

## SCHEDULE 1

*(introduced by section 6)*

### FIXED PENALTY FOR OFFENCES UNDER SECTIONS 1, 2, AND 3

#### *Power to give fixed penalty notices*

- 1 (1) An authorised officer of a council may, if having reason to believe that a person is committing or has committed an offence under section 1, 2 or 3 in no-smoking premises within the area of the council, give that person a fixed penalty notice in relation to that offence.
- (2) A constable may, if having reason to believe that a person is committing or has committed an offence under section 1, 2 or 3, give that person a fixed penalty notice in relation to that offence.
- (3) In this schedule, “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence under section 1, 2 or 3 by payment of a fixed penalty.
- 2 A fixed penalty notice for an offence under section 1, 2 or 3 may not be given after such time relating to the offence as may be prescribed.

#### *Contents of fixed penalty notice*

- 3 (1) A fixed penalty notice must identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.
- (2) A fixed penalty notice must also state—
  - (a) the amount of the penalty and the period within which it may be paid;
  - (b) the discounted amount and the period within which it may be paid;
  - (c) the person to whom and the address at which payment may be made;
  - (d) the method or methods by which payment may be made;
  - (e) the person to whom and the address at which any representations relating to the notice may be made;
  - (f) the consequences of not making a payment within the period for payment.
- (3) The person specified under sub-paragraph (2)(c) must be the council in the area of which the offence was alleged to have been committed or a person acting on its behalf.

#### *The amount of the penalty and the period for payment*

- 4 (1) The fixed penalty for an offence under section 1, 2 or 3 is (subject to paragraph 5) such amount as may be prescribed.
- (2) The period for payment of the fixed penalty is the period of 29 days beginning with the day on which the notice is given.
- (3) The council may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so.

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### *The discounted amount*

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- (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.
  - (2) The discounted amount for a fixed penalty offence is such amount as may be prescribed.
  - (3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

### *Effect of notice and payment of penalty*

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- (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.
  - (2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.
  - (3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the council after that time.
  - (4) Payment of the discounted amount counts for the purposes of sub-paragraph (3) only if it is made before the end of the period for payment of the discounted amount.
  - (5) In proceedings for the offence, a certificate which—
    - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the council; and
    - (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,is sufficient evidence of the facts stated.

### *Request for hearing*

- 7
- (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.
  - (2) A notice requesting a hearing under sub-paragraph (1) must be in writing and must be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.
  - (3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.
  - (4) Where a person has requested a hearing in accordance with this paragraph—
    - (a) the council must hold the hearing;
    - (b) a person authorised for the purpose by the council of the area in which the offence was committed must notify the procurator fiscal of the request; and
    - (c) the period for payment of the fixed penalty must be calculated so that the period beginning with the giving of the notice under this paragraph and

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ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

*Power to withdraw notices*

- 8 (1) If the council considers (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, it may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
- (2) Where a notice under sub-paragraph (1) is given—
- (a) the council must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice; and
  - (b) no proceedings are to be commenced or continued against that person for the offence in question.
- (3) The council must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

*Effect of prosecution on notice*

- 9 Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

*Recovery of unpaid fixed penalties*

- 10 Subject to paragraphs 8 and 9, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it is enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

*Judicial determination of enforcement of fixed penalty*

- 11 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 10 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—
- (a) the fixed penalty was paid before the expiry of the period for paying; or
  - (b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.
- (2) On an application under sub-paragraph (1), the sheriff may declare—
- (a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty;
  - (b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7;
  - (c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request; and
- accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

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*General and supplementary*

- 12 The Scottish Ministers may make regulations about—
- (a) the application by councils of fixed penalties paid under this schedule;
  - (b) the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this schedule.
- 13 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed.
- (2) The method or methods by which fixed penalties may be paid may be prescribed.
- (3) The Scottish Ministers may by regulations modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there.

SCHEDULE 2

*(introduced by section 42(1))*

MINOR AND CONSEQUENTIAL AMENDMENTS

*Public Health (Scotland) Act 1897 (c. 38)*

- 1 In section 157 (no appeal otherwise) of the Public Health (Scotland) Act 1897, for the words “the preceding section” substitute “section 156 or as provided in sections 156A to 156C”.

