

Consultation Response

Regulation and licensing
of non-surgical cosmetic
procedures

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Introduction

The Law Society of Scotland is the professional body for over 13,000 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 Licensing Law and Health and Medical Law sub-committees welcome the opportunity to consider and respond to the Scottish Government's consultation: Regulation and licensing of non-surgical cosmetic procedures. We previously provided a response¹ to The Scottish Government's consultation: Regulation of non-surgical cosmetic procedures² in 2020.

The sub-committees have the following comments to put forward for consideration.

General Remarks

We are grateful for the opportunity to engage with this consultation, and, in particular, we wish to make a number of points relative to the proposal to introduce a new licensing regime under the Civic Government (Scotland) Act 1982. The Licensing Law Sub-committee represents both local authority and private practice solicitors who live and work within the existing licensing systems under the 1982 Act. The Health and Medical Sub-committee represents both local authority and private solicitors as well as academics working within clinical negligence, healthcare litigation and mental health law. We therefore believe we are well placed to offer views.

We want to provide some general views on the consultation topics based on our knowledge and experience.

We note that in the earlier consultation from 2020, 61% of respondents believed that the carrying out of non-surgical cosmetic procedures (that pierce/penetrate the skin) by individuals who are not qualified healthcare professionals should be licensed under Part 1 of the Civic Government (Scotland) Act 1982; however we also note that some respondents appear to have suggested that a system of licensing was not sufficient; that the regulation should be through healthcare

¹ [20-06-30-hea-lic-regulation-of-non-surgical-cosmetic-procedures.pdf](#)

² [Regulation of non-surgical cosmetic procedures: consultation - gov.scot](#)



systems by professionals, as opposed to what might be termed as licensed private businesses.

Membership of SCIEG and Licensing Experience/Knowledge

We also note that the Scottish Government Working Group (SCIEG) looking at these matters has been developing a proposed policy position for some years. However, we are unaware that any licensing practitioner has been co-opted for the purpose of offering insight into how licensing works presently or how licensing for this area might work in terms of “slotting in” to the existing structures of the 1982 Act.

As far as we can see, the membership of SCIEG extends only to medical and health professionals and clinicians. We therefore suggest that one of the outcomes of the consultation should be to have the Scottish Government recognise that there is significant untapped licensing experience which might help inform and advise SCIEG moving forward, regarding any proposed licensing regime. The Law Society of Scotland Licensing Sub-committee would be happy to put forward a volunteer to be co-opted into SCIEG for these purposes.

General Remarks on Resource Implications

Local authorities across Scotland are also the licensing authority for the purposes of the 1982 Act. In practice the licensing authority establish a committee of elected members to determine many applications, with licensing officers and administrative workers who are employed by the local authority to administer the system. In some cases, applications may be determined administratively by officers without a requirement for a hearing.

Local authority resources are stretched, and this is especially true in the aftermath of the introduction of the last “new” licensing regime under the 1982 Act, namely short term let licences. As matters stand, there are still a number of local authorities who have not been able to complete the determination of those applications and resource implications is something we would wish the Scottish Government to be mindful of. Introducing another new licensing system, whilst the desire for which may be proportionate and well-intentioned, must be capable of being administered which means resources.

This is not solely about the financial impact of administering the potential new regime and we acknowledge that any new regime is likely to allow the local authority to set its own fees to cover the cost of administering the system. It is also about human resource; in relation to officers of the local authority and what skill set they may be expected to have to assess and process applications relative to non-surgical cosmetic procedure private businesses. If the local authority is to administer a licensing system, the public must have confidence that those tasked with deciding whether persons and premises are fit to be licensed have experience, skills and training. In particular, it would appear that those officers carrying out checks on premises will be expected to have some knowledge of the



relevant NSCPs and perhaps their own qualifications to be able to perform this task. Who is going to pay for that training? Who is going to deliver that training?

We anticipate similar resource implications in HIS that operates as a Health Board and will have the same resourcing issues as the Local Authorities if its regulatory role increases.

General Remarks on Standards

We retain concerns over whether it is at all appropriate to place a licensing system which links to issues of potential medical negligence in the hands of local authority officers. Whilst many officers are familiar with health and safety issues around the nearest equivalent regime, namely skin piercing and tattoo businesses, most of the officers who deal with such applications are long standing with many years of experience developed over long periods of time which relate to that specific licence type. It should not be assumed that those skills are immediately transferable to what is a very specialist new licensing regime under proposal here. It would be our view that a clear distinction can be drawn around the medical and clinical environment procedures in relation to a tattoo premises and a premises which might be offering Group 1 NSCPs; that distinction is couched primarily around the issue of relative risk.

