



Smoking, Health and Social Care (Scotland) Act 2005

2005 asp 13

PART 6

MISCELLANEOUS

Infection with hepatitis C as a result of NHS treatment etc.

28 Payments to certain persons infected with hepatitis C as a result of NHS treatment etc.

- (1) The Scottish Ministers may make a scheme for the making of payments by them, or out of money provided by them, to, or in respect of—
- (a) persons who—
 - (i) before 1st September 1991, were treated anywhere in the United Kingdom under the National Health Service by way of the receipt of blood, tissue or a blood product;
 - (ii) as a result of that treatment, became infected with the hepatitis C virus; and
 - (iii) did not die before 29th August 2003;
 - (b) persons who—
 - (i) became infected with the hepatitis C virus by transmission of the virus by means specified in the scheme from a person who before 1st September 1991 was treated anywhere in the United Kingdom under the National Health Service by way of the receipt of blood, tissue or a blood product and as a result of that treatment became infected with the hepatitis C virus;
 - (ii) were at the time of transmission in a relationship mentioned in subsection (2) with the person from whom the virus was transmitted; and
 - (iii) did not die before 29th August 2003.
- (2) The relationships referred to in subsection (1)(b)(ii) are—
- (a) spouse or civil partner;

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (b) person who was living with the person from whom the virus was transmitted as husband or wife or in a relationship which had the characteristics of the relationship between civil partners (or if the person from whom the virus was transmitted was in hospital immediately before death, had been so living when that person was admitted to hospital);
 - (c) other cohabitant (whether or not of the same sex as the person from whom the virus was transmitted);
 - (d) where the person from whom the virus was transmitted was a mother, a son or daughter of the mother;
 - (e) such other relationship as the scheme may specify; and the scheme may specify or elaborate the meaning of relationship for this purpose.
- (3) A scheme under this section must—
- (a) provide that the questions of whether—
 - (i) a person became infected with the hepatitis C virus as a result of treatment such as is mentioned in subsection (1)(a)(i) before the date mentioned there; and
 - (ii) a person became infected with the virus by transmission of it by means specified in the scheme from a person who became infected as mentioned in sub-paragraph (i),
 are to be determined on the balance of probabilities;
 - (b) provide that a person is not eligible for the making of a payment under the scheme unless, when the claim for the payment is made or, in the case of a claim made in respect of a dead person, when the person died either—
 - (i) the person's sole or main residence is or was in Scotland; or
 - (ii) the person's sole or main residence is or was outside the United Kingdom but, immediately before acquiring such sole or main residence, the person's sole or main residence is or was in Scotland;
 - (c) provide for the procedure to be followed in relation to claims under the scheme (including the time within which claims must be made and matters relating to the provision of information) and the determination of such claims;
 - (d) provide for a right of appeal against a decision refusing a claim under the scheme; and
 - (e) provide that a claim may be made in respect of a dead person, without such a claim having to have been made prior to that person's death.
- (4) Without prejudice to the generality of subsection (1), a scheme under this section may—
- (a) specify conditions for eligibility for the making of a claim by another person under the scheme in respect of a person falling within subsection (1) who has died without having made a claim under the scheme;
 - (b) specify conditions for eligibility for the making of a payment under the scheme (and may specify different conditions in relation to different payments);
 - (c) provide that the making of a claim, or the receipt of a payment, under the scheme is not to prejudice the right of any person to institute or carry on proceedings in relation to the matter which is the subject of the claim or payment;
 - (d) appoint a person (other than a Minister of the Crown) to manage the scheme on behalf of the Scottish Ministers;

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (e) confer functions on the Scottish Ministers or any person appointed under paragraph (d);
 - (f) provide for any function so conferred on the Scottish Ministers to be carried out on their behalf by any person appointed under paragraph (d); and
 - (g) make transitional, transitory or saving provision.
- (5) Provision such as is mentioned in subsection (4)(d) or (f) does not affect the responsibility of the Scottish Ministers for the management of the scheme or the carrying out of the functions.
- (6) The Scottish Ministers may revoke or amend a scheme under this section.
- (7) The Scottish Ministers must publish a scheme under this section in such manner as they consider appropriate.

