

2006 No. 1056

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

NATIONAL HEALTH SERVICE, SCOTLAND

**The Smoking, Health and Social Care (Scotland) Act 2005
(Consequential Modifications) (England, Wales and Northern
Ireland) Order 2006**

Made - - - - 31st March 2006

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998(a);

In accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Modifications) (England, Wales and Northern Ireland) Order 2006.

(2) This Order shall come into force on as follows—

- (a) this article shall come into force on the day after the day on which this Order is made;
- (b) article 2 and the Schedule shall, subject to sub-paragraph (c), come into force on the day on which section 20 of the Smoking, Health and Social Care (Scotland) Act 2005(b) comes into force; and
- (c) paragraph 5(c) of the Schedule and article 2, for the purposes of paragraph 5(c) of the Schedule, shall come into force on the later of the day after the day on which this Order is made or the day on which regulations made under section 26(2) of the National Health Service (Scotland) Act 1978(c), as substituted by section 19 of the Smoking, Health and Social Care (Scotland) Act 2005, come into force.

(3) This Order does not extend to Scotland.

(4) Subject to paragraph (3), the modifications in the Schedule have the same extent as the provisions being modified.

(a) 1998 c.46.
(b) 2005 asp 13.
(c) 1978 c.29.

Modifications

2. The modifications in the Schedule have effect.

DAVID CAIRNS
Parliamentary Under Secretary of State
Scotland Office,
Department for Constitutional Affairs

Dover House,
London
31st March 2006

PART 1

MODIFICATION OF PUBLIC GENERAL ACTS

Health Services and Public Health Act 1968 (c.46)

1.—(1) The Health Services and Public Health Act 1968 is amended as follows.

(2) In section 59 (extension of power of user by Crown of patented invention to user for certain health services)(a)–

- (a) in subsection (1), after “local pharmaceutical services,” insert “pharmaceutical care services,”;
- (b) in subsection (2), omit “pharmaceutical services or”; and
- (c) after subsection (2C) insert–

“(2D) In subsection (1), the reference to pharmaceutical care services is a reference to pharmaceutical care services provided under Part 1 of the National Health Service (Scotland) Act 1978.”.

(3) In section 63(2)(aa) (provision of instruction for officers of hospital authorities and other persons employed, or contemplating employment, in certain activities associated with health or welfare)(b), after “primary medical service” in the second place where it appears, insert “or pharmaceutical care service”.

(4) In section 64(4) (financial assistance by the Minister of Health and the Secretary of State to certain voluntary organisations)(c) after “section 2C” insert “or 2CA”.

Patents Act 1977(c.37)

2. In section 56(4)(a) of the Patents Act 1977 (interpretation, etc., of provisions about Crown use)(d)–

- (a) in sub-paragraph (i), omit “pharmaceutical services or”; and
- (b) after sub-paragraph (iii) add–
 - “; or
 - (iiia) pharmaceutical care services under Part 1 of the National Health Service (Scotland) Act 1978,”.

(a) Section 59 was amended by S.I. 1969/388; the National Health Service Act 1977 (c.49), Schedule 15, paragraph 44; the National Health Service (Scotland) Act 1978 (c.29) (“the 1978 Act”), Schedule 16, paragraph 26(1); the National Health Service (Primary Care) Act 1997 (c.46) (“the 1997 Act”), Schedule 2, paragraph 1(2); the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), Schedule 5, paragraph 1(2); the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (“the 2003 Act”), Schedule 11, paragraph 3; and S.I. 2004/957.

(b) Section 63(2)(aa) was inserted by the 2003 Act, Schedule 11, paragraph 4(a) and amended by S.I. 2004/957.

(c) Section 64(4) was amended by the National Health Service (Scotland) Act 1972 (c.58), Schedule 6, paragraph 36; the 1978 Act, Schedule 16, paragraph 27 and Schedule 17; and S.I. 2004/957.

(d) Section 56(4) was amended by the 1997 Act, Schedule 2, paragraph 2 and the 2003 Act, Schedule 5, paragraph 4. Section 56(4)(a) is to be read with S.I. 2004/288 and S.I. 2005/2925 for England and S.I. 2004/480 (W.49) and S.I. 2006/345 (W.42) for Wales.

