

## Introduction

APIL welcomes the opportunity to respond to the Scottish Government's consultation on the licensing of non-surgical cosmetic procedures. We believe further regulation of non-surgical cosmetic procedures (NSCPs) is needed. NSCPs are increasingly popular and more easily accessible than ever and there is a general lack of awareness amongst the public of the risks of certain non-surgical procedures.

Furthermore, the absence of mandatory education and training for those providing NSCPs leads to a wide variety in the quality of intervention, resulting in patient safety issues. Members report cases of individuals suffering horrific and long-lasting injuries as a result of procedures being carried out incorrectly or with the wrong equipment. There is a potential for severe burns that may require skin grafts, permanent scarring, tissue loss, and psychological harm as a result of these injuries.

We have only responded to questions within our remit.

## Questions about the grouping of procedures

### 4. Please provide any comments you have in relation to the grouping of procedures and the level of regulation required

We agree with the criteria proposed for the licensing scheme, including that procedures in groups two and three are restricted to HIS-regulated premises.

APIL strongly agrees that higher-risk procedures should be restricted to qualified and regulated healthcare professionals only. A qualified healthcare professional will be better prepared to perform the procedure and recognise and manage possible complications. Using non-prescription fillers as an example, even if non-medically qualified professionals acquire training to perform the treatment, they do not necessarily recognise a complication such as vascular occlusion. Even if they did, they would need a medical prescriber for the dissolving agent hyalase.

There should be a public campaign to raise awareness of the risks of the procedures across all categories and the importance of having these procedures carried out by licensed and qualified professionals or regulated healthcare practitioners only. We also believe there should be guidance on the requirements to be included in the consent form signed by consumers.

We have concerns that the groups proposed to classify the categories for cosmetic procedures may create a false sense of security about the procedures included in groups one and two. We believe more public awareness and education about non-surgical cosmetic procedures are key to ensuring that the licensing scheme is effective. There needs to be more openness and transparency in the industry. The way information is presented to consumers is not clear at the moment and due to social media and the increasing popularity of these procedures, most people do not realise that they can cause life-changing injuries.

We have reservations about the assignment of certain procedures to groups one and two. Our members have provided some examples of life-changing injuries caused by procedures included in those groups:

#### Group 1

Chemical peels – the treatment resulted in severe and permanent scarring and pigmentation all over the face which is difficult to treat and has a knock-on effect on mental health.

IPL treatment for facial pigmentation – the therapist went over the same area a few times causing permanent facial scarring and severe psychological injuries to the client.

Microneedling - Negligently performed micro needling resulting in blemishes on cheeks that fell short of scarring. An advanced nurse practitioner carried out the treatment. NSCPs require correct training and qualification. Not all medical practitioners or nurses will be prepared to perform these types of procedures.

Laser hair removal – The client underwent laser hair removal at a clinic. She sustained burns and pigmentation, about which she was not warned. The clinic did not have adequate indemnity cover so the claim could not proceed. The client was a transwoman, and the impact of the cosmetic procedure going wrong was profound. She had sought the treatment to affirm her identity but instead suffered injuries which caused her psychological distress.

## **Group 2**

Botox facial injections – the client suffered eyelid droop and unwanted raising of one eyebrow ('spock' effect) lasting around 3 months due to incorrectly administered Botox in a beauty salon setting.

Hyalase injections – multiple cases where the use of this prescription treatment to dissolve filler has been overused, resulting in loss of tissue/cavities to the face requiring multiple fat grafting treatments and again psychological effects.

Vitamin B12 injections – an adverse reaction to B12 injections used for cosmetic reasons, resulted in adverse skin reactions and permanent scarring.

Hyaluronic injections to the hands to improve the look of ageing skin – in this case, the treatment was performed in a clinic by juniors overseen by a qualified doctor. It resulted in tendonitis affecting grip strength and hand movement.

Contouring treatment ("Medi-sculpt" or non-surgical tummy tuck) involving LED treatment followed by ultrasonic vibration and radio frequency to break down fat cells. This resulted in burning on the abdominal area and left with residual redness and scarring.

Treatments such as laser red vein therapy and plasma skin rejuvenation can also have potentially dangerous effects if not administered correctly. Laser therapy can lead to burns so severe that the individual will require a skin graft, for example. We recommend that the legislation should be flexible, regularly updated, and reviewed to ensure it keeps in line with changes in trends and the emergence of new treatments. It should be clear, however, that simply because a treatment is not on the list, it does not mean it will not be included in the definition of NCSPs within the legislation.

