

Public Consultation on the Amendments to the Regulation of Independent Health Care: Scottish Government response to the Analysis Report findings

September 2023

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Background

1. From 1 February 2023 to 26 April 2023, the Scottish Government ran a public consultation on the further regulation of independent health care with proposals to amend provisions in the National Health Service (Scotland) Act 1978 that cover Healthcare Improvement Scotland's ("HIS") regulation of independent health care services.
2. The consultation particularly sought views on enabling HIS to regulate independent health care services provided by pharmacists and pharmacy technicians which are not provided under the terms of an NHS contract or from non-General Pharmaceutical Council (GPhC) registered premises. In addition, the consultation sought views on bringing independent medical agencies that provide health care services through a medical practitioner, dental practitioner, registered nurse, registered midwife or dental care professional, as well as independent medical agencies that operate entirely online, under the regulation of HIS. However, services are exempt from the definition of independent medical agency if they are provided by a registered pharmacy, or a nurse agency registered with the Care Inspectorate (officially known as Social Care and Social Work Improvement Scotland). The Consultation also pursued views as to whether or not HIS should have the power to cancel the registration of any independent health care service where there has been a failure to pay continuation fees.

Findings of the consultation and analysis report

3. We have now published the [responses to the consultation](#), and the [consultation analysis report](#).

The headline findings from the analysis report are as follows:

After the removal or reconciliation of duplicate responses, there were a total of 67 responses to the consultation. 47 responses were from individuals and 20 from organisations. The key findings were as follows:-

- 76% of respondents agreed that further regulation of independent health care services in Scotland was required. Most of the respondents felt all independent health care providers should be regulated and that regulation improves safety and could also improve outcomes for patients.
- 82% of respondents agreed with the proposal 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 HIS. Most of the respondents felt that everyone who provides health care services should be regulated and that regulation improves patient safety. The few respondents who disagreed with the proposal felt that regulation is not required whatsoever, with one in particular citing that regulation by the GPhC already provides sufficient regulation.
- 76% of respondents felt 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 HIS. Most respondents were of the opinion that it would improve safety for patients and service users, with a small number of respondents also believing that the amendments would close a legislative loophole. The 14% of respondents who disagreed with the proposal believed that there is already a sufficient number of professional bodies that regulate these professions, and further regulation is not required.
- 75% of respondents felt that current unregulated independent medical agencies operating entirely online and headquartered in Scotland should be regulated by HIS. Most of the respondents felt that regulation of this area by HIS would improve safety for service users. The 15% of respondents who disagreed with this proposal felt that

regulation being undertaken by the current professional bodies is sufficient and further regulation is not required.

- 69% of respondents agreed 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 as it was felt that this would improve equality and protect people from “bad business practices”. The respondents who disagreed with the proposal felt that cancellation was too extreme a response, and that it “could lead to an abuse of power”. A few respondents also suggested that there should be no fees and regulation should be funded entirely by the taxpayer.

Scottish Government response

4. It is clear from the consultation responses that there is strong public support for further regulation of independent health care services in Scotland. The responses also show support for independent health care services provided by pharmacists and pharmacy technicians, alongside independent medical agencies that provide health care services through a medical practitioner, dental practitioner, registered nurse, registered midwife and dental care professional, as well as independent medical agencies based in Scotland who operate entirely online to be regulated by HIS, in the same way as other health professionals. Furthermore, the majority of the responses would also back any proposal that allows HIS, in their capacity as a regulatory body, to 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.
5. Based on the responses to the consultation and what stakeholders have told us, the priority from a safety perspective is to ensure that regulation of independent health care services provided in Scotland reflects the current landscape, and that the increasing number of services provided online are effectively regulated. It is also important that this regulation moves towards being self-funded.
6. We recognise that although independent clinics where services are provided by a doctor, nurse, dentist, dental care professional or midwife have been regulated by HIS since 2016, independent

clinics where services are provided by pharmacists and pharmacy technicians from non-GPhC registered premises are not currently regulated.

7. As the landscape of independent health care services has grown considerably over the past few years, we are proposing that such independent services provided by pharmacists and pharmacy technicians which are not provided from a registered pharmacy or from a clinic where services are provided under an NHS contract should also be regulated by HIS in the same way as other independent health care services currently are. We are therefore proposing to amend the definition of “independent clinic” in section 10F(2) of the National Health Service (Scotland) Act 1978 to include services provided by pharmacists and pharmacy technicians.
8. We are also proposing to commence HIS’ functions in relation to independent medical agencies, to allow regulation of health care services which fall within this definition. The public consultation overwhelmingly supported this proposal.
9. In addition, a small but increasing proportion of independent health care services are now operating solely online, with no physical premises. At present, online-only health care services headquartered in Scotland are unregulated.
10. We propose that the regulation of online health care under independent medical agencies will be consistent with the approach taken by regulators in Wales and Northern Ireland, which have similar regulatory frameworks to Scotland. The four UK home nations will work cooperatively to regulate and inspect the services based in their jurisdiction.
11. We are therefore proposing to enable HIS to regulate these services, by amending the definition of an independent medical agency in section 10F(2) of National Health Service (Scotland) Act 1978. The definition would be widened to include not just independent health care services provided by a medical practitioner, but also those provided by a dental practitioner, registered nurse, registered midwife, dental care professional, pharmacist or pharmacy technician. This would mean that any health care service provided in Scotland (whether online or otherwise) by any of these individuals would be regulated by HIS.

12. However, we propose that the definition of independent medical agency would not extend to (and therefore HIS would not regulate) services provided by:
- a pharmacist or pharmacy technician in pharmacy premises registered with the GPhC
 - premises where pharmaceutical services are provided under an NHS contract, or
 - a nurse agency regulated by the Care Inspectorate (known officially as Social Care and Social Work Improvement Scotland (SCSWIS), and defined in schedule 12 paragraph 4 of the Public Services Reform (Scotland) Act 2010).

This is due to the fact that these services are already regulated.

13. At present, services that fail to pay their continuation fees cannot be removed from the register, undermining HIS' ability to self-fund its regulatory activities, which means that services that repeatedly fail to pay their fees can continue to operate in Scotland.
14. We are proposing to amend the National Health Service (Scotland) Act 1978 to give power to HIS to cancel the registration of any independent health care service that fails to pay its continuation fees.
15. Our ultimate goal is to ensure that all health care provided to people in Scotland is safe, appropriate and carried out by those with the right qualifications, and is effectively regulated.

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