

EXPLANATORY NOTES

Non-Surgical Procedures and Functions of Medical Reviewers (Scotland) Act 2026 (asp 10)

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These notes relate to the Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Act 2026 (asp 13)
which received Royal Assent on 12 May 2026

NON-SURGICAL PROCEDURES AND FUNCTIONS OF MEDICAL REVIEWERS (SCOTLAND) ACT 2026

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Act 2026. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

Overview

3. The Act regulates the provision of non-surgical procedures. A non-surgical procedure is a procedure that pierces or penetrates an individual's skin and which falls within a description in schedule 1 of the Act. Generally speaking, these procedures are sought for cosmetic or wellbeing reasons (such as increasing physical, mental or emotional wellbeing) by the person receiving the procedure.

4. Part 1 of the Act—

- creates a criminal offence of providing a non-surgical procedure to a person who is under 18 (see section 2),
- creates a criminal offence of providing a non-surgical procedure outwith certain premises (see section 3),
- creates a power to make further provision about non-surgical procedures (see section 5),
- confers additional powers on Healthcare Improvement Scotland ("HIS") to enforce the offences under the Act (see sections 6 to 11),
- creates a power to establish a process to which section 26 of the United Kingdom Internal Market Act 2020 applies under which individuals may apply for approval to provide or supervise the provision of non-surgical procedures or licensed procedures (non-surgical procedures within the meaning of the Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 (S.S.I. 2026/87)) in Scotland (see section 14), and

- consequentially amends the National Health Service (Scotland) Act 1978 ("the 1978 Act") (see section 15 and schedule 2).

5. In addition, Part 2 of the Act amends the Certification of Death (Scotland) Act 2011—

- to make certain death certificates eligible for review by a medical reviewer (see section 19),
- to remove the requirement for a medical reviewer to authorise the cremation or hydrolysis of a person's body where that person has died within the United Kingdom but outside Scotland (see section 20).

Part 1: Non-surgical Procedures

Section 1: Meaning of "non-surgical procedure"

6. This section defines a "non-surgical procedure" for the purposes of the Act, other than in section 14(5) (discussed below).

7. A non-surgical procedure is a procedure that:

- pierces or penetrates an individual's skin, including by means of a needle, chemical, medicine, heat, cold, light, laser, sound or electricity, and
- is of a kind specified in schedule 1 of the Act.

8. But a non-surgical procedure does not include a procedure:

- that is provided by a person acting for or on behalf of the NHS in Scotland,
- that is covered by the health care exception set out in section 1(1)(b)(ii) of the Act,
- that is carried out in relation to a clinical trial (within the meaning given by regulation 2(1) of the Medicines for Human Use (Clinical Trials) Regulations 2004 (S.I. 2004/1031)), or
- that is an activity for which a licence is required under Part 2 of the Civic Government (Scotland) Act 1982 (including the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 (S.S.I. 2006/43) and the Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 (S.S.I. 2026/87)).

9. The health care exception set out in section 1(1)(b)(ii) of the Act covers a procedure that is provided by a health care provider (as defined in section 1(2) of the Act) for the purpose of, or in connection with, preventing, diagnosing or treating an illness of the person receiving the procedure.

10. Note that for the purpose of section 1(1)(b)(ii) of the Act, the inclusive definition of "illness" (in section 1(2)) aligns with the definition of "illness" in section 108 of the 1978 Act.

11. Section 1(2) defines a "health care provider" as meaning an independent health care service (within the meaning of section 10F of 1978 Act) that is registered with HIS under section 10P of the 1978 Act; a person who is regulated by one of the bodies listed in subsection (3); or a person who is acting in accordance with the directions of such a person.

12. An independent health care service that is not registered with HIS under section 10P of the 1978 Act cannot be covered by the health care exception. It is an offence under section 10Z9(1) of the 1978 Act for a person to provide (meaning to carry on or manage) an independent health care service while the service is not registered with HIS under section 10P of the 1978 Act (see the meaning of "provide" in this context under section 10Z18 of the 1978 Act).

13. The persons who are regulated by a body listed in subsection (3) are a/an:

- anaesthesia associate,
- art therapist,
- biomedical scientist,
- chiropodist or podiatrist,
- chiropractor,
- clinical dental technician,
- clinical scientist,
- dental hygienist,
- dental nurse,
- dental technician,
- dental therapist,
- dentist,
- dietitian,
- dispensing optician,
- doctor (medical practitioner),
- hearing aid dispenser,
- midwife,
- nurse (registered nurse),
- occupational therapist,
- operating department practitioner,
- optometrist,
- orthodontic therapist,
- orthoptist,
- osteopath,

- paramedic,
- pharmacist,
- pharmacy technician,
- physician associate,
- physiotherapist,
- practitioner psychologist,
- prosthetist or orthotist,
- radiographer,
- speech and language therapist,
- student dispensing optician,
- student optometrist.

