

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: Smoking, Health and Social Care (Scotland) Act 2005, Part 3 is up to date with all changes known to be in force on or before 13 May 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



# Smoking, Health and Social Care (Scotland) Act 2005

2005 asp 13

PROSPECTIVE

## PART 3

### PHARMACEUTICAL CARE SERVICES ETC.

#### **20 Health Boards' functions: provision and planning of pharmaceutical care services**

- (1) The 1978 Act is amended as follows.
- (2) After section 2C (functions of Health Boards: primary medical services), insert—

#### **“2CA “2CA Functions of Health Boards: pharmaceutical care services**

- (1) Every Health Board—
  - (a) must, to the extent that they consider necessary to meet all reasonable requirements, provide or secure the provision of pharmaceutical care services as respects the Board's area; and
  - (b) may, to such extent, provide or secure the provision of pharmaceutical care services as respects the area of another Health Board,and pharmaceutical care services provided, or the provision of which is secured, by a Health Board under or by virtue of this subsection may be performed outside their area.
- (2) For the purpose of securing the provision of pharmaceutical care services under subsection (1), a Health Board may make such arrangements for the provision of the services as they think fit (and may in particular make contractual arrangements with any person).

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** *Smoking, Health and Social Care (Scotland) Act 2005, Part 3 is up to date with all changes known to be in force on or before 13 May 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (3) A Health Board must publish information about such matters as may be prescribed in relation to the pharmaceutical care services provided under this Part.
- (4) Without prejudice to section 13, Health Boards must co-operate with one another in discharging their respective functions relating to the provision of pharmaceutical care services under this Part.
- (5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as pharmaceutical care services for the purposes of this Act.
- (6) Regulations under subsection (5) may in particular—
  - (a) classify services as services which are to be regarded as essential services or which are to be regarded as additional services;
  - (b) describe services by reference to the manner or circumstances in which they are provided;
  - (c) provide that pharmaceutical care services for the purposes of this Act include the provision, in circumstances specified in directions given by the Scottish Ministers, of drugs, medicines and appliances included in a list specified in such directions;
  - (d) describe services which involve the ordering of a drug, medicine or appliance included in such a list by reference to the description of person by whom the drug, medicine or appliance is ordered.
- (7) The Scottish Ministers must publish directions given by them under regulations under subsection (5) in the Drug Tariff or in such other manner as they consider appropriate.
- (8) Arrangements made under this Part by a Health Board for the provision of pharmaceutical care services may provide for such services to be performed outside Scotland.
- (9) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by an order under section 2(1)(a).

## **2CB 2CB Functions of Health Boards: planning of pharmaceutical care services**

- (1) Regulations may make provision requiring every Health Board, in accordance with the regulations, to—
  - (a) prepare a plan for the discharge of their duty under section 2CA(1);
  - (b) keep a plan prepared under paragraph (a) under review;
  - (c) prepare a revised plan; and
  - (d) without prejudice to section 2CA(3), publish a plan so prepared or revised.
- (2) Regulations under subsection (1) may in particular make provision as to—
  - (a) identification by a Health Board in any such plan prepared by them of—

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** Smoking, Health and Social Care (Scotland) Act 2005, Part 3 is up to date with all changes known to be in force on or before 13 May 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (i) what pharmaceutical care services they consider are necessary in order to discharge their duty under section 2CA(1);
  - (ii) whether as respects their area there is convenient access (as regards location and opening hours) to pharmaceutical care services; and
  - (iii) any under-provision of pharmaceutical care services as respects their area;
- (b) the period within which a plan is to be prepared and published;
  - (c) consultation which a Health Board must undertake in relation to the preparation of a plan;
  - (d) the duration of a plan;
  - (e) the frequency with which a plan must be reviewed and revised by a Health Board;
  - (f) the availability and accessibility of a plan to persons who are resident in a Health Board's area; and
  - (g) such other matters as the Scottish Ministers consider appropriate.
- (3) Regulations making provision as to a matter referred to in subsection (2)(a) may provide that the matter is to be identified in accordance with such criteria as may be specified in directions given by the Scottish Ministers.”.
- (3) In section 18 (duty of the Scottish Ministers), the words “, and of pharmaceutical services,” are repealed.