National Health Service Act 1977(c.49)

3. In section 41B of the National Health Service Act 1977 (terms and conditions etc.)(a)–
- (a) in subsection (2), after “pharmaceutical list” insert “or who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978”; and
 - (b) in subsection (6)(b), omit “section 27(2)(a) of the National Health Service (Scotland) Act 1978 or”.

Copyright, Designs and Patents Act 1988 (c.48)

4. In section 240(4) of the Copyright, Designs and Patents Act 1988 (Crown use of designs)(b)–
- (a) in paragraph (a)(ii), omit “pharmaceutical services or”; and
 - (b) after paragraph (c) add–
 - “; or
 - (d) pharmaceutical care services under Part 1 of the National Health Service (Scotland) Act 1978.”.

National Health Service and Community Care Act 1990 (c.19)

5. In section 4A of the National Health Service and Community Care Act 1990 (provision of certain services under NHS contracts)(c)–
- (a) in subsection (1)–
 - (i) in paragraph (a), omit “or”; and
 - (ii) after paragraph (b) add–
 - “; or
 - (c) by a person who has entered into a pharmaceutical care services contract under section 17Q of the National Health Service (Scotland) Act 1978,”;
 - (b) in subsection (3), in the definition of “pharmaceutical list” omit paragraph (b); and
 - (c) after subsection (3) add–

“(4) In subsection (3), in paragraph (b) of the definition of “ophthalmic list” the reference to a list published in accordance with regulations made under paragraph (a) of section 26(2) of the National Health Service (Scotland) Act 1978 is a reference to the first part of the list (referred to in sub-paragraph (i) of that paragraph) which is published in accordance with regulations under that paragraph.”.

Trade Union and Labour Relations (Consolidation) Act 1992(c.52)

6. In section 279 of the Trade Union and Labour Relations (Consolidation) Act 1992 (health service practitioners)(d)–
- (a) in subsection (1)(b), for “, 26, or 27” substitute “or 26”; and

(a) Section 41B was inserted by the 1997 Act, section 28(1) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”), Schedule 2, paragraph 15.

(b) Section 240(4) was amended by the 1997 Act, Schedule 2, paragraph 63; the 2001 Act, Schedule 5, paragraph 7; the 2003 Act, Schedule 11, paragraph 2; and S.I. 2004/957.

(c) Section 4A was inserted by the 1997 Act, section 31(1). Subsection (1) was amended by the 2002 Act, Schedule 1, paragraph 41 and Schedule 2, paragraph 54. Subsection (3) was amended by the 2001 Act, Schedule 5, paragraph 8.

(d) Section 279 was amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 122; the 1997 Act, Schedule 2, paragraph 67; the 2001 Act, Schedule 5, paragraphs 8 and 9; the 2002 Act, Schedule 2, paragraph 60 and Schedule 3, paragraph 13; the 2003 Act, Schedule 11, paragraph 59; and S.I. 2004/957.

- (b) after subsection (3) add—
- “(4) In this Act—
- (a) “worker” also includes an individual regarded in his capacity as one who works or normally works or seeks to work as a person performing pharmaceutical care services under a contract entered into by him with a Health Board under section 17Q of the National Health Service (Scotland) Act 1978; and
- (b) “employer” in relation to such a person, regarded in that capacity, means that Health Board.”.

Employment Rights Act 1996 (c.18)

7. In section 43K of the Employment Rights Act 1996 (extension of meaning of “worker” etc. for Part 4A)(a)—

- (a) in subsection (1)—
- (i) in paragraph (c)(ii), for “, 26 or 27” substitute “or 26”; and
- (ii) after that paragraph insert—
- “; or
- (ca) works or worked as a person performing services under a contract entered into by him with a Health Board under section 17Q of the National Health Service (Scotland) Act 1978;”;
- (b) in subsection (2), after paragraph (b) insert—
- “(ba) in relation to a worker falling within paragraph (ca) of that subsection, the Health Board referred to in that paragraph, and”.