14. The health care exception means that, where these persons provide, or direct the provision of, a procedure for the purpose of, or in connection with, preventing, diagnosing or treating an illness of the person receiving the procedure, the procedure is not a "non-surgical procedure" covered by the Act. Separately, some of these persons are also listed in section 4(2) of the Act - for example, a registered medical practitioner and a nurse independent prescriber. Section 4(2) of the Act specifies which regulated persons may provide or manage an independent clinic service (that is registered under section 10P of the 1978 Act and whose premises meet specified conditions) in which non-surgical procedures may be lawfully provided in accordance with section 3 of the Act as "permitted premises". This meaning of "permitted premises" is distinct from and does not affect the health care exception set out in section 1(1)(b)(ii) of the Act.

15. Subsection (4) provides that the Scottish Ministers may by regulations amend the list of health regulators in subsection (3). Section 22(3) of the Act provides that this power is subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 for the meaning of "the negative procedure").

Non-surgical procedures specified in schedule 1

16. Subsection (1)(a)(ii) introduces schedule 1 of the Act which specifies descriptions of procedures that fall within the definition of a non-surgical procedure for the purposes of the Act.

17. *Ablative laser treatment* is specified in paragraph 1. In addition to procedures which remove one or more layers of skin, lights and lasers can be used in a variety of other procedures. Other procedures involving lasers which do not have an ablative effect (that is, procedures which do not involve the removal of layers of skin) are designated as an activity for which a licence is required under Part 2 of the Civic Government (Scotland) Act 1982 by the Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 (S.S.I. 2026/87).

18. *Chemical peels* are specified in paragraph 2. Chemical peels may remove skin at a variety of depths depending on the strength and composition of substance used in connection with the peel and/or the duration of the application of the substance. Chemical peels which penetrate the skin but not beyond the epidermis (the skin's outer layer) are designated as an activity for which a licence is required under Part 2 of the Civic Government (Scotland) Act 1982 by the Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 (S.S.I. 2026/87).

19. *Dermal microcoring* is specified in paragraph 3. The small cores of skin tissue that are removed by this procedure are typically less than half a millimetre in diameter.

20. *Injectable procedures* are specified in paragraph 4. These procedures must be for a cosmetic or wellbeing purpose (as defined in paragraph 14 of schedule 1). The procedures include:

(a) the administration of dermal fillers in smaller quantities such as to change the shape of the face or lips, or to reduce the appearance of wrinkles,

(b) the administration of dermal fillers in larger quantities to, for example, augment the shape of the breast or buttocks, such as a non-surgical Brazilian butt lift (or BBL),

(c) botulinum toxin (Botox) injections.

21. *Licensed procedures carried out with prescribed anaesthetic or on an intimate area* are specified in paragraphs 6 and 7. These are procedures that are specified in schedule 1 of the Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 but for which a prescribed anaesthetic is used or which are carried out on an intimate area (except for non-ablative laser treatment for hair removal).

22. *Microneedling* is specified in paragraph 8. This procedure may be carried out at a range of depths. Microneedling that delivers radio frequency electromagnetic radiation meets the definition of a non-surgical procedure for the purposes of the Act regardless of the depth at which it is carried out. Otherwise, microneedling must be carried out at a depth of 1.5 millimetres or more to meet the definition of a non-surgical procedure for the purposes of the Act. Microneedling that is carried out at a depth of less than 1.5 millimetres (not involving the use of radio frequency electromagnetic radiation) is designated as an activity for which a licence is required under Part 2 of the Civic Government (Scotland) Act 1982 by the Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 (S.S.I. 2026/87). Paragraph 9 sets out exceptions to paragraph 8 for acupuncture, cosmetic body piercing, electrolysis, tattooing and use of a microneedle to inject or administer a substance. (Acupuncture, cosmetic body piercing, electrolysis and tattooing are excluded from the meaning of "non-surgical procedure" for the purpose of the Act by section 1(1)(b)(iv) as they are licensed procedures under the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 (S.S.I. 2006/43) but only where those procedures are provided in the course of a business.)

23. *Thread lift* is specified as being a non-surgical procedure in paragraph 11. It is also referred to as a thread and cog lift, particularly where the thread used is textured.

24. Section 1(5) of the Act provides that the Scottish Ministers may by regulations amend the list of non-surgical procedures specified in schedule 1. Section 22(4) of the Act provides that this power is subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 for the meaning of "the affirmative procedure").

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

25. This section creates an offence of providing a non-surgical procedure to a client who is under the age of 18. In terms of providing a non-surgical procedure under this section, it is considered that this could apply to not only the person administering a non-surgical procedure but also to a person (whether an individual or a legal person) providing the procedure in the broader sense of supplying the procedure. Depending on the circumstances, this could include a person who: makes available the premises where the offence is committed, purchases and supplies the materials or substances required in connection with the non-surgical procedure, or who arranges the recruitment (or training) of staff in connection with the provision of non-surgical procedures.

