

Draft Order laid before the Scottish Parliament under section 105(3) of the National Health Service (Scotland) Act 1978, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

PUBLIC HEALTH

**The National Health Service (Scotland) Act 1978
(Independent Health Care) Modification Order 2024**

Made - - - - 2024
Coming into force - - 19th June 2024

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 10G and 105(7) of the National Health Service (Scotland) Act 1978(1) and all other powers enabling them to do so.

In accordance with section 10G of that Act, they have consulted with such persons or groups of persons as they consider appropriate.

In accordance with section 105(3)(2) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the National Health Service (Scotland) Act 1978 (Independent Health Care) Modification Order 2024 and comes into force on 19 June 2024.

Modification of the National Health Service (Scotland) Act 1978

2. The National Health Service Scotland Act 1978 is modified in accordance with articles 3 to 5.
- 3.—(1) Section 10F(3) (meaning of “independent health care services”) is modified as follows.
(2) In subsection (2)—

(1) 1978 c. 29. Section 10G was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8) and section 105(7) was amended by paragraph 5(1) of schedule 6 and schedule 7 of the Health Services Act 1980 (c. 53), paragraph 24 of Part 1 of schedule 9 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) and paragraph 60 of schedule 4 of the Health Act 1999 (c. 8). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) Section 105(3) was amended by section 59(2) of the Health Act 1999, section 39(2) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), paragraph 21 of schedule 17 of the Public Services Reform (Scotland) Act 2010 and section 4(4) of the Health and Care (Staffing) (Scotland) Act 2019.

(3) Section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 and amended by S.S.I. 2016/148 and S.S.I. 2017/67.

- (a) in the definition of “independent clinic”, after “registered midwife” insert “, registered pharmacist, registered pharmacy technician”, and
- (b) for the definition of “independent medical agency” substitute—
 - ““independent medical agency” means, subject to subsection (2D), an undertaking which consists of or includes the provision of services, other than in pursuance of this Act, by—
 - (a) a medical practitioner;
 - (b) a dental practitioner;
 - (c) a dental care professional;
 - (d) a registered nurse;
 - (e) a registered midwife;
 - (f) a registered pharmacist; or
 - (g) a registered pharmacy technician;”.
- (3) In subsection (2A)—
 - (a) at the end of paragraph (f) omit “or”, and
 - (b) after paragraph (g) insert—
 - “(h) provides pharmaceutical services in accordance with arrangements made pursuant to section 27 of this Act(4); or
 - (i) is a registered pharmacy within the meaning of section 74 of the Medicines Act 1968(5).”.
- (4) For subsection (2B) substitute—
 - “(2B) In the definitions of “independent clinic” and “independent medical agency” in subsection (2)—
 - (a) “dental care professional” means a registered dental care professional and has the same meaning as in section 53 of the Dentists Act 1984(6) (interpretation); and
 - (b) “registered pharmacy technician” has the same meaning as in article 3 of the Pharmacy Order 2010(7) (interpretation).”.
- (5) After subsection (2C) insert—
 - “(2D) An undertaking does not fall within the definition of “independent medical agency” in subsection (2) if it—
 - (a) is an independent clinic;
 - (b) is a hospital;
 - (c) is a registered pharmacy within the meaning of section 74 of the Medicines Act 1968;

(4) Section 27 was amended by section 20(2) of the Health Services Act 1980 (c. 53), section 3(3) of the National Health Service (Amendment) Act 1986 (c. 66), section 66(1) and paragraph 19(7) of schedule 9 of the National Health Service and Community Care Act 1990 (c. 19), section 3 of the Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), paragraph 44 of schedule 2 of the National Health Service (Primary Care) Act 1997 (c. 46), section 44(2) and (3) of the Health and Social Care Act 2001 (c. 15), sections 213(7) and 220(2) of the Health and Social Care Act 2012 (c. 7), S.I. 1987/2202, S.I. 2003/1590, S.I. 2004/1771, S.I. 2005/2011, S.I. 2007/289 and S.I. 2010/231, and is to be read with section 17 of the Health and Medicines Act 1988 (c. 49).

(5) 1968 c. 67. Section 74 was amended by paragraph 1 of Part XII of schedule 1 of the Statute Law (Repeals) Act 1993 (c. 50), S.I. 2010/231 and S.I. 2016/372.

