

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

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

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## **EXPLANATORY NOTES**

### **SCOTTISH HOSPITAL ENDOWMENTS RESEARCH TRUST**

#### ***Section 38 – Scottish Hospital Endowments Research Trust***

181. The Scottish Hospital Endowments Research Trust is a self-financing Non Departmental Public Body and a registered charity established, in 1953 by Act of Parliament, to receive and hold endowments, donations and bequests and to make grants from these funds to support medical research in Scotland. Subsection (2) repeals the Scottish Ministers' responsibility for the Research Trust.
182. Subsection (3) substitutes paragraphs concerning the membership of the Research Trust.
183. New paragraph 3A provides for the continuation of existing members of the Research Trust, and makes them subject to the new terms and conditions of appointment of members determined by the Research Trust when those new terms and conditions are determined, or after a period of 90 days, whichever occurs first. This provision seeks to provide sufficient time within which the Research Trust can draft and agree its new terms and conditions.
184. New paragraph 3B sets out the terms of office of the membership of the Research Trust, the tenure of office - specifying that a single term of appointment shall not exceed 4 years - and vacation from office.
185. New paragraph 3C provides for single term of reappointment.
186. New paragraph 3D replaces section 12 (3(d)) of the National Health Service (Scotland) Act 1978 with new provisions for the reimbursement of expenses of the membership of the Research Trust.
187. New paragraph 3E provides for the Research Trust to appoint staff on such terms and conditions as they think appropriate.
188. New 3F provides the necessary provisions for the self regulation of the Research Trust, and requires standing orders to be made within a 90 day period.
189. New 3G provides for the Research Trust to be able to do anything necessary or expedient to enable them to exercise their functions.

#### **Part 7: General**

#### ***Section 39 – Ancillary provisions***

190. This section enables the Scottish Ministers to make further provision, by order, which is incidental to or consequent on the Act and to allow transitional or savings provisions as required in implementing the Act's provisions.

### ***Section 40 – Regulations or orders***

191. This section provides that powers to make orders or regulations in the Act shall be exercisable by statutory instrument. Subsection (2) provides that except where otherwise provided, the statutory instruments containing such orders or regulations shall be subject to negative procedure in the Scottish Parliament. Subsection (3) provides that the following orders or regulations shall be the subject of affirmative resolution:
- (a) regulations under sections 3(3) or 4(2) or (8) or paragraph 2, 4(1), 5(2), 12 or 13 of Schedule 1;
  - (b) an order under section 9(1) or 33(4)(e); and
  - (c) an order under section 39 which contains provisions which alter the text of an Act.

### ***Section 41 – Interpretation***

192. This section defines terms used throughout the Act and is self-explanatory.

### ***Section 42 – Minor and consequential amendments and repeals***

193. [Section 42](#) introduces schedule 2 (which makes minor and consequential amendments) and schedule 3 (which contains consequential repeals).

### ***Section 43 – Short title and commencement***

194. This section provides for the short title of the Act. Further, the section allows the Scottish Ministers to bring the provisions of the Act into force by order, except for sections 33, 34, 41 and (insofar as it relates to paragraph 2(2) and (4) of schedule 2) 42 and in schedule 2 paragraphs 2(2) and (4) which will come into force on the day after Royal Assent, and sections 39, 40 and 43 which will come into force on Royal Assent. Different days may be appointed in the order for different provisions.
195. Subsection (3) provides that any order made which appoints a day for the commencement of sections 1 to 10 or schedule 1 (the prohibition and control of smoking provisions) may also specify a time of day .

### ***Schedule 1 - Fixed Penalty for Offences under Sections 1, 2 and 3***

196. [Paragraph 1\(1\)](#) and [\(2\)](#) provides power for an authorised officer of a council or a constable to issue a fixed penalty notice, whilst [paragraph 1\(3\)](#) provides the definition of a “fixed penalty notice” for the purposes of Schedule 1.
197. [Paragraph 2](#) provides the Scottish Ministers with the power to set via regulations a time limit between an offence being committed and an authorised officer being able to give a fixed penalty notice.
198. [Paragraph 3](#) sets out the contents of the fixed penalty notice. It must identify the offence to which it relates and give reasonable particulars of the circumstances alleged to commit that offence. It must also state: the amount of the penalty and the period within which it may be paid; the discounted amount and the period within which it may be paid; the person to whom and the address at which payment may be made; the method or methods by which payment may be made; the person to whom and the address at which any representations relating to the notice may be made; and the consequences of not making a payment at which any representations relating to the notice may be made.
199. [Paragraph 4](#) provides for the level of the fixed penalty notice to be prescribed and the period within which payment of the notice should be made. The council has a discretionary power to extend the period of payment.
200. [Paragraph 5](#) enables offenders to pay a lesser amount in respect of the fixed penalty notice if they make an earlier payment.