26. Subsection (2) sets out that it is a defence to show that the accused had taken reasonable steps to establish the client's age and reasonably believed that the client was aged 18 or over. This may apply, for example, where a client has an initial consultation with Person A, who was responsible for checking the client's age, and Person B administered the non-surgical procedure to the client who was under 18. To be able to rely on the defence, Person B would need to show that they had taken reasonable steps to establish the client's age, such as checking the initial consultation form recorded that the client's identification documents were checked by Person A during the initial consultation.

27. Subsection (3) gives an example of when an accused is to be regarded as having taken reasonable steps. That example is when the accused has taken steps to establish the client's age that have been specified in regulations made by the Scottish Ministers.

28. Under the regulation-making power in subsection (3), the Scottish Ministers may prescribe traditional documents such as a passport or a UK driving licence as acceptable identification. In the future, the power could be used to allow recognised digital forms of age verification. The approach aligns with amendments proposed for other Scottish legislation, such as the amendments of sections 4 to 4B of the Tobacco and Primary Medical Services (Scotland) Act 2010 by section 63 of the Tobacco and Vapes Act 2026 (relating to the sale of tobacco products and vapes and other nicotine products), ensuring consistency in age verification processes.

29. Section 22(3) of the Act provides that the regulation-making power in section 2(3) of the Act is subject to the negative procedure.

30. Subsection (4) provides that the accused is subject to no more than an evidential burden of proof to bring forward enough evidence to raise an issue with respect to the defence. The legal burden of disproving the defence and proving that the offence has been committed stays with the prosecution.

Section 3: Offence of providing a non-surgical procedure outwith permitted premises

31. This section creates an offence of providing a non-surgical procedure to another person outwith permitted premises, as defined in section 4 of the Act. In terms of providing a non-surgical procedure under this section, it is considered that this could apply to not only the person administering a non-surgical procedure but also to a person (whether an individual or a legal person) providing the procedure in the broader sense of supplying the procedure. Depending on the circumstances, this could include a person who: makes available the premises where the offence is committed, purchases and supplies the materials or substances required in connection with the non-surgical procedure, or who arranges the recruitment (or training) of staff in connection with the provision of non-surgical procedures.

32. Subsection (2) provides that it is a defence to show that the accused reasonably believed that the non-surgical procedure in question was being provided in permitted premises. This may apply, for example, where the accused is an employee who is working at what the employee believed to be permitted premises by virtue of being an independent hospital registered with HIS (see section 4(1)(b) of the Act, discussed below) but in fact those premises were not correctly registered with HIS.

33. Subsection (3) provides that the accused is subject to no more than an evidential burden of proof to bring forward enough evidence to raise an issue with respect to the defence. The legal burden of disproving the defence and proving that the offence has been committed stays with the prosecution.

Section 4: Meaning of "permitted premises"

34. This section sets out the meaning of "permitted premises" in which a non-surgical procedure may be provided.

Independent health care services
35. Under section 4(1)(a) and (b), premises of certain independent clinics and independent hospitals (within the relevant meanings given by section 10F(2) of the 1978 Act) which are registered under section 10P of that Act are defined as "permitted premises".

Independent clinics and independent hospitals: service to be registered with HIS
36. Independent hospitals and independent clinics both fall within the definition of an "independent health care service" in section 10F(1) of the 1978 Act. That means that they are regulated by HIS. HIS regulates independent healthcare by inspecting services to ensure that they comply with standards and regulations, such as the requirements set out in the Healthcare Improvement Scotland (Requirements as to Independent Health Care Services) Regulations 2011 (S.S.I. 2011/182) relating to fitness of premises, staffing and keeping records of patient care.

37. Any provider of non-surgical procedures that is an independent hospital or an independent clinic must register with HIS to avoid committing an offence under section 3 of the Act. If a provider does not register with HIS, an offence may be committed under section 3 of the Act (providing a non-surgical procedure outwith "permitted premises") and, separately, under section 10Z9 of the 1978 Act (offences in relation to registration).

Independent clinics and independent hospitals: requirements relating to premises

38. For premises of an independent hospital to count as "permitted premises", the address of the premises must be entered in the register of registered independent health care services. That register is maintained by HIS under regulation 6 of the Healthcare Improvement Scotland (Applications and Registration) Regulations 2011 (S.S.I. 2011/35).

39. Premises of an independent clinic can be "permitted premises" if either—

- the address of the premises is entered in the register, or
- the premises are a vehicle (as defined in section 4(4) of the Act), other than a vehicle that is the client's dwelling.

Independent clinic: services to be provided or managed by certain persons

40. Only independent clinics whose services are provided or managed by certain persons who are listed in subsection (2) fall within the definition of "permitted premises" (see subsection (1)(a)).