Commencement Information

II S. 28 in force at 17.10.2005 by S.S.I. 2005/492, art. 3(a), Sch. 1

Amendment of Regulation of Care (Scotland) Act 2001

29 Independent health care services

In section 2(5) of the 2001 Act (meaning of “independent health care service”), after paragraph (d) insert “, but a service may be excepted from this definition by regulations”.

Commencement Information

I2 S. 29 in force at 17.10.2005 by S.S.I. 2005/492, art. 3(a), Sch. 1

30 Implementation of certain decisions under the 2001 Act

- (1) The 2001 Act is amended as follows.
- (2) In section 16 (right to make representations to Scottish Commission for the Regulation of Care as respects proposals under Part 1), for subsection (2) substitute—
- “(2) Where such a notice has been given—
- (a) the Commission may not decide to implement the proposal until (whichever first occurs)—
 - (i) where the person to whom the notice was given makes such representations as are mentioned in subsection (1) above, it has considered those representations;
 - (ii) that person notifies the Commission in writing that such representations will not be made;
 - (iii) the period of fourteen days mentioned in that subsection elapses without such representations being made and without the Commission receiving such notification; and

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (b) where the circumstances are as mentioned in paragraph (a)(ii) or (iii) above, the Commission shall implement the proposal unless it appears to it that it would be inappropriate to do so.”.
- (3) In section 37 (right to make representations to Commission under Part 2 as respects conditions), for subsection (2) substitute—
- “(2) Where a notice to which this section applies has been given—
- (a) the Commission may not decide to implement the proposal until (whichever first occurs)—
- (i) where the local authority to whom the notice was given make such representations as are mentioned in subsection (1) above, it has considered those representations;
- (ii) the local authority notify the Commission that such representations will not be made;
- (iii) the period of fourteen days mentioned in that subsection elapses without such representations being made and without the Commission receiving such notification; and
- (b) where the circumstances are as mentioned in paragraph (a)(ii) or (iii) above, the Commission shall implement the proposal unless it appears to it that it would be inappropriate to do so.”.
- (4) In section 48 (right to make representations to Scottish Social Services Council as respects proposal in notice under section 46(2) or 47(1)), for subsection (2) substitute—
- “(2) Where such a notice has been given—
- (a) the Council may not decide to implement the proposal until (whichever first occurs)—
- (i) where the person to whom the notice was given makes such representations as are mentioned in subsection (1) above, it has considered those representations;
- (ii) that person notifies the Council in writing that such representations will not be made;
- (iii) the period of fourteen days mentioned in that subsection elapses without such representations being made and without the Council receiving such notification; and
- (b) where the circumstances are as mentioned in paragraph (a)(ii) or (iii) above, the Council shall implement the proposal unless it appears to it that it would be inappropriate to do so.”.
- (5) In section 51(1) (appeal against decision of Council), for the words from “section” to “proposal” substitute “subsection (2) of section 50 of this Act of a decision mentioned in that subsection”.

Commencement Information

I3 S. 30 in force at 17.10.2005 by S.S.I. 2005/492, art. 3(a), Sch. 1

31 Frequency of inspection of care services under the 2001 Act

- (1) The 2001 Act is amended as follows.

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

(2) In section 25 (inspection of registered care services), after subsection (5) insert—

“(5A) The Scottish Ministers may, after consulting the Commission and thereafter such other persons (or groups of persons) as they consider appropriate, by order amend—

- (a) subsection (3)(a) above by substituting for “twelve months” in either or both sub-paragraphs (i) and (ii) a different period (being a period which is not less than twelve months);
- (b) subsection (5) above by substituting for “twelve months” in either or both paragraphs (a) and (b) a different period (being a period which is not less than twelve months).

(5B) An order under subsection (5A) above may make different provision for different purposes.”.

(3) In section 78 (orders and regulations), in subsection (2)(b), after the word “3” insert “ or 25(5A) ”.