## **Questions about the proposed licensing regime**

**Question 5: Do you support or oppose the proposal that the practitioner of a Group 1 procedure operating in a licensed premises should also require a licence?**

- ☒ Strongly support
- ☐ Somewhat support
- ☐ Neutral
- ☐ Somewhat Oppose
- ☐ Strongly Oppose

**Question 6: Do you support or oppose the proposal that the practitioner of a Group 1 procedure operating in a HIS regulated setting should not require a licence?**

- ☐ Strongly support
- ☐ Somewhat support
- ☐ Neutral

☒ Somewhat Oppose

☐ Strongly Oppose

**Question 7: Please provide any comments about the answers you have given to questions 5 and 6 about the proposals for the establishment of licensing arrangements for Group 1 procedures:**

We believe practitioners operating in HIS-regulated settings should still hold a license. This will ensure consistency and avoid gaps in regulation as the license will include all the locations where practitioners provide treatment and what procedures they are qualified to do.

**Question 8 To what extent do you agree or disagree that the Scottish Government should establish:**

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Don't know
Standards of hygiene and health and safety for licensed premises?	x					
Standards of training and qualification for licensed practitioners?	x					
Mandatory insurance and indemnity to compensate clients who suffer harm as a result of negligence or malpractice?	x					

APIL strongly agrees with all of the above.

We welcome that one of the licensing scheme's pillars is indemnity cover. We strongly advocate for indemnity cover as often injured people are unable to bring a claim because the business that incorrectly carried out the procedure causing harm does not have insurance to meet the claim. It is vital that the mandatory insurance requirements within the scheme provide adequate cover should someone be injured.

We recommend that the mandatory insurance requirements make clear that insurance cover must be obtained for loss and damage arising from the course of business activities and specifically arising out of negligent treatment. Businesses must have both public liability and treatment risk insurance, and it must be made clear to those performing special procedures that public liability insurance does not usually cover treatment risk. Treatment risk insurance would provide cover if a procedure were improperly carried out and the person contracted an infection. In all those scenarios, a person could be seriously injured and need to bring a claim for compensation to help put their lives back, as closely as possible, to the position they were

in prior to the incident. Where treatments are to be carried out by healthcare professionals, we believe there should also be a requirement for insurance to cover a medical negligence claim.

Furthermore, the requirements should mirror those in the Civil Government (Scotland) Act 1982 for tattooists and skin piercers, which requires that clients be able to readily view the licence-holders' public liability insurance certificate, which should be clearly displayed on the premises.

Currently, even when insurance is in place for providers of non-surgical cosmetic procedures, there are often challenges in identifying the relevant insurer. This lack of transparency can make it difficult to obtain the necessary insurance information. Introducing compulsory insurance for all providers of non-surgical cosmetic procedures could help address this issue and improve transparency. We suggest the insurance information should be included in the consent form, ensuring greater transparency from the outset.

**9: To what extent do you agree or disagree that local authority officers should have powers of inspection and enforcement, including:**

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Don't know
The removing of a licence from premises or practitioners who cannot demonstrate compliance with standards established by the Scottish Government?	x					
Barring individuals from holding a licence if they are associated with serious or repeated non-compliance with the standards established by the Scottish Government?		x				

**Question 10 Which of the following statements do you agree with in relation to whether a vehicle can receive a licence as a premises?**

- ☒ Local authorities should have discretion to decide whether a vehicle can receive a licence as a premises
- ☐ Vehicles should be eligible for a licence in all local authorities
- ☐ Vehicles should not be eligible for a licence in any local authority

☐ I don't know

### Questions about the restriction of procedures to a HIS regulated setting

#### Question 11 To what extent do you agree or disagree that the Scottish Government should establish

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	Don't know
Standards of training and qualification for non-healthcare and healthcare professionals undertaking procedures in HIS regulated services?	X					
Mandatory insurance and indemnity to compensate clients who suffer harm as a result of negligence or malpractice?		X				

#### Question 12: Do you agree or disagree that the healthcare professional supervising a group 2 procedure should:

	Agree	Disagree	I don't know
Conduct the / any initial consultation(s) with the client?	X		
Prescribe any medications (e.g. Botox TM, lidocaine) required during the procedure, or required for the management of any complications that arise?	X		
Remain available on site for the duration of any procedure?	X		
Be responsible for ensuring the practitioner is suitably trained for the procedure?	X		

Agree

Disagree

I don't know

Be responsible for ensuring the procedure will be undertaken safely?