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201. [Paragraph 6](#) sets out the effect of a fixed penalty notice, providing that no proceedings may be commenced before the end of the period for payment of the penalty, or if payment of the penalty is made before the end of that period or is accepted by the council after that time. Payment of the discounted amount will only count in that regard if it is made before the end of the period for payment for that discounted amount.
202. [Paragraph 7](#) enables a person in receipt of a fixed penalty notice to request a hearing in respect of the offence for which they have been given notice provided that that request is made within 29 days of receipt of the notice. The request must be made in writing to the designated person at the address shown on the fixed penalty notice. The council will hold the meeting and the procurator fiscal will be notified that a hearing is to be held. The period between a person requesting a hearing and being notified of the hearing's decision will not count towards the 29 days for the payment of the penalty.
203. [Paragraph 8](#) provides for a power of the council to withdraw notices, in cases where they have been erroneously issued or consider if there are extenuating circumstances. Sub-paragraph 3 provides that a council is bound to consider any representations made by or on behalf of a person given a notice, and that they must decide in all circumstances whether to withdraw the notice.
204. [Paragraph 9](#) provides for the withdrawal of a fixed penalty notice where proceedings for an offence are commenced.
205. [Paragraph 10](#) provides for the recovery of unpaid fixed penalty fines. After the expiry of 29 days the council is able to enforce the unpaid penalty as if it were an extract registered decree arbitral. In practice this means that the unpaid penalty can be recovered in the same way as a sum of money due under a civil court decree.
206. [Paragraph 11](#) provides a mechanism under which disputes as to whether or not a fixed penalty has been paid or a hearing sought within the period for paying can be resolved by the courts. Subparagraph (1) enables a person who is in dispute with a council to apply to the sheriff by summary application for a declaration that the fixed penalty cannot be enforced under paragraph 10 either because the fixed penalty has been paid or a request for a hearing has been made within the period for paying.
207. [Paragraph 11\(2\)](#) provides that the sheriff may declare that the person has or has not paid the penalty or requested a hearing within the period for paying and that the fixed penalty is or is not enforceable under paragraph 10.
208. [Paragraph 12](#) allows the Scottish Ministers to make regulations about the application by councils of fixed penalties under Schedule 1 and also about the keeping of accounts and the preparation and publication of statements of account, relating to fixed penalties under Schedule 1.
209. [Paragraphs 13\(1\)](#) and [\(2\)](#) provide the Scottish Ministers with powers to make regulations prescribing the circumstances in which a fixed penalty notice may or may not be given and the methods for the payment of penalties.

***Schedule 2 – Minor and Consequential Amendments***

210. The following provisions clarify existing legislation by providing that Scottish Ministers may confer on Health Boards, Special Health Boards and the Common Services Agency by order any of their functions relating to the health service, rather than any of their functions under the National Health Service (Scotland) Act 1978 (“the 1978 Act”).
211. [Paragraph 2\(2\)](#) amends section 2(1) of the 1978 Act to provide that the reference there to Scottish Ministers’ functions specifically under that Act is changed to refer instead to their functions relating to the health service. As amended, the section will make clear that the functions that Scottish Ministers may provide by order to be exercisable by

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Health Boards and Special Health Boards are their functions related to the health service generally, rather than being limited to their functions under the 1978 Act.

212. Paragraph 2(4) amends section 10(3) of the 1978 Act to provide that the reference to Scottish Ministers' functions under the 1978 Act is changed to refer instead to their functions relating to the health service. As amended, the section will make clear that the functions that Scottish Ministers may by order delegate to the Common Services Agency are their functions relating to the health service rather than their functions under the 1978 Act.
213. Sub-paragraphs (17) and (18) of paragraph 2 to Schedule 2 list amendments to sections 85AA and 85AB of the 1978 Act that have the effect of placing the financial resources for meeting the remuneration element of providing pharmaceutical care services (PCS) with Health Boards, as part of their unified budgets. Currently the cost of the national contract is paid by Health Boards but funded centrally; additional services are funded locally. Given the intention to make Health Boards responsible in future for planning and securing or providing all PCS requirements (under both national and local contract arrangements) it is appropriate to make them responsible for the financial management of the process too.