Establishment of Standards

We note that the consultation proposes a three-pronged approach to standards:

- **Standards of hygiene and health and safety:** if a licensing regime is to come forward, the Scottish Government should consult on a list of mandatory conditions which any applicant would have to adhere to, similar to the way this is applied in skin piercing and tattoo premises. Such a list would have to be based on the views and recommendations of medical and clinical experts.
- **Standards of training and qualification:** there is considerable precedent for training underpinning licensing systems in Scotland. For example, the Licensing (Scotland) Act 2005 creates a mandatory requirement for personal licence holders to have undergone and passed a relevant training qualification; and that this must be refreshed every 5 years. The Scottish Government might therefore consider that a similar system should be in place for the licensing of persons dealing with NSCPs. Such a system should create the benefit of confidence in the applicant's technical abilities to perform these procedures and could be made a requirement for application. If such a proposal were to be taken forward, the Scottish Government would have to establish a working group to determine the specification and minimum requirements for the training qualification and a process to authorise groups or bodies to deliver that training.
- **Mandatory insurance and indemnity:** the requirement to produce public liability insurance is an existing feature of many licence types under the 1982 Act and this could be made a mandatory requirement for application. However, the Scottish Government will need to consider whether the



medical negligence aspect is capable of being indemnified by such an insurance arrangement. More pressingly, local authorities would look for comfort that they would not be subject to claims on the basis that they have licensed a person or business who has then conducted themselves negligently in some way.

Premises and practitioners' licences

We note that the consultation paper proposes a dual licensing model for procedures listed in Group 1. With this approach, premises licences may list those practitioners who operate from the premise, and practitioners' licences may also name one or more premises.

We have some concerns about the practicalities of this proposal. We understand that practitioners move between premises regularly and the additional administrative work involved in updating licensing each time that they do seems onerous for all involved. Similarly, if a new premises opens and a practitioner wants to work on an ad hoc basis, it seems unnecessary for them to have to amend their practitioner licence to reflect that, if it is a licensed setting. A condition which requires that only licensed practitioners can operate from a premises would seem more sensible.

Inspection and Enforcement

The new licensing regime would fall under the existing structures of the 1982 Act. The consultation asks whether licences should be removed, or if individuals should be "barred" for persistent non-compliance. It might be argued that the existing general arrangements in the 1982 Act already deal with this. There is already a "fit and proper" test; there is already a process to suspend licences and so forth. Whilst it may be considered prudent and proportionate to have checks and balances relative to the proposed new regime, suggestions of this nature must be balanced against the existing law and existing licensing structures for a number of important reasons. Firstly, the wider licensing system might be undermined if there is one rule for one and one rule for another. This can be seen in relation to the amendments carried through for the short term let regime; with Parliament now allowing transfers and provisional licences, but only for short term let licences, this has left a two-tier system where other licence types cannot access those processes. This is inequitable.

In terms of inspection, the 1982 Act already has significant existing structures in place to allow for inspections of licensed premises, premises subject to licence applications, and the specific role of civic licensing standards officers. A key concern for the Licensing Law Sub-committee would be whether it is fair to expect those existing officers to assume medical or clinical knowledge without resource to be trained (see our comments above).



Related to this would be where a complaint is received that an NSCP has been carried out incorrectly by a practitioner at a particular premises. If a hearing is to take place on the basis, for example, that a practitioner is no longer a fit and person to hold a licence, then it is likely that this could involve questions of medical negligence. Again, the key concern is whether it is fair to expect local authority officers and councillors sitting on a committee to assume medical or clinical knowledge.

Lastly, on the point of enforcement processes, we note and understand the proposal to have individuals be able to apply for a sort of “personal” licence which would allow them to act in freelance fashion from premises to premises. There is precedent for this in licensing terms both in the 1982 and 2005 Acts. However, we would strongly suggest that consideration be given to the liquor licensing system in this regard as a model which might be helpful to follow, namely around the following considerations:

- The person should apply to the authority where they reside; but that licence could be used in any authority in Scotland.
- A local authority should be able to take enforcement steps against a personal/individual licence holder working in their jurisdiction, even where the licence is issued by another licensing authority. The 2005 Act provisions cover this scenario quite well.

Vehicles

There is significant precedent for the licensing of vehicles both under the 1982 Act and indeed in relation to alcohol licensing under the Licensing (Scotland) Act 2005. Licensing authorities and licensing boards therefore have considerable experience of what is and is not appropriate in the licensing of vehicles. Our position is that a vehicle should be capable of being licensed so long as the applicant can demonstrate compliance with the appropriate mandatory conditions; and that it is then a matter for the licensing authorities appropriate committee to consider the application on its merits.

A further issue to address is whether a licensed vehicle can only operate within the boundary of the local authority that licensed the vehicle or whether it can operate in neighbouring areas.

HIS Regulated Settings

We consider this element of the proposals to be outwith our experience and would therefore offer no further views.

Age Restriction Considerations

Licensing authorities are extremely well-versed in laws around age verification and age restriction requirements. We would offer the view that an individual applicant for a premises or personal/individual licence under this new regime should be 18 years of age or above. We would also offer the view that should an age restriction



be placed on customers in Group 1, from an enforcement and standards perspective, this ought to be restricted either to persons age 16 or over; or to persons aged 18 or over; but we are not attracted to the middle option of evidencing parental/guardian consent for persons aged 16 and 17; this appears to us to be an option fraught with difficulty and potential for abuse; and potential for conflict at the point of service. We do however agree that any procedures on intimate areas should be only accessible by persons aged 18 or above.

Questionnaire

We have no specific comments to make in response to questions 1-23, and refer to our general comments above.



For further information, please contact:

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