41. Those persons listed in subsection (2) are—

- a registered medical practitioner, as defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 as meaning a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act,
- a person registered in the dentists register under the Dentists Act 1984,
- a nurse independent prescriber i.e. a nurse who is registered in the register under article 5 of the Nursing and Midwifery Order 2001 (S.I. 2002/253) (see the definition of "registered" in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010) by virtue of qualifications in nursing, and who is noted in that register as being qualified to order drugs, medicines and appliances as a nurse independent prescriber,
- a midwife independent prescriber, i.e. a midwife who is registered in the register under article 5 of the Nursing and Midwifery Order 2001 (see the definition of "registered" in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010) by virtue of qualifications in midwifery, and who is noted in that register as being qualified to order drugs, medicines and appliances as a nurse independent prescriber,
- a pharmacist independent prescriber as defined in section 4(4) of the Act.

42. Note that this is a narrower list of persons than that given in section 1(3) of the Act, and does not affect the health care exception in section 1(1)(b)(ii) of the Act (which disapplies the Act to procedures provided by health care providers for the purpose of, or in connection with, preventing, diagnosing or treating an illness of the person receiving the procedure).

43. The following are not "permitted premises" for the purposes of the Act by virtue of being listed in subsection (2A) of section 10F of the 1978 Act (i.e. they are excluded from being an independent clinic)—

- a clinic comprised in a post-16 education body,
- a clinic comprised in a school,
- a clinic provided by the Common Services Agency, a Health Board or a Special Health Board,
- a clinic or undertaking that is provided by an employer and services are provided only to the employees of that employer,
- a clinic that provides pharmaceutical services in accordance with arrangements made pursuant to section 27 of the 1978 Act,
- 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,
- a clinic or undertaking that only provides first aid or therapy effected through speech (or both).

44. The list of persons specified in section 4(2) is narrower than the list of persons specified in the definition of "independent clinic" in section 10F(2) of the 1978 Act but the same approach is taken in the Act as that in the 1978 Act by referring to the persons who provide or manage the clinic's services (noting that "provide" in this context includes "manage" by virtue of section 108(1) of the 1978 Act).

Other settings
45. Section 4(1)(c) to (f) of the Act allows non-surgical procedures to be provided in registered pharmacies and from GP practice premises and dental practice premises which also provide NHS services (excluding care homes and dwellings).

46. In accordance with section 10F(2A) of the 1978 Act, these providers do not fall within the definition of "independent clinic" and therefore do not need to register with HIS. This is because these settings are already regulated, or the health professionals working there are subject to existing professional regulation.

Power to modify the meaning of "permitted premises"
47. Subsection (3) contains a power to modify section 4 of the Act so as to modify the meaning of "permitted premises". Section 22(4) of the Act provides that this power is subject to the affirmative procedure.

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

48. This section gives the Scottish Ministers the power, in regulations, to impose further restrictions and requirements in relation to the provision of non-surgical procedures. Section 22(4) of the Act provides that this power is subject to the affirmative procedure.

49. The list in subsection (3) sets out examples of what may be done under the regulations.

50. Paragraph (a) refers to the imposition of different restrictions and requirements according to different categories of non-surgical procedure as specified in the regulations. This means that appropriate requirements can be applied in relation to different procedures according to the level of risk associated with them. For example, this power could be used to impose requirements relating to the conditions (e.g. relating to hygiene) under which procedures may be being carried out. Alternatively, the power could be used to restrict the provision of certain procedures to particular groups if it emerged that a new procedure could put the health of a particular group of people at risk (e.g. pregnant women or people with a particular health condition etc).

51. Paragraphs (b) and (c) refer to the specification of who may provide or supervise the provision of non-surgical procedures, and the training or qualifications to be obtained by those persons. Any exercise of this power to provide that only certain persons may provide, or supervise the provision of, non-surgical procedures will take account of the existing legislation about who may administer a prescription only medicine under the Medicines Act 1968 and the Human Medicines Regulations 2012 (S.I. 2012/1916) (see regulation 214(2) of the 2012 Regulations) which is a reserved matter under Section J4 of Part 2 of schedule 5 of the Scotland Act 1998 (medicines, medical supplies and poisons).

52. Paragraph (d) refers to the conferral of functions in relation to the enforcement of any restrictions and requirements relating to the provision of non-surgical procedures that are imposed by the regulations.

53. Paragraph (e) refers to the regulations making provision to require providers to carry out and document pre-procedure assessments of relevant medical history and, where factors are identified that may increase the risk of harm, ensure that enhanced informed consent procedures are followed.

54. Subsection (4) provides that the regulations may make different provision according to individual client risk factors, including risk factors based on the client's medical history, anatomical considerations or mental health.

55. Subsection (2) provides that these regulations may modify any enactment (including the Act). The regulations may also create an offence in connection with a restriction or requirement imposed by the regulations. For example, the regulations could provide that a person commits an offence if the person provides a non-surgical procedure without having obtained certain qualifications. The penalty for any offence created under the regulations is limited by subsection (5), which provides for a maximum penalty on summary conviction of a fine not exceeding £20,000 or to an unlimited fine on conviction on indictment. In addition, if the power is used to create new offences, it may be desirable to amend this Act so that the regulation of the provision of non-surgical procedures is set out in one place rather than in separate regulations.

