

# SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005

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## EXPLANATORY NOTES

### THE ACT

#### **Part 2: General Dental Services, General Ophthalmic Services and Personal Dental Services**

##### *Section 11 – Detection of vision problems in children*

34. [Section 11](#) makes provision in relation to the detection of vision problems in children. It does so by placing a duty on Scottish Ministers, inserted at section 38B of the National Health Service (Scotland) Act 1978, to provide for the detection of vision problems in children, to such an extent as they consider necessary to meet all reasonable requirements.

##### *Section 12 – Free oral health assessments and dental examinations*

35. The provisions discussed in paragraphs 35 to 38 introduce free oral health assessments and dental examinations for all. In subsection (2) of section 70A of the National Health Service (Scotland) Act 1978 new wording is substituted, creating new paragraphs (a) and (b). Subsection (2) defines the dental treatment provided in accordance with section 17C arrangements for which regulations made under subsection (1) may prescribe the manner of making and recovering patient charges. New paragraph (a) excludes oral health assessments and dental examinations undertaken on or after 1 April 2006 from that definition.
36. In subsection (1) of section 71 of the 1978 Act, a new paragraph (a) is inserted. This excludes oral health assessments and dental examinations undertaken on or after 1 April 2006 from the Part II general dental services for which regulations may provide for the making of charges.
37. In subsection (2) of section 71 of the 1978 Act, new wording is substituted. This again excludes oral health assessments and dental examinations made on or after 1 April 2006 from the prescribed special dental treatment provided under general dental services for which regulations may provide for the making of charges.
38. In subsection (1) of section 20 of the National Health Service (Primary Care) Act 1997, new wording is substituted creating new paragraphs (a) and (b). New paragraph (a) replaces subsection (2) of section 20 which is repealed. Section 20 empowers regulations to be made to prescribe the manner of making and recovering patient charges for personal dental services under a pilot scheme. New paragraph (b) excludes oral health assessments and dental examinations undertaken on or after 1 April 2006 from these powers.

### ***Section 13 – Free eye examinations and sight tests***

39. **Section 13** makes provision in relation to free eye examinations and sight tests. It does so by extending the meaning of general ophthalmic services, the provision of which must be secured under section 26 of the 1978 Act. At present, general ophthalmic services to be provided free of charge are limited to the testing of sight, which would determine whether or not a person requires an optical appliance (e.g. spectacles), of certain categories of person. This section extends the duty in section 26(1) of the 1978 Act both to include eye examinations, tailored to meet the needs of the individual patient and which may, or may not, include a sight test, and to apply to all.
40. In subsection (1) of section 26 of the 1978 Act, new wording is substituted in order to provide that Health Boards are placed under a duty to make arrangements with ophthalmic opticians and ophthalmic medical practitioners for the carrying out of eye examinations which will include the testing of the patient's sight where this is considered necessary in the clinical opinion of the ophthalmic optician or medical practitioner who is undertaking the eye examination.
41. Subsections (1A) to (1E) of section 26 of the 1978 Act are repealed. These set out the categories of patient who are currently entitled to have their sight tested free of charge under general ophthalmic services and are therefore otiose.
42. Sub-paragraph (3)(a) of paragraph 2A of Schedule 11 to the 1978 Act is repealed. This provides for Scottish Ministers or a Health Board to contribute towards the cost of sight tests for those persons whose income/capital does not exceed their requirements as calculated in accordance with regulations but falls within the regulatory parameters for help with costs.

### ***Section 14 – Charges for certain dental appliances and general dental services***

43. In section 70 of the 1978 Act, new wording is substituted in order to provide, by regulations, more flexibility for the way in which dental charges are made or recovered. In section 70, wording is expanded to add the category of dental appliances to allow for more flexibility in the charging system. Section 70(1A) is repealed as dental appliances are now included in subsection 1. Similarly, in section 70(2) the reference to subsection (1A), is amended to refer to subsection (1).
44. In section 70A(2) new wording is substituted to take account of the repeal of section 70 subsection (1A) and to refer to section 70(1) for the making and recovery of charges for dental appliances.
45. In section 71 of the 1978 Act new wording is substituted to reflect that section 71A is repealed.
46. In paragraph 2 of schedule 11 of the 1978 Act new wording is substituted. A new sub-paragraph (1A) is introduced to provide by regulations charges for dental appliances which are defined as dentures, bridges, crowns and orthodontic appliances. The wording in sub-paragraph (2) (a) is also amended to include dental appliance. In sub-paragraph 3 the reference to section 1A is repealed and the wording in sub-paragraph (4) is amended to reflect that section 70(1A) is repealed.

### ***Section 15 – Arrangements for provision of general dental services***

47. In section 25 of the 1978 Act, new wording is substituted to expand the categories of persons with whom Health Boards can make arrangements for the provision of dental services. In subsection (1), new wording is substituted to allow arrangements to be made with bodies corporate as defined in section 43 of the Dentists Act 1984 (the 1984 Act).

***Section 16 – Assistance and support: general dental services***

48. After section 28C of the 1978 Act a new section 28D is inserted to enable a Health Board to provide assistance, including financial assistance, to providers of general dental services in a way that the Board thinks fit.
49. A new subsection (1) is introduced which enables a Health Board to provide assistance and support to any person providing, or proposing to provide, general dental services under section 25 of the 1978 Act.
50. New subsection (2) enables the Health Board to provide such assistance and support in a way that it thinks fit, and new subsection (3) enables the assistance to include financial assistance.