Commencement Information

I4 S. 31 in force at 17.10.2005 by S.S.I. 2005/492, art. 3(a), Sch. 1

32 Provision of information to the Scottish Social Services Council

After section 57 of the 2001 Act, insert—

*“Notification of dismissal etc. for misconduct
and provision of other information to Council*

57A Notification of dismissal etc. to Council

The employer of a social service worker shall—

- (a) on dismissing the social service worker on grounds of misconduct; or
- (b) on the social service worker resigning or abandoning the worker's position in circumstances where, but for the resignation or abandonment—
 - (i) the worker would have been dismissed on grounds of misconduct; or
 - (ii) dismissal on such grounds would have been considered by the employer,

forthwith notify the Council of the dismissal, resignation or abandonment; and the employer shall in doing so provide the Council with an account of the circumstances which led to the dismissal or which were present when the resignation or abandonment took place.

57B Provision of other information to Council by employer

The employer of a social service worker shall, when requested to do so by the Council, provide it with such information as respects the worker as it may

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

reasonably require in connection with the exercise of the functions assigned to it under this Act or any other enactment.”.

Commencement Information

I5 S. 32 in force at 17.10.2005 by S.S.I. 2005/492, art. 3(a), Sch. 1

Child care agencies and housing support services

33 Registration of child care agencies and housing support services

- (1) Subsections (2) to (4) apply where—
- (a) on 1st April 2003 a person was providing a care service to which the 2003 Order applies;
 - (b) the service—
 - (i) was, by virtue of article 3(1) of the 2003 Order, treated as if it were registered on that date; and
 - (ii) by virtue of article 3(2) of that Order, ceased on 1st October 2003 or on 1st April 2004 to be treated as if it were registered; and
 - (c) the person continued (or continues) to provide the service after it ceased to be so treated as if it were registered at any time during which it was not registered.
- (2) If any of the circumstances mentioned in subsection (3) apply, the service is, subject to subsection (4), to be treated for all purposes as if it were registered—
- (a) on 1st October 2003 or, as the case may be, 1st April 2004; and
 - (b) for the period during which there was (or is) a continuation of service as mentioned in subsection (1)(c).
- (3) The circumstances are—
- (a) that an application for registration of the service was made by the person before 30th September 2004;
 - (b) that—
 - (i) no application for registration of the service was made by the person before that date; and
 - (ii) the person ceased to provide the service before that date.
- (4) The service ceases to be so treated as registered by virtue of subsection (2) on whichever of the following first occurs—
- (a) where the Commission decides to refuse the application and—
 - (i) no appeal is made under section 20(1) of the 2001 Act against the decision, the fifteenth day after the day on which notice of the decision is given under section 17(3) of that Act;
 - (ii) such an appeal is made timeously and the sheriff confirms the decision, the day on which the sheriff does so;
 - (iii) such an appeal is made timeously but is abandoned, the day on which abandonment of the appeal is intimated to the sheriff clerk or if abandonment is not so intimated the day on which the sheriff deems the appeal to have been abandoned;

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (b) where the Commission decides (other than in accordance with an application under section 14(1)(b) of the 2001 Act) to cancel the registration of the service effected by virtue of subsection (2) and—
 - (i) no appeal is made under section 20(1) of the 2001 Act against the decision, the fifteenth day after the day on which notice of the decision is given under section 17(3) of that Act;
 - (ii) such an appeal is made timeously and the sheriff confirms the decision, the day on which the sheriff does so;
 - (iii) such an appeal is made timeously but is abandoned, the day on which abandonment of the appeal is intimated to the sheriff clerk or if abandonment is not so intimated the day on which the sheriff deems the appeal to have been abandoned;
 - (c) where the sheriff grants an application by the Commission under section 18 of that Act for cancellation of the registration of the service, the day on which the sheriff does so;
 - (d) the day on which the person ceases to provide the service;
 - (e) 1st April 2006 or such later day as may be substituted for it by order made by the Scottish Ministers.
- (5) In this section—
- “the 2003 Order” means the Regulation of Care (Scotland) Act 2001 (Commencement No. 3 and Transitional Provisions) Order 2003 (SSI 2003 No. 205 (C.9));
 - “the Commission” means the Scottish Commission for the Regulation of Care;
 - “registered” means registered under Part 1 of the 2001 Act; and references to “registration” are to be construed accordingly.