*National Health Service (Scotland) Act 1978 (c. 29)*

- 2 (1) The 1978 Act is amended as follows.
- (2) In section 2(1) (Health Boards and Special Health Boards), in each of paragraphs (a) and (b), for the words “under this Act” substitute “relating to the health service”.
- (3) In section 4 (Scottish Dental Practice Board)—
- (a) in subsection (1A)—
    - (i) in paragraph (a), for the words from the second “to” to “he” substitute “or body corporate entitled, by virtue of section 43 of the Dentists Act 1984 (c. 24), to carry on the business of dentistry to submit to the Board, in relation to treatment which he, or as the case may be, it”;
    - (ii) in paragraph (b), after the words “a dental practitioner” insert “or such a body corporate”;
  - (b) in subsection (1B), after the words “dental practitioner” insert “or body corporate”.
- (4) In section 10(3) (Common Services Agency), for the words “under this Act” substitute “relating to the health service”.
- (5) In section 17AA(3) (meaning of “ophthalmic list” for purpose of section), in the definition of “ophthalmic list”—
- (a) for the words from “a list” to the end of paragraph (a) substitute “—
    - (a) in relation to a list published in accordance with regulations made under paragraph (a) of section 26(2) of this Act, the

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- first part of the list which is referred to in sub-paragraph (i) of that paragraph;”;
- (b) at the beginning of each of paragraphs (b) and (c) insert “a list published in accordance with regulations made under”.
- (6) In section 17C(2A)(b)(ii) (other Part 1 services which may be included in arrangements for the provision of personal dental services), after the word “Part” insert “(but not pharmaceutical care services).”.
- (7) In section 17D (persons with whom agreements may be made)—
- (a) in subsection (1)(b)(vi), for the words “an individual” substitute “a person”;
- (b) in subsection (2)—
- (i) in paragraph (b)(v) of the definition of “NHS employee”, for the words “an individual” substitute “a person”;
- (ii) in paragraph (c)(i) of that definition, for the words from the beginning to “or” substitute “a dental practitioner or body corporate whose name is included in the first part of a list prepared under section 25(2) of this Act or in a list prepared under”;
- (iii) in paragraph (c)(ii) of that definition, after the word “who” insert “, or body corporate which,”;
- (iv) in paragraph (b) of the definition of “qualifying body”, for the words “which, in accordance with the provisions of Part IV of the Dentists Act 1984, is entitled to carry on the business of dentistry” substitute “entitled, by virtue of section 43 of the Dentists Act 1984 (c. 24), to carry on the business of dentistry”;
- (v) in the definition of “section 17C employee”, for the words from “by” to the end substitute “by a person providing services in accordance with the arrangements”.
- (8) In section 28A(1) (remuneration for provision of Part II services), for the words “, general ophthalmic services or pharmaceutical services” substitute “or general ophthalmic services”.
- (9) In section 28C(3) (indemnity cover)—
- (a) in the definition of “list”, for the words from “has” to the end substitute “means—
- (a) the first part of a list prepared under section 25(2);
- (b) the first part of a list prepared under section 26(2);”;
- (b) in the definition of “Part II services”, for the words “general dental services, general ophthalmic services or pharmaceutical services” substitute “general dental services or general ophthalmic services”.
- (10) In section 29(8A) (meaning of health care professional in section 29(8)(a)), for the words “17D” substitute “17P”.
- (11) In section 30(1) (review etc. of disqualification), for the words “any disqualification, conditional disqualification or declaration of unfitness” substitute “a disqualification or conditional disqualification”.
- (12) In section 32(1)(a) (regulations as to sections 29 and 31), for the words “31” substitute “30”.
- (13) In section 32A(3) (interim suspension), after paragraph (a) insert “and”.

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- (14) In section 32E(1) (payments in consequence of suspension), for the words “32D(2)” substitute “32D(3)”.
- (15) In section 33 (powers of Scottish Ministers where services are inadequate), for the words from “any list” to the end of paragraph (d) substitute “—
- (a) the first part of any list prepared under section 25(2), being the part which is of dental practitioners and bodies corporate referred to in section 25(1) who undertake to provide general dental services;
  - (b) the first part of any list prepared under section 26(2), being the part which is of medical practitioners and ophthalmic opticians who undertake to provide general ophthalmic services.”.
- (16) In section 64(5) (permission for use of facilities in private practice), in paragraph (b), after the word “provide” insert “dental.”.
- (17) In section 85AA (means of meeting expenditure of Health Boards out of public funds)—
- (a) in subsection (2)(b), for the words “paragraphs (b) to (e)” substitute “paragraph (b)”;
  - (b) in subsection (4)—
    - (i) in paragraph (a)(ii), for the words “paragraphs (b) or (c)” substitute “paragraph (b)”;
    - (ii) paragraphs (c) and (e) are repealed;
  - (c) in subsection (5), for the words “paragraphs (b) to (e)” substitute “paragraph (b)”.
- (18) In section 85AB (further provision as to expenditure on drugs)—
- (a) in subsection (6), for the words “pharmaceutical services” substitute “pharmaceutical care services”;
  - (b) after that subsection insert—
 