56. Subsection (6) requires the Scottish Ministers to lay draft regulations specifying the persons who may provide (or supervise the provision of) non-surgical procedures and the training or qualification requirements for people providing (or supervising the provision of) non-surgical procedures within three years of the coming into force of section 3 (offence of providing non-surgical procedure outwith permitted premises). If the Scottish Ministers consider that it is not practical to lay the regulations by that deadline, they must instead lay a report before the Scottish Parliament explaining why they are unable to lay the draft regulations by that deadline (see subsection (7)).

Sections 6 to 11: Enforcement powers

Section 6: Meaning of "authorised person"
57. Section 6(1) of the Act defines an "authorised person" as being a person authorised by HIS to exercise functions conferred on an authorised person under Part 1 of the Act.

58. Section 6(2) of the Act requires an authorised person to provide proof of authorisation when requested to do so. This duty is similar to that in regulation 8 of the Healthcare Improvement Scotland (Inspections) Regulations 2011 (S.S.I. 2011/184).

Section 7: Powers of entry, search and seizure
59. This section sets out the circumstances in which an authorised person may enter and search premises for the purpose of ascertaining whether or not an offence under section 2 or 3 of the Act has been or is being committed.

60. Firstly, the authorised person must have reasonable grounds to believe that either—

- an offence under section 2 or 3 of the Act has been or is being committed at the premises, or
- the premises have been or are being used in connection with an offence under section 2 or 3 of the Act.

61. An example of premises that are used in connection with an offence are premises that are a lock-up or store containing evidence such as paperwork, electronic devices, medicines or equipment which may provide information or evidence relating to an offence under section 2 or 3 of the Act.

62. Secondly, the authorised person must have authority due to permission having been given by the occupier or a warrant having been granted or, where the premises are not used as a dwelling, it appears to the authorised person that any delay would frustrate the purpose of exercising the powers.

63. Subsection (5) allows an authorised person to seize any thing found on the premises but only if the authorised person has reasonable cause to believe that it may provide evidence of the commission of an offence under section 2 or 3 of the Act.

64. Subsection (6) allows an authorised person to take onto or into any premises any other person or any equipment as may be necessary for the purposes of assisting the authorised person. For example, this could be a locksmith in order to gain access.

65. Subsection (7) requires the occupier of the premises to comply with any reasonable direction of the authorised person (including the provision of any information or assistance that is reasonably required by the authorised person) and section 11 creates an offence in connection with any failure to comply with such a direction or request for information.

66. Subsection (8) provides that an authorised person's powers under section 7 do not apply in relation to any premises that are used (or which HIS believes are being used) for the purpose of providing an independent health care service (as defined in section 10F(1) of the 1978 Act). This avoids duplication and overlap with HIS's existing powers of enforcement under Part 1 of the 1978 Act – see, in particular, section 10K(3) of that Act. Subsection (8) does not affect the powers of the police who retain their usual powers to enforce the offences in the Act.

Section 8: Restrictions on powers of entry, search and seizure

67. This section sets out restrictions on an authorised person's powers of entry, search and seizure.

68. Subsection (1) requires an authorised person to exercise the power of entry and search under section 7(1) at a reasonable time unless doing so would frustrate the purpose of exercising the power.

69. Under subsection (2), an authorised person must leave premises as effectively secured as the authorised person found them if the premises are unoccupied or the occupier of the premises is temporarily absent.

70. Subsections (3) and (4) provide that any thing seized by an authorised person, other than a perishable item that no longer has commercial value, must be returned when retention is no longer justified for the purpose of—

- enabling the item to be used in proceedings for an offence under section 2 or 3 of the Act (as evidence), or
- enabling it to be forfeited in accordance with Part 2 of the Proceeds of Crime (Scotland) Act 1995, which makes provision for property which has been used in crime to be forfeited.

Section 9: Conditions for issue of warrant

71. This section provides a means for an authorised person to obtain a warrant from a sheriff or justice of the peace to enter and search premises for the purpose of ascertaining whether or not an offence under section 2 or 3 has been or is being committed.

72. Before granting a warrant to enter and search premises under this section, the sheriff or justice of the peace must be satisfied that—

- there are reasonable grounds for believing that either an offence under section 2 or 3 of the Act has been or is being committed at the premises, or that the premises have been or are being used in connection with an offence under section 2 or 3 of the Act, and
- either—
- the authorised person has been refused entry to the premises (or a refusal may be reasonably expected), or notice of the intention to seek a warrant has been given to the occupier of the premises (or the giving of notice would frustrate the purpose for which the warrant is sought), or
- the premises are unoccupied, or the occupier of the premises is temporarily absent.

Section 10: Expiry of warrant

73. This section provides that a warrant that is granted under section 9 expires when it is no longer required for the purpose for which it is granted. That is, the warrant to enter and search the premises is no longer required for the purpose of ascertaining whether an offence under section 2 or 3 of the Act has been (or is being committed) at the premises, or whether the premises have been (or are being used) in connection with an offence under section 2 or 3 of the Act.

