across the four nations, and any consequential risks for patient and consumer safety.

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

Yes

We agree that Healthcare Improvement Scotland should regulate unregulated independent medical agencies operating entirely online, providing that the Scottish Government is satisfied that it is within competence and necessary to do so. In order to operate functionally, it is important that Healthcare Improvement Scotland has sufficient human and financial resources to extend its statutory role.

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

Any procedure in place relating to cancellation should be robust and transparent. While we support Healthcare Improvement Scotland having the power to cancel the registration of any independent health care service that fails to pay its continuation fees within a certain notice period, we recognise that non-payment of fees has the potential to adversely impact the resources available to Healthcare Improvement

Scotland to carry out its regulatory functions. There must be robust mechanisms in place to ensure that Healthcare Improvement Scotland is sufficiently funded to be able to deliver effective scrutiny.

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?

We have no specific comments.

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?

We have no specific comments.

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?

We have no specific comments.

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?

We understand that independent health care and independent medical agencies can pose a risk to the health of the public. For example, we note that with respect to online-only services it is easier for children to access medicines or quantities of medicines that would be difficult to access in a face-to-face consultation with a health care professional. Therefore, further regulation has the potential to protect rights relating to health enshrined in Article 24 of the UNCRC.



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