PART 2

MODIFICATION OF SUBORDINATE LEGISLATION

The National Health Service (Pharmaceutical Services) Regulations 1992

8. In the National Health Service (Pharmaceutical Services) Regulations 1992(b), in paragraph 8(3)(a)(i) of Schedule 2 (providing ordered drugs or appliances)—

- (a) omit “Scotland or”;
- (b) omit “or, in Scotland, of a Health Board”; and
- (c) after “Social Services Board” insert “, or, in Scotland, from inclusion in the list of persons performing pharmaceutical care services maintained by a Health Board in terms of section 17X of the National Health Service (Scotland) Act 1978”.

National Health Service (Charges for Drugs and Appliances)(Wales) Regulations 2001

9. In the National Health Service (Charges for Drugs and Appliances) (Wales) Regulations 2001(c), in regulation 2(1) (interpretation), in the definition of “equivalent prescription form” (“ffurflen brescripsiwn gyfatebol”)—

- (a) omit “, Scotland”; and

(a) Section 43K was inserted by the Public Interest Disclosure Act 1998 (c.23), section 1 and was amended by the 2002 Act, Schedule 2, paragraph 63; the 2003 Act, Schedule 11, paragraph 65 and Schedule 14, Part 4; and S.I. 2004/957.

(b) The Regulations were revoked for England by S.I. 2005/641. Part 2 of Schedule 2 was substituted for Wales by S.I. 2005/1013.

(c) S.I. 2001/1358 (W.86). The definition of “equivalent prescription form” was inserted by S.I. 2005/1915.

- (b) after “local pharmaceutical services” insert “, or in Scotland pharmaceutical care services provided under Part 1 of the National Health Service (Scotland) Act 1978,”.

Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd am Gyffuriau a Chyfarpar)(Cymru) 2001

10. In Rheoliadau'r Gwasanaeth Iechyd Gwladol (Ffioedd am Gyffuriau a Cyfarpar) (Cymru) 2001(a), in regulation 2(1) (dehongli), in the definition of “ffurflen bresgripsiwn gyfatebol” (“*equivalent prescription form*”)–

- (a) omit “, yr Alban”; and
- (b) after “wasanaethau fferyllol lleol” insert “neu, yn yr Alban gwasanaethau gofal fferyllol a ddarperir o dan Ran 1 o Ddeddf y Gwasanaeth Iechyd Gwladol (yr Alban) 1978,”.

Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004

11. In the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004(b), in article 1(2) (citation, commencement and interpretation), in the definition of “Drug Tariff”, in paragraph (b), omit the words from “statement” to “1995” and substitute “document published in terms of section 17W of the National Health Service (Scotland) Act 1978”.

The National Health Service (Pharmaceutical Services) Regulations 2005

12. In the National Health Service (Pharmaceutical Services) Regulations 2005(c), in paragraph 8(3)(a)(i) of Schedule 1 (providing ordered drugs or appliances)–

- (a) omit “Scotland or”;
- (b) omit “or, in Scotland, of a Health Board”; and
- (c) after “Social Services Board” insert “, or, in Scotland, from inclusion in the list of persons performing pharmaceutical care services maintained by a Health Board in terms of section 17X of the National Health Service (Scotland) Act 1978”.

(a) O.S. 2001/1358 (Cy.86).

(b) S.I. 2004/1765.

(c) S.I. 2005/641 to which there are amendments not relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision consequential on the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”).

Section 19 of the 2005 Act made provision for the preparation, maintenance and publication by Health Boards of lists of persons involved in the provision of general ophthalmic services, the first part of which shall be of persons who undertake to provide general ophthalmic services, and the second part of which shall be of persons who do not undertake to provide such services but who are approved by the Board to assist in the provision of such services. Part 3 of the 2005 Act amended the National Health Service (Scotland) Act 1978 to make provision for pharmaceutical care services in place of the current provision made for pharmaceutical services.

Article 2 of this Order provides for the modifications of the primary and secondary legislation specified in the Schedule in consequence of these provisions of the 2005 Act. The effect of the modifications is to provide for references in legislation extending to England and Wales and Northern Ireland to the new listing arrangements and pharmaceutical care services provisions made by the 2005 Act, and to remove references to the previous pharmaceutical services provisions.

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