X

Be themselves suitably trained and qualified in the procedure being undertaken?

X

**Question 13: Thinking about the healthcare professional undertaking a group 3 procedure, which statement below do you agree with:**

☒ These procedures should be undertaken by a suitably trained and qualified healthcare professional working within their scope of practice, but not otherwise be limited.

☐ These procedures should only be undertaken by certain healthcare professionals please tick all that apply;

The healthcare professional undertaking a group 3 procedure must be suitably trained to do so. Not all qualified healthcare professionals have the necessary training to perform NSCPs.

Our member has provided an example that highlights this issue:

The client had facial fillers administered by a medical doctor (at the time, the doctor was still training. They are a GP now). The doctor emphasised their medical qualifications in advertising.

After injecting the fillers, the client experienced an unbalanced result and returned to the doctor, who simply injected more fillers on the other side. This happened on a couple more occasions. The client started to experience sensory issues in their face and even vision problems. They spent a lot of money on private investigations, and it turned out that the filler had been encapsulated by the body's tissues and formed into hard, grape-sized lumps. They had migrated around the face and up to under the client's eyes, which is what caused the vision issues. The client required surgical removal and suffered scarring.

Our member reported that when trying to claim compensation, the doctor's insurer advised that the procedure was not covered by her indemnity insurance. This case example not only highlights the importance of adequate indemnity cover but also that just because someone is a medical practitioner, it does not mean that they have an understanding of the particular anatomy or structures they are working with.

**Question 14: If you answered that these procedures should only be undertaken by certain healthcare professionals, please tick all the healthcare professionals to which they apply;**

☐ Medical practitioners (Doctors)

☐ Dental practitioners

☐ Dental care professionals

☐ Registered nurses

☐ Registered midwives

☐ Registered pharmacists

☐ Registered pharmacy technicians

**Question 15: Do you agree or disagree that the following settings should be required to register with Healthcare Improvement Scotland if they are offering non-surgical cosmetic procedures?**

	Agree	Disagree
GP practices	X	
Dental practices	X	
Community pharmacies	X	

**Question 16: Do you agree or disagree that Healthcare Improvement Scotland should have powers of inspection, including powers of entry and inspection of unregistered settings where there is reason to believe registration is required?**

- ☒ Agree
- ☐ Disagree
- ☐ I don't know

#### Questions about age restrictions

**Question 17: Which of the following statements is closest to your view?**

- ☒ There should be a lower age limit under which clients should not be allowed to undertake an NSCPs (different ages are considered in Question 18)
- ☐ There should be no lower age limit under which clients should not be allowed to undertake an NSCPs, but all procedures for under 18s should be treated as a group 3 procedure and be required to be carried out by an appropriate healthcare professional
- ☐ I don't know.

**Question 18: Regardless of your answer to question 17, if an age limit is to be put in place please indicate for each procedure group what you think is the appropriate age to be set for the procedures in that group.**

	Limited to clients aged 18 and over	Limited to clients aged 16 and over	Limited to clients aged 16 and 17 who have parental / guardian's consent, or otherwise to clients aged 18 and over	No age limitations
Procedure Group 1			X	

	Limited to clients aged 18 and over	Limited to clients aged 16 and over	Limited to clients aged 16 and 17 who have parental / guardian's consent, or otherwise to clients aged 18 and over	No age limitations
Procedure Group 2			X	
Procedure Group 3			X	

**Question 19: Do you agree or disagree that procedures on intimate areas should only be available to clients of 18 years of age and over?**

- ☒ Agree
- ☐ Disagree
- ☐ I don't know

Ana Ramos

Legal Policy Assistant

## Regulation of non-surgical cosmetic procedures

### 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: <https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- ☐ Individual  
☒ Organisation

Full name or organisation's name

Association of Personal Injury Lawyers (APIL)

Phone number

01159435401

Address

3 Alder Court, Rennie Hogg Road  
Nottingham

Postcode

NG2 1RX

Email Address

[Ana.ramos@apil.org.uk](mailto:Ana.ramos@apil.org.uk)

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)  
☐ Do not publish response

#### 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