“(7) In this section, “drugs” includes—

    - (a) medicines; and
    - (b) appliances included in a list specified in directions given under regulations made under section 2CA(5).”.
- (19) In section 108 (interpretation)—
- (a) in subsection (1)—
    - (i) after the definition of “dispensing optician”, insert—
 

““Drug Tariff” means the Drug Tariff required to be prepared, maintained and published by the Scottish Ministers under section 17W of this Act;”;
    - (ii) after the definition of “general medical services contract”, insert—
 

““general ophthalmic services” is to be construed in accordance with section 26(1F);”;
    - (iii) after the definition of “personal dental services”, insert—
 

““pharmaceutical care services” is to be construed in accordance with section 2CA(5);

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“pharmaceutical care services contract” has the meaning given by section 17Q(2);”;

(iv) for the definition of “the Research Trust”, substitute—

““the Research Trust” means the Scottish Hospital Endowments Research Trust constituted under subsection (1) of section 12 of this Act (before the repeal of that subsection by section 38(2)(a) of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13);”;

(b) after that subsection, insert—

“(1A) References in this Act to “carrying on the business of dentistry” are to be construed in accordance with section 40 of the Dentists Act 1984 (c. 24).”.

(20) In Schedule 8, in paragraph 8(2)(b), for the words “disqualification, conditional disqualification or declaration of unfitness” substitute “disqualification or conditional disqualification”.

#### *Health and Medicines Act 1988 (c. 49)*

3 In section 17 of the Health and Medicines Act 1988—

(a) in subsection (1)—

(i) for the words “17P, 25(2), 26(2) or 27(2)” substitute “17F, 17P, 17X, 25(2) or 26(2)”;

(ii) after the words “1978” insert “(referred to in this section as “the 1978 Act”)”;

(iii) in paragraph (a), for the words from “or” to the end, substitute “or—

(i) in relation to section 17F of the 1978 Act, personal dental services;

(ii) in relation to section 17P of that Act, primary medical services;

(iii) in relation to section 17X of that Act, pharmaceutical care services”;

(b) in subsection (2)(a)(ii), for the words from “or,” to the end substitute “or, with any requirements placed on him by regulations made under section 17F, 17P, 17X, 25(2) or, as the case may be, 26(2) of the 1978 Act”;

(c) in subsection (2)(b)—

(i) after the words “dental practitioner” insert “or body corporate entitled, by virtue of section 43 of the Dentists Act 1984 (c. 24), to carry on the business of dentistry”;

(ii) after the word “his” insert “or its”.

#### *National Health Service (Primary Care) Act 1997 (c. 46)*

4 (1) The National Health Service (Primary Care) Act 1997 is amended as follows.

(2) In section 1 (pilot schemes)—

(a) in subsection (3)(b), after the word “services” insert “nor pharmaceutical care services”;

(b) in subsection (8), at end insert “;

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“pharmaceutical care services” has the same meaning as for the purposes of Part 1 of the 1978 Act.”.

- (3) In section 3(3) (persons with whom pilot schemes for personal dental services may be made)—
- (a) in paragraph (b) of the definition of “dental list”—
    - (i) after the word “Scotland,” insert “the first part of”;
    - (ii) for the words “section 25(2)(a)” insert “section 25(2)”;
  - (b) in the definition of “NHS employee”—
    - (i) in paragraph (b), after the words “dental practitioner” insert “or body corporate”;
    - (ii) in paragraph (c), after the word “who” insert “, or body corporate which,”.
- (4) In section 17(5) (the Dental Practice Boards)—
- (a) after the words “dental practitioner” insert “or body corporate”;
  - (b) after the word “he” insert “or it”.

*Police Act 1997 (c. 50)*

- 5 In section 115 of the Police Act 1997 (enhanced criminal record certificates)—
- (a) in subsection (6C) (as inserted by section 70(3)(c) of the Criminal Justice (Scotland) Act 2003 (asp 7))—
    - (i) for paragraph (b) substitute—
      - “(b) dental practitioners or bodies corporate undertaking to provide, and persons approved to assist in providing, general dental services;”;
    - (ii) in paragraph (c), after the word “provide” insert “, and persons approved to assist in providing,”;
    - (iii) paragraph (d) is repealed;
  - (b) in subsection (6D)(a) (as inserted by the said section 70(3)(c)), for the words “(c) or (d)” substitute “(b) or (c)”;
  - (c) in subsection (6E) (as inserted by the said section 70(3)(c)), for the words “section 17P of the National Health Service (Scotland) Act 1978 (persons performing primary medical services)” substitute “section 17F (persons performing personal dental services), 17P (persons performing primary medical services) or 17X (persons performing pharmaceutical care services) of the National Health Service (Scotland) Act 1978”.

