

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

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## EXPLANATORY NOTES

### THE ACT

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

##### *Section 21 – Pharmaceutical care services contracts*

80. This section inserts new sections 17Q to 17V into the 1978 Act (in place of existing sections on pharmaceutical services). The new sections govern the terms and content of the new pharmaceutical care services (PCS) contracts and who may provide or perform PCS under the contracts. They contain regulation-making powers that will be used to set out the detail of the rights and obligations under the new contracts.
81. New **section 17Q** refers to the general content of the contract.
82. Subsection (1) allows a Health Board to enter into a PCS contract with a contractor to provide pharmaceutical care services in accordance with the provisions of Part I of the 1978 Act.
83. Subsection (3) sets out parameters for services to be provided under the contract, the remuneration for their provision and other matters. Health Boards and contractors are free to agree the terms of the contract – subject to any restrictions on this freedom contained in Part I of the 1978 Act (restrictions set out in new sections 17R to 17V and in regulations under new section 17Q and those sections).
84. Subsection (4) allows the contract to cover a range of services, such as those that are provided in other primary and acute care settings and for the services to be delivered at a location outside the Health Board's geographical area.
85. New **section 17R** makes it compulsory for a PCS contract to require the contractor to provide pharmaceutical care services of such descriptions as may be set out in regulations under the section. The regulations may describe services by reference to the manner or circumstances in which they are to be provided. The intention is to set out in regulations that providers must provide certain essential services.
86. New **section 17S** sets out the persons with whom a Health Board may enter into a PCS contract. Subsection (1) allows a Health Board to enter into a PCS contract with a registered pharmacist or, where the statutory conditions are satisfied, a person or business lawfully conducting a retail pharmacy business (in accordance with section 69 of the Medicines Act 1968) provided that the contractor undertakes that the pharmaceutical care services are provided by, or under the supervision of, a registered pharmacist.
87. Subsection (2) enables regulations to set out the effect on the contract of a change in the membership of a partnership contracted to provide pharmaceutical care services. The

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intention is to allow the membership of a partnership to change without requiring a new contract to be entered into merely because such a change in partnership has taken place.

88. New **section 17T** deals with payments to be made under PCS contracts.
89. Subsection (1) enables Scottish Ministers to give directions as to payments to be made under the contracts. This follows the practice of using direction-making powers to ensure that Health Boards make payments that adhere to Scotland-wide rates and levels.
90. Subsection (2) makes it compulsory for a PCS contract to require payments to be made in accordance with the directions then in force.
91. Subsection (3) gives examples of the matters for which directions may provide.
92. Subsection (4) requires Scottish Ministers to consult before giving any direction under subsection (1)
93. Subsection (5) requires Scottish Ministers to publish directions under subsection (1) in the Drug Tariff or in such other manner as they consider appropriate, for example, a Health Department Letter of Circular.
94. New **section 17U** allows regulations to be made identifying those requirements that must be included in all PCS contracts.
95. Subsection (2) gives examples of the issues that the regulations under subsection (1) may cover, such as: the manner in which and standards to which services are to be provided; the persons who may perform services; contract variation and enforcement; and the adjudication of disputes. Subsection (2)(b) provides that the regulations may give the Scottish Ministers power to issue directions with regard to the manner and standards to which services under a PCS contract must be provided. The use of directions recognises the clinical nature of the services that will be provided and the need for them to be reviewed and revised on a regular basis.
96. Subsection (3) provides for regulations made under subsection (2)(c)(iii) to set out prescribed circumstances in which a contractor must accept a person to whom services are to be provided and in which a contractor may decline to accept such a person or may terminate responsibility under the PCS contract for the person.
97. Subsection (4) provides that regulations varying the contract terms (by virtue of subsection (2)(c)(v)) may include provision as to the circumstances in which a Health Board may so vary the terms or to suspend or terminate any duty under the contract to provide services of a prescribed description.
98. Subsection (6) provides that all PCS contracts must include a requirement that the contractors comply with any directions given by the Scottish Ministers under the regulation powers at subsection (1).
99. New **section 17V** essentially provides for two things.
100. Subsection (1) creates a regulation-making power to set national procedures for internal dispute resolution for the terms of proposed PCS contracts. The regulations may provide for the proposed terms to be referred to the Scottish Ministers and for the Scottish Ministers, or a person or panel of persons appointed by them, to determine what the terms of contract should be.
101. Subsection (2) creates a regulation making power to enable the parties to a PCS contract and parties who are already providing pharmaceutical care services under a PCS contract to opt to be treated as a health service body for any purposes in the existing section 17A of the 1978 Act. Section 17A allows health service bodies to enter into contracts with other health service bodies for the supply of goods and services. Such contracts are health service contracts, and are not regarded for any purpose as giving rise to contractual rights and liabilities, and they are not enforceable in courts. Section

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17A instead provides for either party to a NHS contract to refer any matter in dispute to the Scottish Ministers for determination. It also provides for any determination made by the Scottish Ministers to contain directions (including directions about payments) and places a duty on the parties to the NHS contract to comply with any such directions.

102. Subsection (3) provides that if a PCS contractor or potential provider elects to become a health service body under subsection (2), section 17A of the 1978 Act applies with appropriate modifications. Where a business opts for its PCS contract to be an ordinary contract at law, it will have the option of asking the courts to resolve any resultant contractual disputes.