

Easy guide to responding to the Joint Consultation on the statutory regulation of practitioners of acupuncture and herbal medicine

About the consultation

This public consultation – which will close Monday 2nd November 2009 – will determine how practitioners of acupuncture, herbal medicine and traditional Chinese medicine will operate for the foreseeable future. Herbal medicine includes Western herbal medicine, Ayurveda and other traditional medicine systems.

It is tremendously important for two reasons.

First, we believe that statutory regulation is essential to protect the public from ill-trained or disreputable practitioners. No such protection currently exists.

There has been clear advice that statutory regulation is the best way forward from the Department of Health's own Steering Groups, the House of Lords' Science and Technology Committee and the Health Professions Council, the likely regulator. The Medicines and Healthcare products Regulatory Agency (MHRA) strategy for herbal medicine depends on statutory regulation. Nevertheless the government is now considering alternatives. These include no regulation at all or a licensing scheme based on the model employed by the Security Industry Authority to control the activities of wheel clampers, bouncers and security guards.

In our view, none of the proposed alternatives will provide the level of public protection necessary in respect of healthcare. Acupuncturists and medical herbalists – including practitioners of traditional Chinese medicine and Ayurveda – offer diagnosis and treatment to their patients. That merits full statutory regulation.

The second reason the consultation is important is the impact on herbal medicine if practitioners are *not* statutorily regulated. From 2011 when the EU Directive on Traditional Herbal Medicinal Products is fully implemented, many herbal medicines will be withdrawn from general sale. They will be available only from authorised, statutorily regulated professionals. If statutory regulation is refused now, we fear the practice of herbal medicine will be severely curtailed, many practitioners will go out of business and patient choice will be substantially limited. There is also a danger that it will go underground and that more people will access restricted herbal products via dubious mail order and internet retailers. There have already been many cases of so-called herbal medicines that contain substituted ingredients, undeclared pharmaceutical products or toxic heavy metals. Failure to introduce full statutory regulation will almost certainly increase the risk to public health.

How to respond

You can access an on-line questionnaire at:

http://www.info.doh.gov.uk/questionnaire/ahmtcm_consultion.nsf

There are twenty four questions, mostly rather complex, so if you prefer you can write with your views to the consultation team at: Department of Health, Room 2N09, Quarry House, LEEDS LS2 7UE, email: consultations.co-ordinator@dh.gsi.gov.uk

You can also write to your MP, even after the consultation has closed. You can find your MP and his or her email address here:

http://www.parliament.uk/mps/lords-and-offices/mps_and_lords/alcm.cfm#N

There are two relevant official documents you might want to read. Both have been written for experts so patients might find them hard going.

The Department of Health Steering Group Report concluded: “. . . *there is an urgent need to proceed without delay to statutory regulation of practitioners of acupuncture, herbal medicine, traditional Chinese medicine and other traditional medicine systems.*” The full report is available on the Department of Health website at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_086359

The consultation document considers a range of alternatives to statutory regulation. It can be found here:

http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_103567

Answering the consultation questions

Below we suggest some possible answers to the consultation questions. Please feel free to copy these, add to them or amend them in any way you wish.

Question 1

What evidence is there of harm to the public currently as a result of the activities of acupuncturists, herbalists and traditional Chinese medical practitioners? What is its likelihood and severity?

Experts agree that there is evidence of harm. These include the Medicines and Healthcare products Regulatory Agency (MHRA), the House of Lords' Select Committee for Science and Technology and the Department of Health's own Steering Group. I support their conclusions.

Question 2

Would this harm be lessened by statutory regulation? If so, how?

Only properly trained and qualified practitioners would be allowed to practise as acupuncturists or herbal medicine practitioners.

Question 3

What do you envisage would be the benefits to the public, to practitioners, and to businesses, associated with introducing statutory regulation?

It would be straightforward for members of the public to identify reputable practitioners.

Statutory regulation would also allow herbal medicine practitioners to continue to supply pre-prepared and manufactured herbal products as they now do. That will not be the case if herbalists are **not** statutorily regulated.

Question 4

What do you envisage would be the regulatory burden and financial costs, to the public, to practitioners, and to businesses, associated with introducing statutory regulation? Are these costs justified by the benefits and are they proportionate to the risks? If so, in what way?

This question requires expert knowledge and is impossible for a member of the public to answer.

Question 5

If herbal and TCM practitioners are subject to statutory regulation, should the right to prepare and commission unlicensed herbal medicines be restricted to statutorily regulated practitioners?

Yes

Question 6

If herbal and TCM practitioners are *not* statutorily regulated, how (if at all) should unlicensed herbal medicines prepared or commissioned by these practitioners be regulated?

