



## Briefing for the Public Petitions Committee

**Petition Number:** [PE1552](#)

**Main Petitioner:** Peter Campbell

**Subject:** Choice of treatments for cancer

Calls on the Parliament to urge the Scottish Government to reform cancer treatment to ensure there is a choice of treatments including electromedicine.

### Background

#### *What is Electromedicine?*

Electromedicine is a broad term which generally refers to the application of electrical currents to the body in order to treat various medical conditions. Electromedical devices are already used in medicine and examples include heart pacemakers, cochlear implants, vagal nerve stimulation, TENS machines and electro convulsive therapy (ECT).

#### *What choice do patients have over the treatment they receive?*

Patients have a right to be involved in decisions about their treatment and to be given information to help choose the correct treatment for them. Such practice is seen as central to producing informed consent, the necessity of which is well established in common law. Patients also have the right to refuse a treatment and this too is recognised in common law. Implementing a treatment without informed consent or against the patient's wishes could constitute an assault.

However, in relation to choosing to have a particular treatment, a patient's rights are less absolute and must be weighed against other considerations, for example, the evidence base on the clinical and cost effectiveness of a treatment.

The [Patient Rights \(Scotland\) Act 2011](#) set out the following specific rights for patients:

“s3(2) Health care is to—

- (a) be patient focused: that is to say, anything done in relation to the patient must take into account the patient's needs,
- (b) have regard to the importance of providing the optimum benefit to the patient's health and wellbeing,
- (c) allow and encourage the patient to participate as fully as possible in decisions relating to the patient's health and wellbeing,
- (d) have regard to the importance of providing such information and support as is necessary to enable the patient to participate in accordance with paragraph (c) and in relation to any related processes, taking all reasonable steps to ensure that the patient is supplied with information and support in a form that is appropriate to the patient's needs."

These provisions recognise the importance of encouraging a patient's involvement in their treatment and respecting their wishes. However, the Act qualifies these rights with other provisions (s4) which state that the rights of other patients must be taken in to account, that the healthcare must be proportionate and appropriate to the circumstances of each case and that nothing in the Act prejudices the exercising of clinical judgment and the effective and efficient use of health service resources.

#### *The use of electromedicine in cancer treatment*

The NHS does not have a position on the use of electromedicine in cancer generally. This is because each device would be assessed on its own merits before it would be considered suitable for clinical use in the NHS. As mentioned previously, a number of examples of devices that would be considered 'electromedicine' are already commonly used and some types of electromagnetic energy are used in standard cancer treatment. These methods include X-rays and radiation therapy as well as radiofrequency ablation and microwave ablation, which help destroy tumors.

#### *How do medical devices become available for use in the NHS in Scotland?*

The regulation of medical devices is a matter reserved to the UK Parliament and is governed under a number of European Directives<sup>1</sup>. In order to be used in the NHS, a medical device must be licensed by the European Medicines Agency (EMA) or the Medicines and Healthcare Products Regulatory Agency (MHRA). The Directives impose a range of requirements that devices must meet before being placed on the market. Essential requirements include matters such as the safety and performance of the device. If granted a

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<sup>1</sup> Medical Devices Directive [93/42/EEC](#); Active Implantable Medical Devices Directive [90/385/EEC](#); *In Vitro* Diagnostic Medical Devices Directive [98/79/EEC](#)

license, the manufacturer can affix the 'CE' mark to the device to certify that the product meets the requirements of the relevant directive(s).

Whether a medical device can be used in the NHS in Scotland is a devolved matter. The NHS in Scotland does not systematically assess all medical devices. However, the [Scottish Health Technologies Group](#) (part of Healthcare Improvement Scotland) provides advice on the evidence of the clinical and cost effectiveness of existing and new technologies likely to have significant implications for patient care in Scotland. Anyone can suggest a topic for the SHTG to review so long as it meets certain [criteria](#).

Healthcare Improvement Scotland also advises on the applicability to Scotland of guidance published by the National Institute for Health and Care Excellence (NICE) in England. NICE issues guidance in five areas which may be relevant to the types of medical devices mentioned by the petitioner:

1. Multiple Technology Appraisals
2. Single Technology Appraisals
3. Interventional Procedures
4. Diagnostics Guidance
5. Medical Technologies Guidance

Regardless of the existence or otherwise of guidance, clinicians can use a medical device if they think it is warranted. Clinical practice is guided by the general principles outlined by the General Medical Council as well as the availability of specific clinical guidelines (e.g. SIGN guidelines). The GMC guidance on 'Good Clinical Care' states that in providing care, a doctor must, "provide effective treatments based on the best available evidence"<sup>2</sup>. Doctors are also expected to keep their knowledge and skills up to date, and to be familiar with relevant guidelines and developments that affect their work.

### **Scottish Government Action**

The Scottish Government introduced the Patient Rights (Scotland) Bill which contained a specific right for patients to be involved in decisions affecting their health and wellbeing.

The Scottish Government also published "[Better Cancer Care: An Action Plan](#)" in 2008. This includes a section on treatment which discusses the adoption of new techniques for treating cancer. Within this it states that there are few clear mechanisms for horizon scanning new techniques and technologies which may be used in diagnosis or treatment and so, "their introduction can be irregular with no coherent assessment of effectiveness once they have been adopted". The action plan went on to commit to "work[ing] with NHS Boards and other stakeholders to further develop improved mechanisms for the assessment and introduction of new techniques and technologies".

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<sup>2</sup> General Medical Council (Online) Good Medical Practice

## **Scottish Parliament Action**

On 24 February 2011, the Scottish Parliament passed the Patient Rights (Scotland) Act 2011 which contains the provisions relating to patient involvement in their treatment.

In addition, both the Public Petitions Committee and the Health and Sport Committee have discussed access to new medicines as well as the regulation of medical devices. However, neither Committee has looked specifically at access to new medical devices.

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**25<sup>th</sup> February 2015**

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