(6) 1984 c. 24. Section 53 was relevantly amended by S.I. 2005/2011.

(7) S.I. 2010/231, relevantly amended by S.I. 2019/593.

- (d) is a nurse agency registered with Social Care and Social Work Improvement Scotland by virtue of section 59 of the Public Services Reform (Scotland) Act 2010⁽⁸⁾;
- (e) is provided by an employer and services are provided only to the employees of that employer; or
- (f) only provides one or both of the following services—
 - (i) first aid in situations requiring medical treatment or medical care;
 - (ii) therapy effected only through the provider of the therapy and the recipient communicating through speech.”.

4. In section 10P(2)⁽⁹⁾ (registration of independent health care services), after paragraph (d) insert —

- “(e) be accompanied by any annual continuation fee, or any instalment of an annual continuation fee, that remains due in respect of a previous registration of that service that has been cancelled.”.

5. In section 10S⁽¹⁰⁾ (cancellation of registration), after subsection (2) insert—

“(2A) HIS may propose to cancel the registration of an independent health care service where subsection (2B) applies.

(2B) This subsection applies where —

- (a) the service has not paid the fee in respect of the annual continuation of the registration imposed under section 10Z5(2)(b)⁽¹¹⁾ or, where the service has agreed with HIS to pay an annual continuation fee by instalments, an instalment of that annual continuation fee; and
- (b) HIS has given notice that, unless within such reasonable period as may be specified in the notice the fee or instalment is paid, it intends to propose to cancel the registration of the service.”.

Transitional provision

6.—(1) During the transitional period, section 10Z9(1)(a)⁽¹²⁾ of the National Health Service (Scotland) Act 1978 does not have effect in relation to a person who is a registered pharmacist or a registered pharmacy technician providing services from an independent clinic.

(2) For this purposes of this article, the “transitional period” is the period—

- (a) beginning on 19 June 2024, and
- (b) ending on 18 June 2025.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

⁽⁸⁾ 2010 asp 8.

⁽⁹⁾ Section 10P was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8) (“the 2010 Act”).

⁽¹⁰⁾ Section 10S was inserted by section 108 of the 2010 Act.

⁽¹¹⁾ Section 10Z5 was inserted by section 108 of the 2010 Act.

⁽¹²⁾ Section 10Z9 was inserted by section 108 of the 2010 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the definition of “independent health care services” in section 10F of the National Health Service (Scotland) Act 1978 (“the Act”).

Article 3(2)(a) modifies the definition of “independent clinic” in section 10F(2) of the Act to include a clinic not comprised in a hospital and in or from which services are provided by a registered pharmacist or registered pharmacy technician.

Article 3(2)(b) substitutes a new definition of “independent medical agency” in section 10F(2) of the Act. The new definition provides that an independent medical agency is, subject to section 10F(2D) of the Act, an undertaking which consists of or includes the provision of services, other than in pursuance of the Act, by a medical practitioner, dental practitioner, dental care professional, registered nurse, registered midwife, registered pharmacist, or registered pharmacy technician.

Article 3(3) modifies section 10F(2A) of the Act to provide that a clinic does not fall within the definition of “independent clinic” in section 10F(2) if it provides pharmaceutical services in accordance with arrangements made pursuant to section 27 of the Act or if it is a registered pharmacy within the meaning of section 74 of the Medicines Act 1968.

Article 3(4) substitutes a new section 10F(2B) of the Act which provides for definitions of “dental care professional” and “registered pharmacy technician” where these terms appear in the definitions of “independent clinic” and “independent medical agency” in section 10F(2) of the Act.

Article 3(5) inserts a new section 10F(2D) in to the Act which sets out which undertakings do not fall within the definition of “independent medical agency” in section 10F(2) of the Act.

This Order also modifies the independent health care functions (as defined in section 10E of the Act) of Health Improvement Scotland (“HIS”) to allow for cancellation of registration of an independent health service where it fails to pay the annual continuation fee (article 5). Additionally, where a service has previously had registration cancelled for non-payment of continuation fees, and the service seeks to register with HIS again, there is a requirement to pay any annual continuation fees that remained due (article 4).

Article 6 makes transitional provision so that the offence, in section 10Z9(1)(a) of the Act, of providing an independent health care service without being registered, does not apply to a registered pharmacist or a registered pharmacy technician providing services from an independent clinic for a period of 1 year after this Order comes into force.