***Section 17 – Lists of persons undertaking to provide or approved to assist in the provision of general dental services***

51. A new subsection (2) is substituted in section 25 of the 1978 Act for the existing subsection (2). The new subsection (2) provides a regulation-making power as to arrangements for the provision of general dental services (GDS).
52. The regulations as to arrangements shall provide for the listing of those who are approved to assist in the provision of GDS in the area of the Health Board for the first time. The subsection sets out those persons who will be listed on each part of a list to be prepared, maintained and published by each Health Board. Under paragraph (a), those persons who have undertaken to provide GDS will be named on the first part of the list. The second part will include those persons who are approved by the Health Board to assist in the provision of GDS and this is provided for in paragraph (b).
53. A new subsection (2A) is substituted for existing subsection (2A) of section 25. Paragraphs (a) to (j) of subsection (2A) set out issues that may be included in the regulations as to the preparation, maintenance and publication of the list.
54. Paragraph (a) provides that the first or second part of the list or both parts may be divided into further sub-parts to enable different categories of persons undertaking to provide or assisting with the provision of GDS to be distinguished as necessary – for example, those who provide domiciliary visits to nursing homes and similar establishments.
55. Paragraphs (b) to (j) provide that the regulation making powers may include provision as to: eligibility and applications for inclusion in a list; the grounds on which an application must be granted or refused, or a removal made and the consequences of removal; requirements with which a person included in a list must comply; circumstances in which a listed person may not withdraw from that list; the grounds under which a Health Board may suspend a person from its list; provision as to payments while subject to suspension by a Health Board; and disclosure of information about applications, refusal of applications, or suspensions, removal or references to the Tribunal.
56. A new subsection (2B) is substituted for existing subsection (2B) of section 25. Under this, regulations may specify that a person who acts as practitioner in a Health Board area may not provide GDS unless named on the first part of the Board's list and a person who acts only as an assistant practitioner in a Health Board area may not assist with GDS provision unless named on the second part of the Board's list.

***Section 18 – Lists of persons performing personal dental services under section 17C arrangements or pilot schemes***

57. A new section 17F is inserted into the 1978 Act. This provides an enabling power so that regulations may be made to establish lists of persons performing personal dental services (PDS) under pilot schemes or section 17C arrangements, that is, permanent schemes.

58. New subsection (1) provides that no person may perform PDS in an area unless that person's name is included in a list maintained by the Health Board.
59. Paragraphs (a) to (j) of new subsection (2) set out issues that may be included in the regulations and provide that the regulation making powers may in particular include provision as to: the preparation, maintenance and publication of a list by a Health Board, eligibility and applications for inclusion in such a list; the grounds on which an application must be granted, or refused, or a removal made and the consequences of removal; requirements with which a person included in a list must comply; circumstances in which a listed person may not withdraw from that list; the grounds under which a Health Board may suspend a person from its list; provision as to payments while subject to suspension by a Board; and disclosure of information about applications, refusal of applications, or suspensions, removal or references to the Tribunal.

***Section 19 – Lists of persons undertaking to provide or approved to assist in the provision of general ophthalmic services***

60. A new subsection (2) is substituted in section 26 of the 1978 Act for the existing subsection (2). As with existing subsection (2) this provides a regulation-making power as to arrangements made by medical practitioners and ophthalmic opticians undertaking to provide general ophthalmic services (GOS). The regulations as to arrangements shall provide for the listing of those who are approved to assist in the provision of GOS in the area of the Health Board for the first time. Paragraph (a) sets out those persons who will be listed on each part of a list to be prepared, maintained and published by each Health Board. Under (2)(a)(i), ophthalmic contractors, i.e. those persons who undertake to provide GOS, will be named on the first part of the list. The second part will include those persons who are approved by the Board to assist in the provision of GOS and this is provided for in (2)(a)(ii).
61. A new, expanded subsection (2)(b) replaces the former subsection (2)(c). Regulations will also provide for the procedure by which patients will have a right to choose the person that examines their eyes as well as the person that tests their sight or gives a prescription. Previously, the right to choose related only to the person by whom a patient's sight would be tested or from whom any prescription could be obtained but the Act now proposes that GOS should include eye examinations.
62. A new subsection (2A) is inserted into section 26. Paragraphs (a) to (j) of subsection (2A) set out issues that may be included in the regulations as to the preparation, maintenance and publication of the list.
63. Paragraph (a) provides that the first or second part of the list or both parts may be divided into further sub-parts to enable different categories of persons undertaking to provide or assist with GOS provision to be distinguished as necessary – for example, those who provide domiciliary visits to nursing homes and similar establishments.
64. Paragraphs (b) to (j) provide that the regulating making powers may include: particular provision as to eligibility and applications for inclusion in a list; the grounds on which an application must be granted or refused or a removal made and the consequences of removal; requirements with which a person included in a list must comply; circumstances in which a listed person may not withdraw from that list; the grounds under which a Health Board may suspend a person from its list; provision as to payments while subject to suspension by a Board; and disclosure of information about applications, refusal of applications, or suspensions, removal or references to the Tribunal.
65. A new subsection (2B) is inserted into section 26 of the 1978 Act. Under this, regulations may provide that a person who acts as practitioner in a Health Board area may not provide GOS unless named on the first part of the Board's list and a person

*These notes relate to the Smoking, Health and Social Care (Scotland)  
Act 2005 (asp 13) which received Royal Assent on 5 August 2005*

who acts only as an assistant practitioner in a Health Board area may not assist with GOS provision unless named on the second part of the Board's list.