34 Grants in respect of housing support services

Payments by a local authority—

- (a) made out of sums, or descriptions of sum, received by it from the Scottish Ministers under section 91(1) of the Housing (Scotland) Act 2001 (asp 10); and
- (b) purportedly made in compliance with the condition specified in paragraph 2 of the Schedule to the Housing (Scotland) Act 2001 (Payments out of Grants for Housing Support Services) Order 2003 (SSI 2003 No. 140),

which were not validly made merely by virtue of the condition not having been complied with are to be treated as having been validly made notwithstanding the non-compliance with the condition.

VALID FROM 19/12/2005

Authorisation of medical treatment

35 Amendment of Adults with Incapacity (Scotland) Act 2000: authorisation of medical treatment

- (1) The Adults with Incapacity (Scotland) Act 2000 (asp 4) is amended as follows.
- (2) In section 47 (authorisation of medical treatment)—

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (a) in subsection (1)—
 - (i) for the words “the medical practitioner primarily responsible for the medical treatment of an adult” substitute “ any of the persons mentioned in subsection (1A) ”;
 - (ii) in paragraph (a), for the words “the adult” substitute “ an adult ”;
- (b) after that subsection, insert—

“(1A) The persons are—

 - (a) the medical practitioner primarily responsible for the medical treatment of the adult;
 - (b) a person who is—
 - (i) a dental practitioner;
 - (ii) an ophthalmic optician;
 - (iii) a registered nurse; or
 - (iv) an individual who falls within such description of persons as may be prescribed by the Scottish Ministers,

who satisfies such requirements as may be so prescribed and who is primarily responsible for medical treatment of the kind in question.”;
- (c) in subsection (2)—
 - (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who by virtue of subsection (1) has issued a certificate for the purposes of that subsection ”;
 - (ii) for the words “medical treatment” where they second occur substitute “ the medical treatment in question ”;
- (d) in subsection (3)—
 - (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person on whom that authority is conferred ”;
 - (ii) for the words “medical treatment”, where they second occur, substitute “ the medical treatment in question ”;
- (e) in subsection (5)—
 - (i) in paragraph (a), for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issues the certificate ”;
 - (ii) in paragraph (b), for the words “does not exceed one year from” substitute “does not exceed—
 - (i) one year; or
 - (ii) if, in the opinion of the person issuing the certificate any of the conditions or circumstances prescribed by the Scottish Ministers applies as respects the adult, 3 years,

from ”;
- (f) in subsection (6)—

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued it ”;
 - (ii) in paragraph (b), for the words “not exceeding one year from” substitute “not exceeding—
 - (i) one year; or
 - (ii) if, in the opinion of that person any of the conditions or circumstances prescribed by the Scottish Ministers apply as respects the adult, 3 years,
- from ”;
- (g) after subsection (10) insert—
- “(11) In subsection (1A)—
- “dental practitioner” has the same meaning as in section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29);
- “ophthalmic optician” means a person registered in either of the registers kept under section 7 of the Opticians Act 1989 (c. 44) of ophthalmic opticians.”.
- (3) In section 49(1) (medical treatment where there is an application for intervention or guardianship order)—
- (a) for the words “Section 47(2)” substitute “ Subsection (2) of section 47 ”;
 - (b) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person on whom authority is conferred by that subsection ”.
- (4) In section 50 (medical treatment where guardian etc. has been appointed)—
- (a) in subsection (2)—
 - (i) in paragraph (b), for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued the certificate for the purposes of section 47(1) ”;
 - (ii) in paragraph (c), for the words “medical practitioner” substitute “ person ”;
 - (b) in subsection (3)—
 - (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued the certificate for the purposes of section 47(1) ”;
 - (ii) for the words “any person having an interest” substitute “ the medical practitioner primarily responsible for the medical treatment of the adult (in a case where the person who so issued the certificate was someone other than that practitioner) or any person having an interest ”;
 - (c) in subsection (4)—
 - (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued the certificate for the purposes of section 47(1) ”;
 - (ii) for the words “medical practitioner”, where they second occur, substitute “ person who issued the certificate ”;

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (iii) for the words “a medical practitioner (the “nominated medical practitioner”)” substitute “ a practitioner who the Commission consider has professional knowledge or expertise relevant to medical treatment of the kind in question (the “nominated practitioner”)”;
- (d) in subsection (5)—
 - (i) for the words “nominated medical practitioner” substitute “ nominated practitioner ”;
 - (ii) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued the certificate for the purposes of section 47(1) ”;
- (e) in subsection (6)—
 - (i) for the words “nominated medical practitioner” substitute “ nominated practitioner ”;
 - (ii) after the words “personal welfare of the adult” insert “ (including, where the certificate issued for the purposes of section 47(1) was issued by another person, that person) ”;
- (f) in subsection (9)—
 - (i) for the words “medical practitioners” substitute “ practitioners ”;
 - (ii) for the words “medical practitioner” substitute “ practitioner ”.

