

## EQUALITY IMPACT ASSESSMENT RECORD

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	<b>The National Health Service (Scotland) Act 1978 (Independent Health Care) Modification Order 2024 (“the Modification Order”)</b>  <b>The Public Services Reform (Scotland) Act 2010 (Commencement No. 8) Order 2024 (“the Commencement Order”)</b>  <b>The Healthcare Improvement Scotland (Inspections) Amendment Regulations 2024 (“the Inspection Regulations”)</b>  <b>The Healthcare Improvement Scotland (Fees) Regulations 2024 (“the Fees Regulations”)</b>	
<b>Minister</b>	<b>Minister for Public Health and Women’s Health</b>	
<b>Lead official</b>	<b>Lorraine Alcock</b>	
<b>Officials involved in the EQIA</b>	<b>Name</b>	<b>Team</b>
	<b>Lorraine Alcock Robert Law</b>	<b>Quality &amp; Safety Team</b>
<b>Directorate: Division: Team</b>	<b>Directorate of the Chief Operating Officer, NHS Scotland Healthcare Quality and Improvement Safety, Openness, and Learning</b>	
<b>Is this new policy or revision to an existing policy?</b>	<b>Revision to existing legislation</b>	

### Policy Aim

The Scottish Government is making changes in relation to the provisions in the National Health Service (Scotland) Act 1978 that cover Healthcare Improvement Scotland’s (“HIS”) regulation of independent health care services. For the purpose of this EQIA, the main aim of the Modification Order, the Commencement Order, the Inspection Regulations, and the Fees Regulations is to ensure that the Scottish Government meets its requirements for health care in Scotland that is fit for purpose, safe, and appropriate.

Where providers of independent healthcare in Scotland continue to be many and varied, along with the increasing complexity of this area of healthcare provision, we have specifically considered the impact this policy may have on members of the public, in line with how it contributes to the Health Outcomes in the Scottish Government's [National Performance Framework](#). This will ensure that this new policy delivers on making independent healthcare safe and focuses on positive health, care, and wellbeing outcomes. Our overall intention is that these steps will support HIS in their work to ensure a well regulated healthcare sector.

In broad terms, the Modification Order, the Commencement Order, the Inspections Regulations, and the Fees Regulations make the following changes:

1. Enabling HIS to regulate independent clinics where services are provided by pharmacists and pharmacy technicians.
2. Giving HIS power to de-register independent healthcare providers who fail to pay continuation fees.
3. Enabling HIS to regulate independent medical agencies (“IMAs”), including online-only independent healthcare services based in Scotland. As part of the proposal to commence HIS’ functions in relation to IMAs, the definition of IMAs will be amended to be aligned with the list of healthcare professionals in the definition of independent clinic, including the addition of pharmacists and pharmacy technicians.
4. Allowing inspectors, authorised by HIS to carry out inspections under section 10K of the National Health Services (Scotland) Act 1978, to inspect medical records. Currently, the ability to inspect medical records as part of inspections undertaken by HIS is restricted to medical practitioners, registered nurses, pharmacists, and registered dentists.
5. Will enable HIS, under Section 10Z5 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”), to be able to prescribe the maximum fees which HIS may impose in respect of Independent Medical Agencies “IMAs” (IMAs not previously included as a service in fees regulations); and raise the maximum fees which may be imposed by HIS on all independent healthcare services in respect of applications for registration or cancellation of registration of independent health care services; the annual continuation of any such registration; and applications for the variation or removal of a condition of registration. In prescribing the maximum fees, HIS will have regard to its reasonable expenses in being able to carry out its functions, as required under section 10Z5(3) of the 1978 Act.

For the purpose of the EQIA we will focus on the changes that could potentially affect the people of Scotland who will access independent health care services.

### ***Who will it affect?***

The primary focus of this package of Scottish Statutory Instruments is to ensure the safe delivery of independent healthcare services throughout Scotland. This

will benefit everyone who chooses to access them, regardless of their background, circumstance or location.

