

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

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## EXPLANATORY NOTES

### THE ACT

#### **Part 3: Pharmaceutical Care Services Etc.**

#### ***Section 20 – Health Boards’ functions: provision and planning of pharmaceutical care services***

66. This inserts two new sections, 2CA and 2CB, into the 1978 Act.

#### **New section 2CA – Functions of Health Boards: pharmaceutical care services**

67. Subsection (1) of the new section 2CA requires Health Boards to provide pharmaceutical care services or to secure the provision of those services by others. This gives Health Boards a new obligation to provide services themselves, in contrast to current legislation that only permits them to secure provision by others.
68. The subsection also creates a power for Health Boards to provide or secure the provision of pharmaceutical care services for persons for whom they would not be under a duty to provide. This makes it possible for Health Boards to deliver pharmaceutical care services in a location that is outwith the area they cover.
69. Subsection (2) of the new section enables a Health Board securing the provision of pharmaceutical care services by others to do so by means of such arrangements as they think fit. The main arrangement available will be a pharmaceutical care service contract under new section 17Q, which replaces the current section 27 pharmaceutical services arrangements.
70. Subsection (3) of the new section places a duty on Health Boards to publish prescribed information about the pharmaceutical care services that they secure the provision of by others, or provide themselves. The information that can be prescribed is in relation to the provision of pharmaceutical care services under Part 1 of the 1978 Act and not just section 2CA.
71. Subsection (4) of the new section creates an obligation on Health Boards to co-operate with each other in discharging their functions connected with every aspect of the provision of pharmaceutical care services. This will be relevant where Health Boards choose to deliver pharmaceutical services in a location outwith their geographical area as described above. This specific duty of co-operation is in addition to the existing general duty on Health Boards and others under section 13 of the 1978 Act to co-operate with one another in exercising their functions in order to secure and advance the health of people in Scotland.
72. Subsection (5) of the new section allows regulations to be made that will define “pharmaceutical care services” for the purposes of the 1978 Act. The regulation will set out types of services that are and are not pharmaceutical care services for this purpose.

73. Subsection (6) of the new section allows the regulations made under subsection (5) to classify what services are to be regarded as essential or additional pharmaceutical care services and under paragraph (b) the manner or circumstances in which they will be provided. This would include, for example, categorising the type of premises from which different services are to be provided and the time of day during which services should be available. Subsections (c) and (d) provide that where the service provided involves dispensing it is undertaken in accordance with directions that list drugs, medicines and appliances (i.e. the current Drug Tariff) and the circumstances in which they may be prescribed, and against orders raised by prescribed persons, for example appropriately registered medical and dental practitioners.
74. Subsection (7) provides that any directions to be issued by Scottish Ministers (by virtue of their regulation powers at subsection (5)) must be published in the 'Drug Tariff', or other such other manner as they consider appropriate. The Drug Tariff already exists and, *inter alia*, lists or details the drugs, medicines and appliances that can be ordered and dispensed as part of the provision of pharmaceutical care services.
75. Subsection (8) makes it clear that arrangements which a Health Board may make for the provision of pharmaceutical care services may provide for the delivery of those services at a location outside Scotland. For instance, this would allow a Health Board to make arrangements that would enable persons to receive pharmaceutical care services outside Scotland where it was more practical or convenient for them to do so.
76. Subsection (9) of the new section provides that while Health Boards are exercising their own statutory functions to provide or secure the provision of pharmaceutical care services, they are to be regarded in law as exercising functions of the Scottish Ministers conferred on the Health Boards.

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

77. Subsection (1) provides the Scottish Ministers with broad regulation and direction-making powers that will prescribe the arrangements by which Health Boards will prepare, publish and keep under review plans that will enable them to discharge their duty under new section 2CB(1).
78. Subsection (2) gives examples of what the regulations under subsection (1) may cover and includes identification of what pharmaceutical care services are required in a Health Board's area, whether there is convenient access and where provision of those services is considered inadequate. It also includes the periods in which Health Boards are to prepare, publish and review their pharmaceutical care services (PCS) plan; and the consultation process by which the PCS plan is prepared and ultimately made available to public.
79. Subsection (3) gives the Scottish Ministers power to publish in directions what criteria ought to be considered in the identification by the Health Boards of the matters in subsection (2)(a) in preparing a PCS plan. For example, the directions might require Health Boards to compare the locations of NHS community pharmacies and GP surgeries relative to and the size and proximity of populations they serve and their pharmaceutical care service needs.