Appeals under Public Health (Scotland) Act 1897

36 Amendment of Public Health (Scotland) Act 1897: appeal against certain orders etc.

After section 156 of the Public Health (Scotland) Act 1897 (c. 38), insert—

“156A Appeal to sheriff or sheriff principal in certain cases: sections 54, 55 and 96

- (1) Any person in respect of whom—
 - (a) an order under section 54(1) (for removal to a hospital) or under section 54(3) (for transfer to another hospital) (referred to in this section and section 156C as a “section 54 order”);
 - (b) a direction under section 55(1) (for detention in a hospital) or under section 55(3) (for removal to another hospital) (referred to in this section and section 156C as a “section 55 direction”); or
 - (c) a decision under section 96 (for removal to a hospital) (referred to in this section and sections 156B and 156C as a “section 96 decision”),
 is made, or any person having an interest in the welfare of the person in respect of whom the order, the direction or, as the case may be, the decision is made, may appeal under this section against the order, the direction or, as the case may be, the decision.
- (2) An appeal under this section against—
 - (a) a section 54 order or a section 55 direction by a sheriff may be made to the sheriff principal;

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (b) a section 54 order or a section 55 direction by a justice may be made to the sheriff principal of either of the sheriffdoms mentioned in subsection (3);
 - (c) a section 96 decision may be made to the sheriff of either of those sheriffdoms.
- (3) The sheriffdoms are—
- (a) the sheriffdom in which the person (in respect of whom the section 54 order, section 55 direction or section 96 decision in question is made) is resident immediately before it is made;
 - (b) the sheriffdom in which the hospital (in which that person is detained pursuant to the section 54 order, section 55 direction or section 96 decision in question) is situated.
- (4) An appeal under this section may be made on either or both of the following grounds—
- (a) that the section 54 order, section 55 direction or section 96 decision in question was based on an error of law;
 - (b) that the section 54 order, section 55 direction or section 96 decision in question was not supported by the facts found to be established by the sheriff or justice who made the order or direction or, as the case may be, the local authority who made the decision.
- (5) An appeal against a section 54 order, section 55 direction or section 96 decision may be made before the expiry of the period of 21 days beginning with the day on which the order, the direction or, as the case may be, the decision is made.
- (6) An appeal against a section 54 order or section 55 direction by a justice or a section 96 decision is to be made by way of summary application.
- (7) In an appeal under this section against a section 54 order, section 55 direction or section 96 decision, the sheriff principal or, as the case may be, the sheriff may—
- (a) confirm the order, the direction or, as the case may be, the decision;
 - (b) direct that the order, the direction or, as the case may be, the decision ceases to have effect;
 - (c) make such other order or direction as the sheriff principal or, as the case may be, the sheriff thinks fit.

156B Further appeal to sheriff principal: section 96 decision

- (1) Where, in an appeal under section 156A against a section 96 decision, the sheriff confirms the decision, the person in respect of whom the section 96 decision was made, or any person having an interest in the welfare of that person, may appeal to the sheriff principal against the decision of the sheriff in the appeal on either or both of the grounds mentioned in subsection (2).
- (2) The grounds are—
- (a) that the decision of the sheriff in the appeal under section 156A was based on an error of law;
 - (b) that that decision was not supported by the facts found to be established by the sheriff in the appeal.

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (3) An appeal under this section may be made before the expiry of the period of 21 days beginning with the day on which the decision of the sheriff in the appeal under section 156A is made.
- (4) In an appeal under this section, the sheriff principal—
 - (a) may allow the appeal and when doing so must direct that the section 96 decision ceases to have effect;
 - (b) may refuse the appeal and confirm the decision of the sheriff;
 - (c) may make such other order or direction as the sheriff principal thinks fit.

