

Smoking, Health, and Social Care (Scotland) Bill

Bill Number: SP Bill 33
Introduced on: 16 December 2004
Introduced by: Andy Kerr (Executive Bill)
Passed: 30 June 2005
Royal Assent: 5 August 2005

[2005 asp 13](#)

Passage of the Bill

The [Smoking, Health and Social Care \(Scotland\) Bill](#) [SP Bill 33] was introduced in the Parliament on 16 December 2004. Stage 1 commenced on 11 January 2005, with the Health Committee as the lead committee. The Stage 1 (general principles) debate took place on [28 April 2005](#) and the [Bill was passed](#) following the Stage 3 parliamentary debate on [30 June 2005](#).

Purpose and objectives of the Bill

The Bill is required to:

- to prohibit smoking in certain wholly or substantially enclosed places; to enable the Scottish Ministers by order to vary the minimum age limit of those to whom tobacco may be sold, following the consultation '[Smoking in Public Places: A Consultation](#)'
- to make provision in relation to general dental services, general ophthalmic services, personal dental services, pharmaceutical care services and detection of vision problems in children. This follows the consultations '[Modernising NHS Dental Services in Scotland](#)' and '[Modernising NHS Community Pharmacy in Scotland: Consultation Paper](#)', together with the commitments made in '[A Partnership for a Better Scotland: Partnership Agreement](#)'
- to make provision in relation to disqualification by the NHS Tribunal, following the consultation '[Further Measures to Improve the Provision of Primary Care Services: A Consultation](#)'
- make provision for payments to certain persons infected with hepatitis C
- make provision for amendment of the [Regulation of Care \(Scotland\) Act 2001](#)
- make provision for registration of child care agencies and housing support services
- amend the [Adults with Incapacity \(Scotland\) Act 2000](#)
- make provision for appeals against certain orders under the Public Health (Scotland) Act 1897
- make provision for the ability of Scottish Ministers and health bodies to enter into joint ventures

- make provision for the Scottish Hospital Endowments Research Trust

Provisions of the Bill

The main provisions in the Bill are contained in several parts:

Part 1 - Smoking: Prohibition and Control

This makes provision for a ban on smoking in certain wholly or substantially enclosed places:

- creating an offence of permitting others to smoke in and on no-smoking premises
- creating an offence of smoking in no-smoking premises
- creating an offence of failing to display warning notices in no-smoking premises
- setting out the powers of enforcement officers to enter no-smoking premises
- creating an offence of failing without reasonable excuse to give one's name and address on request by an authorised officer
- enabling Scottish Ministers to vary the age for the purchase of tobacco

Part 2 - General Dental Services, General Ophthalmic Services, Personal Dental Services etc

This provides for various matters concerning general dental services, personal dental services and general ophthalmic services:

- free oral health assessments and dental examinations
- free eye examinations and sight tests
- assistance and support in the provision of general dental services
- NHS provision of certain dental services
- listing of those persons undertaking to provide or approved to assist in the provision of general ophthalmic services
- listing of those persons undertaking to provide or approved to assist in the provision of general dental services and those persons performing personal dental services

Part 3 - Pharmaceutical Care services etc.

This makes a series of provisions regarding pharmaceutical care services:

- requirements on Health Boards to plan provision of pharmaceutical care services
- contracts for provision of pharmaceutical care services
- listing of persons performing pharmaceutical care services
- provision of assistance and support for pharmaceutical care services

Part 4 - Discipline

Amends the disciplinary powers and duties of the NHS Tribunal and NHS Boards, concerning family health service practitioners (ie general medical

practitioners, general dental practitioners, pharmacists, optometrists and general ophthalmic practitioners).

Part 5 – Miscellaneous

This makes provisions on a number of issues:

- enables Scottish Ministers to establish a scheme for the making of payments to certain persons infected with hepatitis C as a result of NHS treatment and to certain persons infected with the virus by transmission of it from a person infected with it as a result of such treatment
- amends the Regulation of Care (Scotland) Act 2001 as regards: what constitutes an independent health care service; implementation of certain decisions by the Scottish Commission for the Regulation of Care or the Scottish Social Services Council; the provision of information to the Council; and the minimum frequency of inspection of care services by the Commission
- provides further time for applications to be made for registration of child care agencies and housing support services under the Regulation of Care (Scotland) Act 2001 and provides authorisation for the payment of certain grants to such services while not registered under that Act
- amends the Adults with Incapacity (Scotland) Act 2000 as respects authorisation of medical treatment
- amends the Public Health (Scotland) Act 1897 to introduce a right of appeal in certain cases under that Act
- enables Scottish Ministers to form, participate in and provide assistance to companies for the purpose of providing facilities or services for persons exercising functions under the National Health Service (Scotland) Act 1978 or of making money available to the health service in Scotland (joint ventures)
- amends the rules as to membership of and other matters relating to the Scottish Hospital Endowments Research Trust

Parliamentary consideration

In its [Stage 1 Report](#) the Health Committee noted that it had some concerns that the diverse nature of the Bill made it more difficult to carry out effective scrutiny. It recommended that the Executive bring forward bills that are more discrete in nature to avoid the difficulty of having to deal with very different subject matter.

In general terms the Committee was satisfied with the provisions in the Bill, though this was by majority decision when considering the smoking provisions. There was some concern with the proposals for joint ventures, though this mainly concerned that the legislation was based on the use of one model of joint venture, the performance of which could not be properly assessed due to the short period it had been in operation.

During stages 2 and 3, the most significant amendments were:

- an Executive amendment which sought to give Ministers the power to amend section 25(5) of the Regulation of Care (Scotland) Act 2001, and, after consultation, bring forward regulations that could lengthen the time

within which the Care Commission inspections take place (though not shorten it). The Health Committee took evidence on this amendment from the Care Commission, the care sector and service user groups, and following assurances from the Executive agreed to the amendment.

- An amendment proposed by Duncan McNeil MSP at stage 2, which sought to give Ministers the power to introduce regulations, following consultation, to vary the age for the purchase of tobacco. This received support from the Health Committee at Stage 2, and was further amended by the Executive at stage 3 to ensure that any regulations would be dealt with by affirmative procedure in Parliament.
- An amendment at Stage 3 proposed by Duncan McNeil MSP, which placed a duty on Scottish Ministers to ensure that they take all reasonable steps to provide for the detection of vision problems in children. This was agreed to by Parliament.