

# Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill

## [As amended at Stage 2]

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## Supplementary Delegated Powers Memorandum

### Introduction

1. This Supplementary Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.7.9 of the Parliament's Standing Orders, in relation to the Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill ("the Bill"). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either added to the Bill or amended at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum ("DPM") published to accompany the Bill on introduction.

2. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

### Provisions conferring power to make subordinate legislation introduced or amended at Stage 2

3. The amended or new delegated powers in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

### Delegated powers

#### Section 2 – Offence of providing a non-surgical procedure to person under 18

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: Revised

## Provision

4. Section 2 creates a new offence of providing a non-surgical procedure to a person (“the client”) under the age of 18 years. It is a defence for anyone charged with this offence to show that they had taken reasonable steps to establish the client’s age and reasonably believed the client to be aged 18 or over.

5. The power in the Bill as introduced sets out that one way in which an accused person can demonstrate that they had taken reasonable steps to establish the client’s age is if they were shown a document listed in what was section 2(4) (e.g. a passport or UK driving licence) and that document would have convinced a reasonable person as to the client’s age.

6. Section 2(6) in the Bill as introduced provided the Scottish Ministers with the power to make regulations which may add or remove a document from the list in section 2(4) or vary the description of an existing entry.

7. The amendments made at Stage 2 remove the list of acceptable documents for age verification (section 2(4)) and the Ministerial power to amend this list (section 2(6)), and replaces these with a provision to allow the Scottish Ministers to specify in regulations the steps which can be taken to establish a person’s age for the purposes of providing a non-surgical procedure.

## Reason for taking power

8. In November 2025 (after the Bill was introduced) the First Minister announced the intention of the Scottish Government to develop an online app which amongst other things will eventually provide a form of digital age verification. This means that in the future, it may be possible to verify age in a greater variety of means than by asking people to produce traditional ID documents.

9. These changes future-proof the Bill, allowing for potential recognised digital forms of age verification, such as a digital proof of age app, to be included in the future. The approach aligns with amendments proposed for other Scottish legislation, such as proposed amendments to sections 4 and 4A of the Tobacco and Primary Medical Services (Scotland) Act 2010, by the Tobacco and Vapes Bill (currently at Report stage in the UK Parliament), ensuring consistency in age verification processes.

## Choice of procedure

10. As a consequence of the amendments to section 2, a technical amendment was also made to section 19(3) (which sets out the regulation making powers which are subject to negative procedure) to update the reference to the regulation-making power in section 2, from section 2(6) to section 2(3).

11. Amendments made relying on this revised enabling power will follow the negative procedure, as it allows the Scottish Ministers to be able to specify in regulations the

steps which can be taken to establish a person's age – the power could not be used to make a substantive policy change.

## Section 5 – Power to make further provision about non-surgical procedures

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

### Provision

12. Section 5 in the Bill, as introduced, allows the Scottish Ministers to impose further restrictions and requirements in relation to the provision of non-surgical procedures. Such regulations may include:

- imposing different restrictions and requirements by reference to categories of non-surgical procedure as specified in the regulations;
- specifying persons or descriptions of persons who may provide or supervise the provision of a non-surgical procedure;
- specifying requirements about the training or qualifications of persons who may provide or supervise the provision of a non-surgical procedure;
- creating an offence in connection with a contravention of a restriction, or failure to comply with a requirement, imposed by virtue of the regulations; or
- conferring functions relating to the enforcement of provisions made under the regulations.

13. Section 5 also allows any regulations made under the power to modify any enactment (including the Bill) and sets out the maximum penalty that may be imposed under offences created by the regulations.

14. At Stage 2, section 5(3) was amended to add to the list of matters about which the Scottish Ministers may make regulations, under subsection (1) which now include:

- provisions which may enable different or additional requirements where there are individual client risk factors, including risk factors based on a client's medical history or anatomical considerations;
- requiring providers to carry out and document a pre-procedure assessment of relevant medical history and ensure that enhanced informed consent procedures are followed where factors are identified that may increase the risk of harm.

15. Section 5(4) was also amended at Stage 2 to increase the maximum penalty which may be provided for under regulations made under section 5(1). At introduction

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this was a fine, on summary conviction, up to level 5 on the standard scale (currently the maximum fine is £5,000). This is increased to:

- on summary conviction, a fine not exceeding £20,000;
- on conviction on indictment, an unlimited fine.

16. In its Stage 1 Report, the Health, Social Care and Sport Committee noted the “strong evidence” they had heard that suggested “the level of sanctions against those committing offences under the Bill will be an insufficient deterrent to those bad actors willing to commit repeat offences who may consider repeat fines to be an acceptable cost of continuing to operate outside the law”. The Scottish Government supported this change and it is considered appropriate to increase the level of penalty.

17. At Stage 2, section 5 was amended to add subsections (5) and (6). These new provisions were supported by the Scottish Government and require that draft regulations that contain provision about training or qualifications under section 5(1) are laid within a certain period. Subsection (5) places a duty on the Scottish Ministers to lay draft regulations setting training or qualification requirements for people providing non-surgical procedures. It provides a deadline of 3 years from the coming into force of section 3 (which contains the offence of providing a non-surgical procedure outwith permitted premises).

18. Subsection (6) places a duty on Scottish Ministers to lay a report before Parliament if they consider it not practical to lay such regulations within this timeframe, with an explanation as to why they are unable to comply.