## **21 Pharmaceutical care services contracts**

For section 17Q of the 1978 Act (assistance and support), substitute—

*“Pharmaceutical care services contracts*

### **17Q 17Q Health Boards' power to enter into pharmaceutical care services contracts**

- (1) A Health Board may enter into a contract under which pharmaceutical care services are provided (whether directly or indirectly) by a contractor in accordance with the provisions of this Part.
- (2) A contract under this section is referred to in this Act as a “pharmaceutical care services contract”.
- (3) Subject to any provision made by or under this Part, a pharmaceutical care services contract may make such provision as may be agreed between the Health Board and the contractor as respects—
  - (a) the services to be provided under the contract;
  - (b) the remuneration to be paid under the contract; and
  - (c) any other matters.
- (4) The services to be provided under a pharmaceutical care services contract may include services which are not pharmaceutical care services; and the contract may provide for such other services to be performed in any place where, by virtue of section 2CA(1), pharmaceutical care services may be performed.

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** *Smoking, Health and Social Care (Scotland) Act 2005, Part 3 is up to date with all changes known to be in force on or before 13 May 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (5) In this Part, “contractor”, in relation to a pharmaceutical care services contract with a Health Board, means the other party to the contract.

**17R 17R Mandatory contract term: provision of prescribed pharmaceutical care services**

- (1) A pharmaceutical care services contract must require the contractor to provide as respects the area of the Health Board pharmaceutical care services of such descriptions as may be prescribed.
- (2) Regulations under subsection (1) may in particular describe the pharmaceutical care services by reference to the manner or circumstances in which they are provided.

**17S 17S Eligibility to be contractor under pharmaceutical care services contract**

- (1) A Health Board may, subject to such conditions as may be prescribed, enter into a pharmaceutical care services contract with—
- (a) a registered pharmacist; or
  - (b) a person other than a registered pharmacist who, by virtue of section 69 of the Medicines Act 1968 (c. 67), is taken to be a person lawfully conducting a retail pharmacy business in accordance with that section,
- who undertakes that all pharmaceutical care services provided under the contract will be provided by, or under the supervision of, a registered pharmacist.
- (2) Regulations may make provision as to the effect on a pharmaceutical care services contract entered into with a partnership of a change in the membership of the partnership.

**17T 17T Payments by Health Boards under pharmaceutical care services contracts**

- (1) The Scottish Ministers may give directions as to payments to be made under pharmaceutical care services contracts.
- (2) A pharmaceutical care services contract must require payments to be made under it in accordance with directions for the time being in force under this section.
- (3) A direction under subsection (1) may in particular—
- (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
  - (b) provide for payments to be made by reference to—
    - (i) any scheme or scale specified in the direction;
    - (ii) a determination made by any person in accordance with factors specified in the direction;
  - (c) provide that the whole or any part of a payment is subject to conditions (including a condition that the whole or any part of a payment is liable

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** Smoking, Health and Social Care (Scotland) Act 2005, Part 3 is up to date with all changes known to be in force on or before 13 May 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- to be paid by a Health Board only if they are satisfied as to such conditions as may be specified in the direction);
- (d) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
- (4) Before giving a direction under subsection (1), the Scottish Ministers—
- (a) must consult any body appearing to them to be representative of persons to whose remuneration the direction would relate; and
- (b) may consult such other persons as they think appropriate.
- (5) The Scottish Ministers must publish directions given by them under subsection (1) in the Drug Tariff or in such other manner as they consider appropriate.
- (6) References in this section to payments include fees, allowances and reimbursements.

**17U 17U Other mandatory contract terms: pharmaceutical care services contracts**

- (1) A pharmaceutical care services contract must include (in addition to provisions required by or under other provisions of this Part) such provision as may be prescribed.
- (2) Regulations under subsection (1) may in particular—
- (a) make provision as to the manner in which, and the standards to which, services must be provided;
- (b) provide that the Scottish Ministers may give directions as to the manner in which, and the standards to which, services must be provided;
- (c) make provision as to—
- (i) the persons who are to perform services;
- (ii) the area in which services are to be provided;
- (iii) the persons to whom services are to be provided;
- (iv) requirements to be complied with where a contractor provides any pharmaceutical care services indirectly (including requirements as to the pharmaceutical care services which may or may not be so provided);
- (v) the variation of terms of the contract (except terms required by or under this Part);
- (vi) rights of entry and inspection (including inspection of clinical records and other documents);
- (vii) the circumstances in which, and the manner in which, the contract may be terminated;
- (viii) enforcement;
- (ix) the adjudication of disputes.
- (3) Regulations making provision in pursuance of subsection (2)(c)(iii) may make provision as to the circumstances in which a contractor—

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** *Smoking, Health and Social Care (Scotland) Act 2005, Part 3 is up to date with all changes known to be in force on or before 13 May 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) must, or may, accept a person as a person to whom services are provided under the contract;
  - (b) may decline to accept a person as such a person; or
  - (c) may terminate the contractor's responsibility for a person.
- (4) Regulations making provision in pursuance of subsection (2)(c)(v) may—
- (a) make provision as to the circumstances in which a Health Board may unilaterally vary the terms of a contract;
  - (b) make provision suspending or terminating any duty under the contract to provide services of a prescribed description.
- (5) Regulations making provision of the kind described in subsection (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.
- (6) A pharmaceutical care services contract must contain provision requiring the contractor to comply with directions for the time being in force given by the Scottish Ministers under regulations under subsection (1).

