

**EXPLANATORY MEMORANDUM TO THE**  
**SMOKING, HEALTH & SOCIAL CARE (SCOTLAND) ACT 2005**  
**(CONSEQUENTIAL MODIFICATIONS)**  
**(ENGLAND & WALES AND NORTHERN IRELAND) ORDER 2006**

**SI 2006/ 1056**

**1.** This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

2.1 The Order seeks to make modifications to primary and secondary legislation in consequence of Parts 2 and 3 of the Smoking, Health & Social Care (Scotland) Act 2005 (“the 2005 Act”) relating to general ophthalmic services and pharmaceutical care services (“PCS”).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998 (“the 1998 Act”). The Order is, by virtue of Schedule 7 to that Act, subject to affirmative resolution procedure in both Houses of the UK Parliament. Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of any Act of the Scottish Parliament; in this case the Smoking, Health and Social Care (Scotland) Act 2005.

3.2 A section 104 Order under the 1998 Act is necessary in consequence of the 2005 Act as the Scottish Parliament does not have legislative competence under the 1998 Act to make changes to the law of England and Wales and Northern Ireland. The Order makes necessary consequential modifications to the enactments listed in the Schedule as a matter of English and Welsh and Northern Irish law. The Scottish Executive intends to make all consequential modifications as a matter of Scots law, which are within devolved competence, in an Order under the 2005 Act.

**4. Legislative Background**

4.1 The 2005 Act received Royal Assent on 5 August 2005. The Act contains seven Parts in total, dealing with prohibition of smoking, the provision of ophthalmic, dental and pharmaceutical care services, and other reforms of the National Health Service and health law in Scotland. The provisions relating to ophthalmic services are intended to come into force on 1 April 2006, and those relating to pharmaceutical care services are intended to come into force on 1 July 2006.

4.2 Part 2 deals with Dentistry and Optometry and in doing so amends the National Health Service (Scotland) Act 1978 (“the 1978 Act”). The relevant provisions of Part 2 of the 2005 Act, for the purposes of this Order, extend the categories of optometrists/ophthalmic medical practitioners who are required to be named on NHS family health service lists (established and maintained by a Health Board) in order to treat patients in the Board’s area. The Act also extends the information and requirements those applying to join or be named on a list must

supply in order to demonstrate their fitness to practice in the Board's area. There is also provision for the current ophthalmic lists to be in 2 parts. The first part of the ophthalmic list will in future comprise those optometrists and ophthalmic medical practitioners who have or will make arrangements with a Board for the provision of general ophthalmic services in its area. The second part will comprise those optometrists and ophthalmic medical practitioners who are approved by the Board to assist with that provision.

4.3 Part 3 of the 2005 Act also amends the 1978 Act to replace the current pharmaceutical services regime with a new PCS regime including placing requirements on Health Boards to plan provision of pharmaceutical care services; providing for contracts for the provision of those services; and providing for the listing of persons able to provide PCS and it mandates the provision of assistance and support for PCS.

4.4 The Order therefore seeks to modify references in enactments to the old pharmaceutical services and pharmaceutical and ophthalmic lists. These references will be updated to refer to the new PCS regime and the new lists under the 1978 Act.

## **5. Extent**

5.1 The modifications in the Schedule have the same extent as the legislation modified, but exclude Scotland in each case. As explained in paragraph 3.2 above, the Scottish Executive intend to make an Order under the 2005 Act which will make consequential amendments as a matter of Scots law.

## **6. European Convention on Human Rights**

6.1 The Parliamentary Under Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the draft Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Modifications) (England, Wales and Northern Ireland) Order 2006 are compatible with the Convention rights.

## **7. Policy Background**

7.1 In February 2005, the Scottish Executive issued a consultation paper *Listing of Non Principal General Dental Practitioners, Optometrists and Ophthalmic Medical Practitioners*. Listing of non principals means that Health Boards will be aware of their presence in their areas and the principals for whom they work will no longer be responsible for the non principals' acts and failures to act. Consequently, Boards will be able to refer non principals to NHS Discipline Committees or, in more serious cases, to the NHS Tribunal for national disqualification from lists in Scotland. Non principals are to be included in the second part of the dental or ophthalmic list held by a Health Board.

7.2 In February 2002 the Scottish Executive Health Department published its strategy for pharmaceutical care in Scotland, *The Right Medicine*<sup>1</sup>. This followed the 2001 publication of the Scottish Health Plan, *Our National Health: a plan for action, a plan for change*<sup>2</sup>. Collectively these documents set an agenda for modernising and redesigning pharmacy

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<sup>1</sup> <http://www.scotland.gov.uk/library3/health/pcis-00.asp>

<sup>2</sup> <http://www.scotland.gov.uk/Topics/Health/care/JointFuture/Publications/ournationalhealth>

services. The over-arching aim was to improve patient care and to better utilise the skills of community pharmacists and their support staff to meet local population needs.

7.3 The introduction of a new community pharmacy contract is a key factor in delivering the policy aims of *The Right Medicine*. In March 2004 legislative proposals to underpin its delivery were put out to consultation in the document *Modernising NHS Community Pharmacy in Scotland*<sup>3</sup> The structure and content of the new contract were agreed by the pharmacy contractors' representative body, the Scottish Pharmaceutical General Council.

7.4 Part 3 of the 2005 Act provides a legislative framework through which future investment and improvement in primary care services will be embodied within the new contract for PCS. This will ensure the development and better utilisation of pharmacists' skills, and those of their support staff.

7.5 The Order is necessary to ensure that health service bodies in England and Wales may enter into NHS contracts for services such as co-management schemes (which complement the work of hospital ophthalmology departments e.g. screening patients with cataracts until they reach a stage appropriate for hospital referral) with those optometrists/ophthalmic medical practitioners who are named on the first part of a Health Board's ophthalmic list; that is those who have made arrangements for the provision of general ophthalmic services in a Board area. The Order also amends legislation to reflect the replacement in Scotland of the pharmaceutical services regime with the new PCS regime.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There will be no impact on the public sector.

## **9. Contact**

Alasdair Smith at the Scotland Office, telephone 0207 270 6756 or e-mail: [alasdair.smith@scotland.gsi.gov.uk](mailto:alasdair.smith@scotland.gsi.gov.uk), can answer any queries regarding the instrument.

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<sup>3</sup> <http://www.scotland.gov.uk/consultations/health/mncp-00.asp>