

*These notes relate to the Health (Tobacco, Nicotine etc. and Care)  
(Scotland) Act 2016 (asp 14) which received Royal Assent on 06 April 2016*

# **HEALTH (TOBACCO, NICOTINE ETC. AND CARE) (SCOTLAND) ACT 2016**

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## **EXPLANATORY NOTES**

### **THE ACT – OVERVIEW**

#### **Part 1 – Tobacco, Nicotine Vapour Products and Smoking**

##### *Chapter 3 – Smoking Outside Hospitals*

#### **Duty of candour procedure**

##### *Section 22 – Duty of candour procedure*

88. The duty of candour procedure, which covers actions to be taken by responsible persons, will be set out in regulations made using the power in subsection (1). Those regulations will be subject to negative procedure. Responsible persons are defined in section 25(1) and include Health Boards (both territorial and Special Health Boards), the Common Services Agency (which operates under the name of NHS National Services Scotland), independent health care services, local authorities and other providers of care services and social work services. Generally, individuals providing health, care or social work services are not included in the “responsible person” definition. However, for care services, individuals providing a service who make arrangements with others to assist with the provision of the service, are included in the definition of “responsible person”.
89. Subsection (2) gives detail as to what the regulations may, in particular, make provision about. This includes taking actions to meet with and apologise to the “relevant person” (see paragraph 92 below) and provide support to them, as well as asking the “relevant person” whether they would like to receive an account of the incident or information about further steps taken. Subsection (2) also includes detail on recording and monitoring incidents and providing training and support to those carrying out the duty of candour procedure.
90. Subsection (3) gives a definition of ‘relevant person’ for the purposes of the section and the duty of candour procedure, which is the person who has received the health service, care service, or social work service, or a person acting on behalf of that person where that person has died or lacks capacity, or for other reasons cannot make decisions about the service provided to them.