156C Further appeal to Court of Session: sections 54, 55 and 96

- (1) Where, in an appeal under section 156A against a section 54 order or section 55 direction, the sheriff principal confirms the order or, as the case may be, the direction, the person in respect of whom the decision in the appeal is made or any person having an interest in the welfare of that person may, with the leave of the sheriff principal, appeal to the Court of Session against the decision of the sheriff principal on either or both of the following grounds—
 - (a) that the decision of the sheriff principal in the appeal under section 156A was based on an error of law;
 - (b) that that decision was not supported by the facts found to be established by the sheriff principal in the appeal.
- (2) Where, in an appeal under section 156B against a decision of the sheriff in an appeal under section 156A, the sheriff principal confirms the decision of the sheriff in the appeal under section 156A, the person in respect of whom the decision of the sheriff principal is made or any person having an interest in the welfare of that person may, with the leave of the sheriff principal, appeal to the Court of Session against the decision of the sheriff principal on either or both of the following grounds—
 - (a) that the decision of the sheriff principal in the appeal under section 156B was based on an error of law;
 - (b) that that decision was not supported by the facts found to be established by the sheriff principal in the appeal.

156D Effect of appeal in relation to section 54 order, section 55 direction or section 96 decision

A section 54 order, a section 55 direction or a section 96 decision may be given effect notwithstanding that an appeal may be or is made against, or in relation to, it under this Act.”.

Commencement Information

16 S. 36 in force at 17.10.2005 by S.S.I. 2005/492, art. 3(a), Sch. 1

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

Joint ventures

37 Joint ventures

- (1) After section 84A of the 1978 Act, insert—

“Joint ventures

84B Joint ventures

- (1) The Scottish Ministers may do any (or all) of the following—
- (a) form or participate in forming companies to provide facilities or services for persons or groups of persons exercising functions, or otherwise providing services, under this Act;
 - (b) participate in companies providing facilities or services for persons or groups of persons falling within paragraph (a);
 - (c) with a view to securing or facilitating the provision by companies of facilities or services for persons or groups of persons falling within paragraph (a)—
 - (i) invest in the companies (whether by acquiring assets, securities or rights or otherwise);
 - (ii) provide loans and guarantees and make other kinds of financial provision to or in respect of them.
- (2) For the purpose of subsection (1), it is immaterial that the facilities or services provided or to be provided by a company are not provided or to be provided—
- (a) only to persons or groups of persons exercising functions, or otherwise providing services, under this Act; or
 - (b) to such persons or groups of persons only in that capacity.
- (3) In this section—
- “companies” means companies within the meaning of the Companies Act 1985 (c. 6);
 - “facilities” includes the provision of (or the use of) premises, goods, equipment, materials, vehicles, plant or apparatus.”.
- (2) After section 7(7B) of the Health and Medicines Act 1988 (c. 49) (powers of the Secretary of State for financing the health service), insert—
- “(7C) The power specified in paragraph (g) of subsection (2) above includes power for the Scottish Ministers—
- (a) to form or participate in forming companies,
 - (b) to—
 - (i) participate in companies,
 - (ii) invest in companies (whether by acquiring assets, securities or rights or otherwise),
 - (iii) provide loans and guarantees and make other kinds of financial provision to or in respect of companies,where it appears to them that to do so is calculated to facilitate, or to be conducive or incidental to, the exercise of any power conferred by that subsection.

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

(7D) In subsection (7C) above “companies” means companies within the meaning of the Companies Act 1985; and that subsection is without prejudice to the generality of subsection (2) above.”.