*The Scottish Public Services Ombudsman Act 2002 (asp 11)*

- 6 In paragraph 14 of schedule 4 to the Scottish Public Services Ombudsman Act 2002, for the words “17P, 25(2), 26(2) or 27(2)” substitute “17F, 17P, 17X, 25(2) or 26(2)”.



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### SCHEDULE 3

(introduced by section 42(2))

#### REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
National Health Service (Scotland) Act 1978 (c. 29)	<p>In section 17C(6), the words “by a general dental practitioner”.</p> <p>Section 25(3) to (5).</p> <p>Sections 27 to 28.</p> <p>In section 28B(6), the words “Subject to section 25(3),”.</p> <p>In section 29A, subsection (2) and in subsection (5), the words “(including provision modifying the effect of this Part)”.</p> <p>Section 29B(3).</p> <p>In section 29B(4), the words “or declaration”.</p> <p>In section 30(2), in paragraph (a) the words from “or” to the end of the paragraph, and the words from “, and, on a review” to the end of the subsection.</p> <p>Section 30(4).</p> <p>In section 30(5), the words from “and” to the end.</p> <p>Section 30(6) and (7)(b) and (c) and the word “or” immediately preceding paragraph (b).</p> <p>Section 31.</p> <p>In section 32A, in subsection (3) paragraph (c) and the word “and” immediately preceding that paragraph and in subsection (6) paragraph (b) and the word “, and” immediately preceding that paragraph.</p> <p>In section 32B, in each of subsections (1) and (2)(a) the word “national” and subsection (3).</p> <p>Section 85AA(11).</p> <p>In section 85AB(6), the words “section 85AA and”.</p> <p>In Schedule 8, paragraph 8(2A).</p>
Health Services Act 1980 (c. 53)	<p>Section 20(2).</p> <p>In Schedule 6, paragraph 4.</p> <p>In Schedule 7, the entry for section 25(3) of the 1978 Act.</p>

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<i>Enactment</i>	<i>Extent of repeal</i>
Health and Social Services and Social Security Adjudications Act 1983 (c. 41)	Section 16(a).
Dentists Act 1984 (c. 24)	In Schedule 5, paragraph 12.
Health and Social Security Act 1984 (c. 48)	In Schedule 1, in Part II, paragraphs 2, 3 and 4.
National Health Service (Amendment) Act 1986 (c. 66)	Section 3(3).
Health and Medicines Act 1988 (c. 49)	Section 8. Section 11(4) to (6). In section 17(3A) the words from “or section 27A” to the end. In Schedule 2, in paragraph 15, subparagraphs (2) and (3). In Schedule 3, the entry concerning section 70(1) of the 1978 Act; and in the entry concerning Schedule 11, the words “the words “dental or” and”.
National Health Service and Community Care Act 1990 (c. 19)	Section 40. In Schedule 9, paragraph 19(6), (7) and (8).
National Health Service (Primary Care) Act 1997 (c. 46)	In section 1(8), the words “by a general dental practitioner”. Section 27(2). Section 28(2). Section 29(2). In Schedule 2, paragraphs 43, 44 and 45. In Schedule 3, the entry concerning section 25(2)(c) of the 1978 Act.
Health Act 1999 (c. 8)	Section 56(3) and (4). In Schedule 4, paragraphs 49, 51(d) and (g), 52(c) and 53. In Schedule 5, in the entry concerning section 32A of the 1978 Act, the words “and, in subsection (6)(a), “prepared under this Part of this Act””.
Public Finance and Accountability (Scotland) Act 2000 (asp 1)	In schedule 4, paragraph 4(2).
Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)	In schedule 3, the entry relating to the Scottish Hospital Endowments Research Trust.

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<i>Enactment</i>	<i>Extent of repeal</i>
Community Care and Health (Scotland) Act 2002 (asp 5)	In schedule 2, paragraphs 2(6)(c), (7), (8), (9)(b), (10)(b) and (11).
Freedom of Information (Scotland) Act 2002 (asp 13)	In schedule 1, paragraph 43.
Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)	In schedule 2, paragraph 4(3)(b) and (6)(b).
Primary Medical Services (Scotland) Act 2004 (asp 1)	Section 5(3)(a). In the schedule, paragraph 1(8), (10), (11)(a), (13) and (16)(a).

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