Section 11: Offence of obstructing an authorised person
74. This section makes it an offence to intentionally prevent or obstruct an authorised person from doing anything which the authorised person is authorised or entitled to do by virtue of the Act, or without reasonable excuse to fail to comply with a direction given, or a requirement made, under section 7(7) of the Act.

Sections 12 and 13: Enforcement of offences

Section 12: Penalties
75. This section sets out the penalties for the offences in the Act.

76. It provides that a person convicted of an offence under section 2, 3 or 11 is liable—

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

Section 13: Individual culpability where offending by an organisation
77. This section provides that where an offence is committed under the Act (section 2, 3 or 11) by a "relevant organisation" (as defined in subsection (3)), and committed either with the consent or the connivance of a "responsible individual" (as defined in subsection (3)), or because of neglect by such an individual, that individual, as well as the organisation, commits the offence in question.

Section 14: UK internal market: power to establish individual assessment process

78. This section contains a regulation-making power which allows the Scottish Ministers to establish one or more individual assessment processes to which section 26 of the United Kingdom Internal Market Act 2020 ("the 2020 Act") applies.

79. Section 26 of the 2020 Act 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 qualification or experience which may be set out by one part of the UK.

80. Under an individual assessment process established under section 14 of the Act, individuals may apply for approval to provide (or supervise the provision of) non-surgical procedures or licensed procedures i.e. the lower risk non-surgical procedures which are specified in the Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 (S.S.I. 2026/87) which introduces a local authority licensing scheme.

81. When established, this process will give individuals the opportunity to apply to have their level of training or qualifications recognised as equivalent to any standard established in Scotland. This would allow them to provide non-surgical procedures (or licensed procedures) to which that standard relates.

82. Regulations made under this section 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 establish 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. This scale is set out in section 225 of the Criminal Procedure (Scotland) Act 1995 and, as at May 2026, level 5 on the scale is set at £5,000.

83. Section 22(5) provides for the parliamentary procedure for this regulation-making power. 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 is subject to the affirmative procedure together with a consultation requirement (see section below in relation to section 23). Thereafter, it is anticipated that the changes made to the process by regulations will be more minor and technical in nature. Subsequent regulations made using this power will be subject to the negative procedure.

Section 15: Minor and consequential modifications of the 1978 Act

84. Section 15 introduces schedule 2 of the Act, which makes minor and consequential modifications of the 1978 Act in relation to the provision of non-surgical procedures.

85. At present, section 10A of the 1978 Act sets out that that HIS—

- is to exercise the functions conferred on it by virtue of the 1978 Act and any other enactment (including the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 ("the 2021 Act")), and
- has the general duty of furthering improvement in the quality of health care, and of services provided under the 2021 Act.

86. Paragraph 2 of schedule 2 of the Act amends section 10A of the 1978 Act to make clear that HIS has functions under this Act and to expand HIS's general duty to furthering the improvement of the provision of non-surgical procedures.

87. Paragraph 3 of schedule 2 of the Act amends section 10S of the 1978 Act so that requirements of regulations made under section 5 of the Act are "relevant requirements" for the purpose of section 10S(1) of the 1978 Act. That section allows HIS, after the expiry of the period specified in an improvement notice, to propose to cancel the registration of the independent health care service in question on the ground that the service is being, or has at any time been, carried on other than in accordance with the relevant requirements.

88. Paragraphs 4 and 5 add Part 1 of the Act to sections 76 and 77 of the 1978 Act so that inquiries and orders can be made in relation to HIS's functions with regard to the regulation of the provision of non-surgical procedures. This reflects the extension of HIS's role under the Act in relation to non-surgical procedures.

Section 17: Guidance about the provision of non-surgical procedures

89. This section imposes a duty on the Scottish Ministers to issue guidance about the provision of non-surgical procedures. The guidance may include information relating to the requirements imposed under Part 1 of the Act and the steps to be taken by providers of these procedures to comply with those requirements (see subsection (2)). The Scottish Ministers must publish their guidance issued under this section and they may revise or revoke the guidance (see subsection (3)).

Section 18: Review of Part 1

90. This section requires the Scottish Ministers to carry out a review of both the inclusion of the procedures specified in schedule 1 of the Act, and the operation of Part 1 of the Act. The Scottish Ministers must also prepare a report on the review and publish the report. Each of these things must be done within five years of the coming into force of section 3 (offence of providing a non-surgical procedure outwith permitted premises).

91. Subsection (2) allows the Scottish Ministers to delegate these functions of carrying out the review, and preparing and publishing a report on it, to another person.

92. The review must include an assessment of the impact of Part 1 of the Act on businesses and the enforcement of the requirements imposed under Part 1 of the Act (together with other appropriate matters) (see subsection (3)).

93. HIS, the Chief Constable of Police Scotland and other appropriate persons must be consulted in relation to the review (see subsection (4)) and the Scottish Ministers must lay the report on the review before the Scottish Parliament (see subsection (5)).