We enlisted the assistance of the Scottish Government Library to conduct a thorough search of a large number of information services. However, data on independent healthcare usage in Scotland is very limited. The Private Healthcare Information Network (PHIN) is an independent source of information on private healthcare in the UK and publishes data from private hospitals across the UK, it does not publish data specific to Scotland. Data from across the UK suggests that there are more female admissions than male, and there has been a drop in self-pay admission for females (9%) compared to males (4%). It also tracks age distribution across the UK, with the 50-54 and 55-59 age ranges showing the largest number of admissions.

It has not been possible to assess the usage of online medical agencies, or services provided by pharmacists and pharmacy technicians from clinics which are not registered pharmacies or premises where services are not provided under the terms of an NHS contract. In addition to the Scottish Government Library, we exhausted all avenues available to us including contacting relevant stakeholders directly, in the search for such data.

Due to the lack of specific data collected around who accesses independent clinics and medical agencies in Scotland, we cannot be completely certain to what extent those with protected characteristics may be impacted. The package of Scottish Statutory Instruments (“SSIs”) is unlikely to have significant impact, whether that be positive or negative, direct or indirect, on inequalities of outcomes experienced by socio-economically disadvantaged groups. The changes may only impact those who seek private healthcare services, and paid for it at their own expense. Furthermore, the likelihood of service users experiencing poverty and making the conscious decision to use optional and non-essential treatments paid for by themselves is also deemed to be low.

However, we will keep the evidence base under review, and update this Impact Assessment should data become available.

### ***What might prevent the desired outcomes being achieved?***

HIS is restricted in which services they have the power to regulate.

If the package of Scottish Statutory Instruments do not receive Parliamentary approval then HIS would continue to lack the ability to regulate independent pharmacists and pharmacy technicians and independent medical agencies, including online only independent healthcare services based in Scotland. This could result in members of the public unknowingly accessing unsafe independent health care services from independent pharmacists and pharmacy technicians, as well as services provided by independent medical agencies, including online only independent healthcare services based in Scotland. Without Parliamentary approval there would continue to be no consequences for registered providers who do not pay their continuation fees.

## **Stage 1: Framing**

### ***Results of framing exercise***

There is no available data or evidence on the impact these changes would have on people with protected characteristics in Scotland. However, bringing forward the package of Scottish Statutory Instruments is intended to benefit all users of independent health care services in Scotland.

### ***Extent/Level of EQIA required***

There is no available data or evidence about the use of independent health care services among people with protected characteristics or other groups in Scotland.

The Scottish Government ran a public consultation from February to April 2023 which included the following question specifically consulting on the impact these proposals from the Modification Order, the Commencement Order, and the Inspections Regulations might have on people with protected characteristics:

*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?*

At the conclusion of the consultation, 42 respondents provided a response to the above question. Of those who responded, 10 respondents felt there would be no impact, and 15 felt that further regulation would improve equity of service for those with protected characteristics. One person believed that further regulation would negatively impact the situation, and another felt that people with protected characteristics may feel discriminated against if there are restraints to them accessing a service. One respondent believed that further regulation would result in non-viable businesses being forced to close, driving people with protected characteristics to unsafe practices from non-medical companies.

Our analysis of the responses to this question show support for the Modification Order, the Commencement Order, and the Inspections Regulations. Those who responded to the question, broadly agree that the changes we have proposed will improve services for those with protected characteristics. Requiring independent healthcare providers to provide safe, consistent, and high quality services, enforced through regulation, will protect the needs of all those accessing services in a non-discriminatory manner.

## Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

We approached the following groups for sources of data, but as detailed above, were unable to locate any evidence backed up with data:

- Healthcare Improvement Scotland
- Public Health Scotland
- Scottish Government Health and Social Care Analysis team
- Scottish Government Equalities Unit

We also made efforts to source useful data through Scottish Government Library, internet search engines, and gathered opinions from the Scottish Government public consultation [Amendments to the regulation of independent health care](#).