19. Due to the impact of the UK Internal Market Act 2020 (UKIMA), for this Bill, the Scottish Parliament is not able to set training and supervision standards for Scotland which would operate in the manner in which the Scottish Ministers would like them to. The Scottish Government wants to work with the UK Government in progressing plans to regulate in this sector. This amendment provides an assurance that regulations around training and qualifications will be put in place.

## Reason for taking power

20. The reasons for taking the power in section 5 remains the same as in the original DPM.

## Choice of procedure

21. As stated in the original DPM, amendments made relying on the new enabling power may involve amending primary legislation, for which affirmative procedure is usually the most appropriate.

22. This power allows provision to be made to allow the legislation to keep pace with the non-surgical procedures sector and what is required to continue to ensure it is safe and the public is adequately protected. It will allow provision to be made in relation to

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training or qualification standards or the restriction of procedures (and their supervision) to particular professionals in the future.

23. Provision made relying on these powers can be supported by new offences, or enforcement powers. As such the higher level of parliamentary scrutiny afforded by the affirmative procedure appears appropriate, together with a consultation requirement (see section below in relation to section 19A).

## Section 13A – UK Internal Market – power to establish individual assessment process

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative procedure for the first regulations, negative procedure for subsequent regulations

Revised or new power: New

### Provision

24. Section 13A adds a new enabling power to the Bill which would allow the Scottish Ministers to establish by regulations an individual assessment process to which section 26 of the UK Internal Market Act 2020 (“UKIMA”) would apply.

25. Section 26 of UKIMA allows for an exception to the automatic recognition principle in section 24(2) of that Act by means of an individual assessment process. A section 26 process enables a qualified UK resident to have their qualifications, experience, knowledge or skills assessed to ensure they meet any standards of training and qualification which may be set out by one part of the UK.

26. When created, this process will give individuals the opportunity to apply to have their level of training and qualification recognised as equivalent to any standard established in Scotland. In turn this would allow them to provide non-surgical procedures to which that standard relates. These procedures may be non-surgical procedures in the Bill or licensed procedures i.e. the lower risk non-surgical procedures which are contained in the Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 (“the Order”) which introduces a local authority licensing scheme.

27. Regulations made under this new provision will be able to designate one or more regulatory bodies to set up, administer and run an individual assessment process, make provision in relation to fees, and the application process for an individual under the process. The regulations will also allow for the creation of an offence where an individual provides false or misleading information as part of an application under the process. The maximum penalty that can be provided for the offence will be a fine, on summary conviction, up to level 5 on the standard scale (currently the maximum fine is £5,000).

## Reason for taking power

28. Part 3 of UKIMA establishes an automatic recognition principle where a professional qualified in one part of the UK is automatically treated as qualified in another part of the UK. The effects of Part 3 of UKIMA mean that Scottish Government is currently unable to set standards for training and qualifications for individuals providing non-surgical procedures in the Bill in the way we would like.

29. Section 26 of UKIMA does provide a partial remedy to this. The individual assessment process under this provision would allow someone to have their existing training or qualifications assessed, where different to those specified, to ensure they are equivalent to or meet the standards we establish for Scotland.

30. The Scottish Government intends to work with the UK government on a long term solution to the issues posed by Part 3 of UKIMA as the section 26 process is a cumbersome one.

## Choice of procedure

31. The choice of procedure is designed to reflect that the first time the power is used it will be to implement policy decisions e.g. around the choice of regulator, creation of offences and the parameters of the process, and therefore affirmative procedure, together with a consultation requirement (see section below in relation to section 19A), is appropriate. Thereafter it is considered that changes made to the process by regulations will be more minor and technical in nature, and so the negative procedure is appropriate.

## Section 19A – Regulations subject to the affirmative procedure: consultation

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

## Provision

32. Section 19A was added to the Bill at Stage 2 and requires that the Scottish Ministers must “consult such persons, or groups of persons, as they consider appropriate” where any regulation-making power that requires the affirmative procedure is used, that is:

- section 1(5) – power to amend list of procedures in schedule 1;
- section 4(4) – power to modify the meaning of “permitted premises”;
- section 5(1) – power to make further provision about non-surgical procedures;
- the first regulations under section 13A(1); and

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- section 18 – ancillary provisions.

### Reason for taking power

33. In its Report at Stage 1, the Delegated Powers and Law Reform Committee highlighted the breadth of the power in section 5(1) and stated—

“The Committee recommends that the lead committee considers whether the power could be limited, for instance, by adding statutory consultation requirements or guiding principles to ensure its use is evidence-based and compatible with public health.”

34. An amendment was made at Stage 2 to add a consultation requirement not only for the power in section 5, but for all powers to make subordinate legislation in the Bill where the affirmative procedure is to be used. Section 19A requires the Scottish Ministers to “consult such persons, or groups of persons, as they consider appropriate”. Who the Scottish Ministers chooses to consult will depend on the nature of the provision being amended, but could include Healthcare Improvement Scotland, local authorities, consumer rights groups, representatives from businesses, healthcare professionals, healthcare regulators and training providers.

### Choice of procedure

35. The consultation requirement will apply to all regulations, as set out above , made using powers in the Bill which follow the affirmative procedure to reflect that policy decisions will be implemented by these regulations. As such, any regulations made under this power should be subject to thorough Parliamentary scrutiny.

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