**17V 17V Resolution of disputes and entry into NHS contracts:  
 pharmaceutical care services contracts**

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed pharmaceutical care services contract, including, without prejudice to that generality, provision for—
- (a) the referral of the terms of the proposed contract to the Scottish Ministers; and
  - (b) the Scottish Ministers, or a person or panel of persons appointed by them, to determine the terms on which the contract may be entered into.
- (2) Regulations may make provision for any person entering, or who has entered, into a pharmaceutical care services contract to be regarded as a health service body for any purposes of section 17A, in circumstances where the person so elects.
- (3) Where a person is to be regarded as a health service body for any purposes of section 17A by reason only of an election by virtue of subsection (2) of this section, that section has effect in relation to that person with the omission of the words “under any enactment” in subsection (1) and with such other modifications (if any) as may be prescribed.
- (4) Regulations under subsection (2) may include provision as to the application of section 17A in cases where—
- (a) a partnership is to be regarded as a health service body; and
  - (b) there is a change in the membership of the partnership.”.

**22 Drug Tariff**

After section 17V of the 1978 Act (as inserted by section 21 above), insert—

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** Smoking, Health and Social Care (Scotland) Act 2005, Part 3 is up to date with all changes known to be in force on or before 13 May 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

### *“Drug Tariff*

#### **17W 17W Drug Tariff**

- (1) The Scottish Ministers must prepare, maintain and publish a document (to be known as the “Drug Tariff”).
- (2) The Scottish Ministers—
  - (a) must include in the Drug Tariff, such information relating to pharmaceutical care services as may be prescribed;
  - (b) may include in it such other information relating to such services as they consider appropriate.”.

#### **23 Persons performing pharmaceutical care services**

After section 17W of the 1978 Act (as inserted by section 22 above), insert—

### *“Persons performing pharmaceutical care services*

#### **17X 17X Persons performing pharmaceutical care services**

- (1) Regulations may provide that a registered pharmacist may not perform any pharmaceutical care service which a Health Board is, under section 2CA(1), under a duty to provide or secure the provision of unless that pharmacist is included in a list maintained under the regulations by the Health Board.
- (2) Regulations under subsection (1) may make provision in relation to such lists and in particular as to—
  - (a) the preparation, maintenance and publication of a list;
  - (b) eligibility for inclusion in a list;
  - (c) applications for inclusion (including provision for the procedure for applications to be made and dealt with and documents to be supplied on application);
  - (d) the grounds on which an application for inclusion must be granted or refused;
  - (e) requirements with which a person included in a list must comply (including requirements as to standards of performance and patient care and as to declarations, consents or undertakings);
  - (f) suspension or removal from a list (including the grounds for and consequences of suspension or removal);
  - (g) circumstances in which a person included in a list may not withdraw from it;
  - (h) payments to be made by a Health Board in respect of a person suspended from the list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers);
  - (i) criteria to be applied in making decisions under the regulations;
  - (j) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references to the Tribunal.

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** *Smoking, Health and Social Care (Scotland) Act 2005, Part 3 is up to date with all changes known to be in force on or before 13 May 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (3) Regulations making provision as to the matters referred to in subsection (2)  
 (j) may in particular authorise the disclosure of information—  
 (a) by a Health Board to the Scottish Ministers; and  
 (b) by the Scottish Ministers to a Health Board.”.

**24 Assistance and support: primary medical services and pharmaceutical care services**

After section 17X of the 1978 Act (as inserted by section 23 above), insert—

*“Assistance and support: primary medical services and pharmaceutical care services*

**17Y 17Y Assistance and support: primary medical services and pharmaceutical care services**

- (1) A Health Board may provide assistance and support to—  
 (a) any person providing, or proposing to provide, primary medical services under a general medical services contract;  
 (b) any person providing, or proposing to provide, such services in accordance with section 17C arrangements;  
 (c) any person providing, or proposing to provide, pharmaceutical care services under a pharmaceutical care services contract.
- (2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.
- (3) In this section, “assistance” includes financial assistance.”.



**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

Smoking, Health and Social Care (Scotland) Act 2005, Part 3 is up to date with all changes known to be in force on or before 13 May 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4A-4D inserted by [2016 asp 14 s. 20\(2\)](#)
- s. 7(1A) inserted by [2016 asp 14 s. 20\(6\)\(a\)](#)