Characteristic <sup>1</sup>	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
<b>AGE</b>	<p>One consultation respondent believed the amendment would protect “uphold rights and safety of protect characteristics. For example- protecting the young from inappropriate treatments before they are adults and also supporting older adults safe and appropriate care when they may have other medical health issues to take into account when seeking treatments”.</p> <p>Age Scotland published results of a survey they conducted suggesting that those who had paid for healthcare, 18% were in their 80s, 17% in their 70s and 15% in their 60s.</p> <p>Data from across the UK suggests the 50-54 and 55-59 age ranges have the largest number of admissions to independent hospitals.</p>	<p>Scottish Government Consultation</p> <p>Age Scotland</p> <p>PHIN</p>	<p>We could source no quantifiable data in this area.</p> <p>The survey is just a snapshot of the population, and will not be 100% accurate but does suggest that the older population utilise paid for healthcare more</p> <p>UK data, not Scotland specific. Also only covers hospital admissions, not the wider independent sector</p>

<sup>1</sup> Refer to Definitions of Protected Characteristics document for information on the characteristics

<b>DISABILITY</b>	One consultation respondent was of the opinion that “One thing that is very important is insuring that these services are accessible to people with disabilities” and that it is “important to ensure that as part of regulation that parties take appropriate steps to ensure information is accessible to all people”	Scottish Government Consultation	Scottish Government and HIS will consider this as part of ongoing broader independent healthcare regulation.
<b>SEX</b>	Data from across the UK suggests that there are more female admissions to independent hospitals than male, and there has been a greater drop in self-pay admission for females (9%) compared to males (4%).	PHIN	UK data, not Scotland specific. Also only covers hospital admissions, not the wider independent sector
<b>PREGNANCY AND MATERNITY</b>	One consultation respondent believes the regulations will assist in “keeping women safe during pregnancy and nursing an infant, regulation will ensure safe practice for this period a woman’s life”	Scottish Government Consultation	We could source no quantifiable data in this area.
<b>GENDER REASSIGNMENT</b>	One consultation respondent believes that “pushing further regulation will be detrimental to all groups” and “pushing us to our limits will push these vulnerable groups into the hands of un-ethical practitioners”.  Another respondent believes that regulation “would be helping people with feminising or masculinising facial features during gender reassignment process. Registered and regulated health care professionals are ultimately governed by ethical principles of care to do no harm and uphold dignity, rights, equality and safety which is why regulation industry wide is required”  A comment from another respondent stated that people with protected characteristics “may seek or be targeted by direct advertising to make use of independent health care services. It is important therefore that these services are regulated to offer safe and effective care to vulnerable people, consistent with legislation.”	Scottish Government Consultation	We could source no quantifiable data in this area.
<b>SEXUAL ORIENTATION</b>	None	N/A	N/A
<b>RACE</b>	None	N/A	N/A
<b>RELIGION OR BELIEF</b>	None	N/A	N/A
<b>MARRIAGE AND CIVIL PARTNERSHIP</b>	None (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details).	N/A	N/A

### Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

The below questions cannot be answered due to a lack of data, which limits our ability to assess the particular impacts these changes may have on people with protected characteristics, including those highlighted in individual responses made to the public consultation, however the package of SSIs is intended to benefit all users of independent health care services in Scotland.

#### Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	N/A	N/A	N/A	N/A
Advancing equality of opportunity	N/A	N/A	N/A	N/A
Promoting good relations among and between different age groups	N/A	N/A	N/A	N/A

**Do you think that the policy impacts disabled people?**

<b>Disability</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation	N/A	N/A	N/A	N/A
Advancing equality of opportunity	N/A	N/A	N/A	N/A
Promoting good relations among and between disabled and non-disabled people	N/A	N/A	N/A	N/A

**Do you think that the policy impacts on men and women in different ways?**

<b>Sex</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	N/A	N/A	N/A	N/A
Advancing equality of opportunity	N/A	N/A	N/A	N/A
Promoting good relations between men and women	N/A	N/A	N/A	N/A



**Do you think that the policy impacts on women because of pregnancy and maternity?**

<b>Pregnancy and Maternity</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	N/A	N/A	N/A	N/A
Advancing equality of opportunity	N/A	N/A	N/A	N/A
Promoting good relations	N/A	N/A	N/A	N/A

**Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used).**

<b>Gender reassignment</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	N/A	N/A	N/A	N/A
Advancing equality of opportunity	N/A	N/A	N/A	N/A
Promoting good relations	N/A	N/A	N/A	N/A

**Do you think that the policy impacts on people because of their sexual orientation?**

<b>Sexual orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	N/A	N/A	N/A	N/A
Advancing equality of opportunity	N/A	N/A	N/A	N/A
Promoting good relations	N/A	N/A	N/A	N/A

**Do you think the policy impacts on people on the grounds of their race?**

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	N/A	N/A	N/A	N/A
Advancing equality of opportunity	N/A	N/A	N/A	N/A
Promoting good race relations	N/A	N/A	N/A	N/A

**Do you think the policy impacts on people because of their religion or belief?**

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	N/A	N/A	N/A	N/A
Advancing equality of opportunity	N/A	N/A	N/A	N/A
Promoting good relations	N/A	N/A	N/A	N/A

**Do you think the policy impacts on people because of their marriage or civil partnership?**

<b>Marriage and Civil Partnership<sup>2</sup></b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	N/A	N/A	N/A	N/A

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<sup>2</sup> In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

## Stage 4: Decision making and monitoring

### *Identifying and establishing any required mitigating action*

Have positive or negative impacts been identified for any of the equality groups?	<p>We have been unable to identify any negative impact for any of the equality groups based on the work we have undertaken. However, recognised that due to a lack of data or evidence on who accesses independent health care services this impact assessment is limited.</p> <p>As the primary focus of the package of Scottish Statutory Instruments is to ensure patient safety, we have identified a significant positive impact for all who access independent health care services regardless of their background, circumstance or location.</p>
Is the policy directly or indirectly discriminatory under the Equality Act 2010 <sup>3</sup> ?	There is no evidence to suggest that the policy is directly or indirectly discriminatory under the Equality Act 2010.
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

### *Describing how Equality Impact analysis has shaped the policy making process*

The primary purpose of the package of Scottish Statutory Instruments is to ensure patient safety, for all who access independent health care services. Equality impact was seriously considered at all stages of planning, but it was determined that the policy is unlikely to negatively impact people with protected characteristics; any impact will be equal across the board. No changes have been made to the policy as a result of this impact analysis.

The package of SSIs is broadly aimed at regulation of independent medical agencies, and widening HIS' scope of regulation to include independent pharmacists and pharmacy technicians. Any impact will be equal across the board. We will keep our assessment under review and update the impact assessment if new evidence comes to light.

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<sup>3</sup> See EQIA – Setting the Scene for further information on the legislation.

## ***Monitoring and Review***

No equality issues have been identified in this EQIA, but the Scottish Government will continue to search for relevant data that may allow us to make an informed assessment of the impacts the policy might have on people with protected characteristics and all who access independent health care services in Scotland.

Healthcare Improvement Scotland and various Scottish Government policy teams responsible for these areas have regular meetings to discuss issues arising. Both HIS and the Scottish Government will assume joint responsibility for undertaking monitoring and evaluation of progress.

## Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes  No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes  No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes  No  Not applicable

### Declaration

I am satisfied with the equality impact assessment that has been undertaken for the Amendments to the Regulation of Independent Health Care and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

**Name:** Lynne Nicol

**Position:** Deputy Director - Healthcare Planning and Quality

**Authorisation date:** 11 April 2024