Commencement Information

I7 S. 37 in force at 17.10.2005 by S.S.I. 2005/492, art. 3(a), Sch. 1

VALID FROM 01/11/2005

Scottish Hospital Endowments Research Trust

38 Scottish Hospital Endowments Research Trust

- (1) The 1978 Act is amended as follows.
- (2) In section 12 (establishment and functions of the Trust)—
- (a) subsections (1) and (2) are repealed;
 - (b) in subsection (3), for the words “the Research Trust” substitute “the Scottish Hospital Endowments Research Trust (referred to in this Act as “the Research Trust”)”;
 - (c) in subsection (4B), the words from “Subject to” to “activity,” are repealed;
 - (d) subsection (5) is repealed;
 - (e) in subsection (6), the words from “, and shall send” to the end are repealed;
 - (f) subsection (6A) is repealed;
 - (g) for subsection (7), substitute—

“(7) The Research Trust shall prepare an annual report of their proceedings which shall include an abstract of their accounts.”;
 - (h) after that subsection, insert—

“(8) Schedule 7 shall have effect in relation to the Research Trust.”.
- (3) In Schedule 7 (further provision as respects the Trust)—
- (a) paragraph 1 is repealed;
 - (b) for paragraph 3, substitute—

“3 **Members**

Subject to paragraph 3A, the Research Trust shall consist of such number of members appointed by the Trust as the Trust may determine.

3A

- (1) The persons who are the members of the Research Trust immediately before the day on which section 38 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) comes into force shall, on that day, continue to be members (the “continuing members”).

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (2) The terms and conditions of appointment of the continuing members shall, on the 90th day after whichever of the following occurs first—
- (a) the day on which that section comes into force; or
 - (b) the day on which the Research Trust first make standing orders under paragraph 3F,

be the terms and conditions of appointment the Research Trust determine for the members appointed by them under paragraph 3B(1).

- (3) The provisions of paragraphs 3B(2) and (3) to 3D and 3F shall apply to the continuing members as they apply to members appointed under paragraph 3; and in the application of paragraph 3C any period of appointment of a continuing member as a member (before he became a continuing member by virtue of sub-paragraph (1)) shall count for the purposes of determining eligibility for re-appointment in accordance with paragraph 3C.

3B Terms of office etc.

- (1) Subject to the provisions of this Schedule, the appointment of a member under paragraph 3 shall be on such terms and conditions as the Research Trust may determine, but shall not be for a period exceeding 4 years.
- (2) A person holds and vacates office as member in accordance with the person's terms of appointment.
- (3) A person may resign office as member at any time by notice in writing to the Research Trust.

3C Eligibility for re-appointment

A person who ceases to be a member of the Research Trust shall be eligible for re-appointment, but only once.

3D Payments to members

The Research Trust may make payments from their funds to their members in respect of any loss of earnings the members would otherwise have made or any additional expenses to which they would not otherwise have been subject, being loss of expenses necessarily suffered or incurred for the purpose of enabling the members to discharge their duties as members of the Trust.

3E Staff

- (1) The Research Trust may appoint such staff, on such terms and conditions (including as to remuneration and allowances), as they consider appropriate.
- (2) The Research Trust may—
 - (a) pay, or make arrangements for the payment of;

Status: Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6. (See end of Document for details)

- (b) make payments towards the provision of; and
- (c) provide and maintain schemes (whether contributory or not) for the payment of,

such pensions, allowances and gratuities to or in respect of such of their employees, or former employees, as they may determine.

- (3) The reference in sub-paragraph (1) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.

3F **Standing orders**

- (1) The Research Trust—
 - (a) shall make and maintain standing orders regulating—
 - (i) the appointment by them of members;
 - (ii) the appointment of a member as convener;
 - (iii) the terms and conditions of office of members and convener;
 - (iv) their procedure;
 - (v) such other matters as the Research Trust consider appropriate;
 - (b) may, subject to sub-sub-paragraph (a), amend such standing orders from time to time.
- (2) The first set of standing orders under this paragraph shall be made before the expiry of the period of 90 days beginning with the day on which section 38 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) comes into force.
- (3) Subject to the provisions of this Schedule, the Research Trust may regulate their own procedure.
- (4) The validity of any proceedings of the Research Trust shall not be affected by any vacancy in membership nor by any defect in the appointment of a member.

3G **Powers etc.**

The Research Trust may do anything which appears to them to be necessary or expedient for the purpose of, or in connection with, the exercise of their functions.”;

- (c) in paragraph 6, the words from “, unless” to “case,” where it first occurs, are repealed;
- (d) paragraph 7 is repealed.

Status:

Point in time view as at 17/10/2005. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Part 6.