Part 2: Certification of death and authorisation of cremation or hydrolysis

Section 19: Certification of death

94. This section amends sections 4 (application for review of certificate by interested person) and 8 (review of medical certificates of cause of death) of the Certification of Death (Scotland) Act 2011 ("the 2011 Act").

95. Section 4(1) of the 2011 Act allows an interested person (see section 4(5) of the 2011 Act for the meaning of that term) to apply to a medical reviewer for a review of an eligible medical certificate of cause of death. Under section 8(1)(b) of the 2011 Act, a medical reviewer must review any certificate in respect of which an application has been made under section 4(1) of the 2011 Act. Section 4(6) of the 2011 Act defines "eligible medical certificate of cause of death" as excluding certain certificates.

Certificate that has been referred under section 24A of the 1965 Act
96. Section 4(6)(b) of the 2011 Act excludes from the definition of "eligible medical certificate of cause of death" a certificate that has been referred under section 24A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 ("the 1965 Act"). Section 24A of the 1965 Act—

- requires the Registrar General to refer randomly selected certificates (subsection (1)),
- requires the Registrar General to refer certificates requested by medical reviewers (subsection (2)), and
- allows a district registrar for a registration district to refer a certificate where the district registrar considers it appropriate to do so (subsection (3)).

97. Section 19(2)(c) of the Act removes paragraph (b) of section 4(6) of the 2011 Act. The effect is that certificates that have been subjected to a review following referral under section 24A of the 1965 Act count as an eligible medical certificate of cause of death. Therefore, the certificate can subsequently be subject to review on an application by an interested person.

Certificate that has been, or is being, reviewed under section 8(1) of the 2011 Act
98. Section 4(6)(c) of the 2011 Act excludes from the definition of "eligible medical certificate of cause of death" a certificate that has already been, or is being, reviewed under section 8(1) of the 2011 Act following an application made by an interested person under section 4(1) of the 2011 Act.

99. Section 19(2)(c) of the Act removes paragraph (c) of section 4(6) of the 2011 Act so that more than one review can be carried out under section 4 of the 2011 Act. This may be considered appropriate by a medical reviewer, for example, where new evidence has come to light.

Medical reviewers' power to reject application for review
100. Section 4(3) of the 2011 Act allows a medical reviewer to reject an application for a review of an eligible medical certificate of cause of death under section 4(1) of the 2011 Act where the medical reviewer considers the application to be vexatious.

101. Section 19(2)(a) and (3) of the Act expand a medical reviewer's discretion to reject an application so that the medical reviewer may reject an application if the medical reviewer—

- considers the application to be identical to, or substantially the same as, an application relating to a certificate that has been or is being reviewed under section 8(1)(b) of the 2011 Act, or
- considers it otherwise appropriate to do so.

102. Section 19(2)(b) of the Act inserts new subsection (3A) into section 4 of the 2011 Act. This new subsection requires a medical reviewer who rejects an application to give the applicant the reason for the rejection.

Section 20: Authorisation of cremation or hydrolysis

103. This section amends section 18 of the 2011 Act (medical reviewers to authorise cremation or hydrolysis).

104. Section 18 of the 2011 Act applies where a person ("A") dies outwith Scotland and it is intended that A is to be cremated or hydrolysed in Scotland. In those circumstances, a medical reviewer must – on an application by a person who wishes to arrange the cremation or hydrolysis of A – determine whether it is safe for A's body to be cremated or hydrolysed.

105. Section 20 of the Act amends section 18 of the 2011 Act so that section 18 applies where A dies outwith the United Kingdom and it is intended that A be cremated or hydrolysed in Scotland.

106. Section 20 of the Act also amends subsection (1)(b) of section 14 of the 2011 Act (power to require documents), to reflect the change to section 18 of that Act.

Part 3: General provisions

Section 21: Ancillary provision

107. This section empowers the Scottish Ministers, by regulations, to make various types of ancillary provision (incidental, supplementary, consequential, transitional, transitory or saving provision) for the purposes of, in connection with, or to give full effect to the Act or any provision made under it.

108. Regulations under section 21 may modify any enactment (including this Act). The word "enactment" is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 and includes Acts of the Scottish or UK Parliaments, as well as secondary legislation.

109. If regulations under section 21 textually amend an Act then they are subject to the affirmative procedure, but otherwise they are subject to the negative procedure (see section 22(2) of this Act and sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 22: Regulation-making powers

110. This section makes further provision about the regulation-making powers given to the Scottish Ministers under this Act. In particular—

- it allows regulations to make different provision for different purposes and different provision for different areas,
- it sets out the parliamentary procedure to which each regulation-making power is subject (i.e. the negative or the affirmative procedure – see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 23: Regulations subject to the affirmative procedure: consultation

111. This section requires the Scottish Ministers to consult such persons, or groups of persons, as they consider appropriate where they propose to make any regulations that are subject to the affirmative procedure, that is—

- section 1(5) (power to amend list of procedures in schedule 1),
- section 4(3) (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 14(1) (power to create one or more individual assessment processes to which section 26 of the 2020 Act applies),
- section 21 (ancillary power) where the regulations add to, replace or omit any part of the text of an Act.