**Schedule 3 - Repeals**

214. The following provisions amend the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp13\)](#).
215. At present, paragraph 4(3)(b) of schedule 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 provides that a member of the Mental Health Tribunal for Scotland must vacate office on the day on which the member reaches the age of 70. The repeal of paragraph 4(3)(b) of schedule 2 removes this requirement.
216. The repeal of paragraph 4(6)(b) of schedule 2 removes reference to the Tribunal members' age as one of the circumstances by which they would not be reappointed after a current 5 year appointment has ended.

**Parliamentary History**

The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports and other papers.

<i>Proceedings and Reports</i>	<i>Reference</i>
<b>Introduction</b>	
14 December 2004	<a href="#">Bill as introduced (SP Bill 33)</a>
<b>Stage 1</b>	
<i>(a) Health Committee</i>	
1st Meeting 2005 (Session 2)	<a href="#">11 January 2005, Cols 1493 - 1530 &amp; Minutes</a>
5th Meeting 2005 (Session 2)	<a href="#">22 February 2005, Cols 1626 – 1658 &amp; Minutes</a>
6th Meeting 2005 (Session 2)	<a href="#">1 March 2005, Cols 1661 – 1702 &amp; Minutes</a>
7th Meeting 2005 (Session 2)	<a href="#">8 March 2005, Cols 1704 – 1760 &amp; Minutes</a>

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<b><i>Proceedings and Reports</i></b>	<b><i>Reference</i></b>
8th Meeting 2005 (Session 2)	15 March 2005, Cols 1763 – 1834 & Minutes
22 April 2005:	Stage 1 Report on the Smoking etc. (Scotland) Bill (SP Paper 322)
6th Report 2005 (Session 2): Stage 1 Report on Smoking, Health and Social Care (Scotland) Bill	
<b><i>(b) Subordinate Legislation Committee</i></b>	
11 <sup>th</sup> Meeting 2005 (Session 2)	12 April 2005, Cols 942 – 945 & Minutes
Report to Health Committee	[refer to Health Committee report]
<b><i>(c) Finance Committee</i></b>	
5 <sup>th</sup> Meeting 2005 (Session 2)	8 February 2005, Cols 2309 – 2334 & Minutes
7 <sup>th</sup> Meeting 2005 (Session 2)	1 March 2005, Cols 2421 – 2441 & Minutes
Report to Health Committee	[refer to Health Committee report]
<b><i>(d) Consideration by Parliament</i></b>	
Stage 1 debate 28 April 2005	Vol. 2, No. 67 (Session 2) Cols 16471 – 16524
<b>Stage 2</b>	
<b><i>(a) Health Committee</i></b>	
14th Meeting 2005 (Session 2)	17 May 2005, Cols 1942 – 1984 & Minutes
15th Meeting 2005 (Session 2)	24 May 2005, Cols 1987 – 1994 & Minutes
16th Meeting 2005 (Session 2)	31 May 2005, Cols 1997 – 2018 & Minutes
17th Meeting 2005 (Session 2)	7 June 2005, Cols 2022 – 2035 & Minutes
18th Meeting 2005 (Session 2)	14 June 2005, Cols 2037 – 2076 & Minutes
<b><i>(b) Subordinate Legislation Committee</i></b>	
21st Meeting 2005 (Session 2)	21 June 2005, Cols 1110 – 1113 & Minutes
Bill (as Amended at Stage 2)	SP Bill 33A
<b>Stage 3</b>	
<b><i>Consideration by Parliament</i></b>	
Stage 3 debate, 30 June 2005	Vol. 3, No. 12 (Session 2) Cols 18613 – 18636 and 18678 – 18747
Bill passed, 30 June 2005	Bill as passed (SP Bill 33B)
<b>Royal Assent</b>	
05 August 2005	Smoking, Health and Social Care (Scotland) Act 2005 (asp13)