Only statutory regulation of practitioners will allow proper regulation of herbal medicines. No other system is adequate.

Question 7

What would be the effect on the public, practitioners and businesses if, in order to comply with the requirements of European medicines legislation, practitioners were unable to supply manufactured unlicensed herbal medicines commissioned from a third party, after 2011?

The public would lose access to these herbal medicines. That would unnecessarily and unfairly limit patient and consumer choice.

Question 8

How might the risk of harm to the public be reduced other than by statutory professional self-regulation? For example, by voluntary self-regulation underpinned by consumer protection legislation and by greater public awareness, by accreditation of voluntary registration bodies, or by a statutory or voluntary licensing regime?

There are no alternatives that would provide the same level of protection against risk of harm as statutory regulation of practitioners.

Question 9

What would you estimate would be the regulatory burden and financial costs, to the public, to practitioners, and to businesses, for the alternatives to statutory regulation suggested at Question 8?

This question requires expert knowledge. I cannot answer it.

Question 10

What would you envisage would be the benefits to the public, to practitioners, and to businesses, for the alternatives to statutory regulation outlined at Question 8?

There would not be any benefits equivalent to the benefits of statutory regulation of practitioners.

Question 11

If you feel that not all three practitioner groups justify statutory regulation, which group(s) does/do not and please give your reasons why/why not?

All three (practitioners of acupuncture, herbal medicine and traditional Chinese medicine) justify statutory regulation.

Question 12

Would it be helpful to the public for these practitioners to be regulated in a way which differentiates them from the regulatory regime for mainstream professions publicly perceived as having an evidence base of clinical effectiveness? If so, why? If not, why not?

No, it would not be helpful to the public. Healthcare is healthcare, no matter who provides it.

Question 13

Given the Government's commitment to reducing the overall burden of unnecessary statutory regulation, can you suggest which areas of healthcare practice present sufficiently low risk so that they could be regulated in a different, less burdensome way or de-regulated, if a decision is made to statutorily regulate acupuncturists, herbalists and traditional Chinese medicine practitioners ?

Don't know. This question requires expert knowledge.

Question 14

If there were to be statutory regulation, should the Health Professions Council (HPC) regulate all three professions? If not, which one(s) should the HPC not regulate?

The HPC should regulate all three.

Question 15

If there were to be statutory regulation, should the Health Professions Council or the General Pharmaceutical Council/Pharmaceutical Society of Northern Ireland regulate herbal medicine and traditional Chinese medicine practitioners?

The HPC should regulate herbal medicine and traditional Chinese medicine.

Question 16

If neither, who should and why?

See answer to questions 14 and 15.

Question 17

- a) **Should acupuncture be subject to a different form of regulation from that for herbalism and traditional Chinese medicine? If so, what?**
- b) **Can acupuncture be adequately regulated through local means, for example through Health and Safety legislation, Trading Standards legislation and Local Authority licensing?**

No, it should not.

No, it cannot be adequately regulated through local means.

Question 18

- a) **Should the titles "acupuncturist", "herbalist" and "[traditional] Chinese medicine practitioner" be protected?**
- b) **If your answer is "No", which ones do you consider should not be legally protected?**

Yes

Question 19

Should a new model of regulation be tested where it is the *functions* of acupuncture, herbal medicine and TCM that are protected, rather than the *titles* of acupuncturist, herbalist or Chinese medicine practitioner?

No, a new model would be unhelpful and unnecessary. The titles should be protected.

Question 20

If statutory professional self-regulation is progressed, with a model of protection of title, do you agree with the proposals for "grandparenting" set out in the Pittilo report?

I do not understand what this means. It would require expert knowledge to answer this question.

Question 21

In the event of a decision that statutory or voluntary regulation is needed, do you agree that all practitioners should be able to achieve an English language IELTS score of 6.5 or above in order to register in the UK?

Yes.

Question 22

Could practitioners demonstrate compliance with regulatory requirements and communicate effectively with regulators, the public and other healthcare professionals if they do not achieve the standard of English language competence normally required for UK registration? What additional costs would occur for both practitioners and regulatory authorities in this case?

No, they could not. I do not know what the costs might be.

Question 23

What would the impact be on the public, practitioners and businesses (financial and regulatory burden) if practitioners unable to achieve an English language IELTS score of 6.5 or above are unable to register in the UK?

Practitioners who could not communicate in English would not be allowed to practise.

Question 24

Are there any other matters you wish to draw to our attention

[This is your opportunity to say whatever you like about regulation.]