Section 24: Commencement

112. This section sets out when the provisions of the Act will come into force (i.e. take effect).

113. The final sections, including the commencement section, will come into force automatically on the day after the Bill for the Act receives Royal Assent. The other provisions will be commenced in accordance with regulations made by the Scottish Ministers under this section. Except that the Scottish Ministers may not bring section 3 (offence of providing a non-surgical procedure outwith permitted premises) into force before 6 September 2027 (see subsection (4)) which is the date on which the licensing regime under the Civic Government (Scotland) Act 1982 (Licensing of Non-surgical Procedures) Order 2026 (S.S.I. 2026/87) is due to come into force.

114. Regulations under this section may make transitional, transitory or saving provision (see subsection (3)). Regulations under this section will, unless exercised in conjunction with powers under other sections, be laid before the Scottish Parliament but will not be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010).

Section 25: Short title

115. This section gives the Act its short title (being the name by which it may be formally cited). The short title of the Act is the Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Act 2026.

NOTE ON INTERPRETATION

116. The text of the Act itself is to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010. Among other things, this provides default definitions for certain expressions (such as "person").

117. The amendments of the 1978 Act will be interpreted in accordance with the Interpretation Act 1978.

CROWN APPLICATION

118. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. This Act applies to the Crown in the same way as it applies to everyone else.

PARLIAMENTARY HISTORY

119. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	Reference
Bill as introduced	SP Bill 77 Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [as introduced] Session 6 (2025)
Explanatory Notes	SP Bill 77 Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [explanatory notes] Session 6 (2025)

Proceedings and reports	**Reference**
Policy Memorandum	SP Bill 77 Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [policy memorandum] Session 6 (2025)
Financial Memorandum	SP Bill 77 Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [financial memorandum] Session 6 (2025)
Delegated Powers Memorandum	SP Bill 77 Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [delegated powers memorandum] Session 6 (2025)
Stage 1	
Health, Social Care and Sport Committee, 7 October 2025	SP OR Health, Social Care and Sport Committee 7 October 2025
Delegated Powers and Law Reform Committee, 28 October 2025	SP OR Delegated Powers and Law Reform Committee 28 October 2025
Delegated Powers and Law Reform Committee, 25 November 2025	SP OR Delegated Powers and Law Reform Committee 25 November 2025
Health, Social Care and Sport Committee, 2 December 2025	SP OR Health, Social Care and Sport Committee 2 December 2025
Health, Social Care and Sport Committee, 9 December 2025	SP OR Health, Social Care and Sport Committee 9 December 2025
Delegated Powers and Law Reform Committee, 9 December 2025	SP OR Delegated Powers and Law Reform Committee 9 December 2025
Delegated Powers and Law Reform Committee report	Delegated Powers and Law Reform Committee 91st report, 2025, Delegated Powers in the Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill at Stage 1 (SPP 931)
Health, Social Care and Sport Committee, 16 December 2025	SP OR Health, Social Care and Sport Committee 16 December 2025
Health, Social Care and Sport Committee report	Health, Social Care and Sport Committee 2nd report, 2026, Stage 1 report: Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill (SPP 976)
Chamber, 5 February 2026	SP OR 5 February 2026
Stage 2	
Marshalled List of Amendments for Stage 2	SP Bill 77 Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [marshalled list of amendments for stage 2] Session 6 (2026)

Proceedings and reports	**Reference**
Costed Groupings of Amendments for Stage 2	SP Bill 77 Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [costed groupings of amendments for stage 2] Session 6 (2026)
Health, Social Care and Sport Committee, 24 February 2026	SP OR Health, Social Care and Sport Committee 24 February 2026
Bill as amended at Stage 2	SP Bill 77A Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [as amended at Stage 2] Session 6 (2026)
Supplementary Financial Memorandum	SP Bill 77A Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [supplementary financial memorandum] Session 6 (2026)
Supplementary Delegated Powers Memorandum	SP Bill 77A Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [supplementary delegated powers memorandum] Session 6 (2026)
Delegated Powers and Law Reform Committee report	Delegated Powers and Law Reform Committee 29th report, 2026, Delegated powers in the Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill (as amended at Stage 2) (SPP 1058)
Revised Explanatory Notes	SP Bill 77A Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [revised explanatory notes] Session 6 (2026)
Stage 3	
Marshalled List of Amendments for Stage 3	SP Bill 77A Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [marshalled list of amendments for stage 3] Session 6 (2026)
Timed Groupings of Amendments for Stage 3	SP Bill 77A Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [timed groupings of amendments for stage 3] Session 6 (2026)
Chamber, 17 March 2026	SP OR 17 March 2026
Bill as passed	SP Bill 77B Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill [as passed] Session 6 (2026)
Post passage	
Royal Assent, 12 May 2026	2026 asp 13

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