



SCOTTISH EXECUTIVE

Health Department
Performance Management & Finance Directorate

Dear Colleague

SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005 – INCOME GENERATION POWER TO FORM COMPANIES

Section 7 of the Health and Medicines Act 1988 allows Scottish Ministers to undertake certain activities for the purpose of generating income for the NHS. This power was extended to NHS Boards and the Common Services Agency for the Scottish Health Service through the Direction and guidance attached to SHHD/DGM (1989)66.

Section 37(2) of the Smoking, Health and Social Care (Scotland) Act 2005 extends those powers to allow Scottish Ministers to create and participate in companies for the same purpose of generating income. That provision came into force on 17 October 2005.

Ministers propose extending this new power to NHS Boards and the Common Services Agency for the Scottish Health Service for the purpose of exploiting intellectual property. Prior to doing so, however, they have decided to take views on the extent to which it would be appropriate to control the use of the power. CSO will undertake this exercise shortly.

In the meantime, it is necessary to make a revised Direction (attached) to ensure that NHS Boards and the Common Services Agency for the Scottish Health Service do not use the new power. This Direction makes provision so that it is clear that the income generation powers of NHS Boards and the Common Services Agency for the Scottish Health Service are exactly the same as they were before 17 October 2005.

Yours sincerely

P. S. Collings

PETER COLLINGS

Director of Performance Management & Finance

12 December 2005

Addresses

For action

Chief Executive NHS Boards
Chief Executives Operating Divisions
Finance Directors
R&D Lead Officers

For information

Medical Directors

Enquiries to:

Malcolm Pringle
Chief Scientist Office
Room GE.14
St Andrew's House
EDINBURGH EH1 3DG

Tel: 0131-244 2251
Fax: 0131-244 2285

NATIONAL HEALTH SERVICE, SCOTLAND

INCOME GENERATION (SCOTLAND) DIRECTIONS 2005

The Scottish Ministers, in exercise of the powers conferred by section 7(3), (4) and (5) of the Health and Medicines Act 1988^(a), and of all other powers enabling them in that behalf and having regard to the existing work of voluntary bodies, hereby give the following directions:-

Commencement, interpretation and extent.

1. – (1) These directions may be cited as the Income Generation (Scotland) Directions 2005 and shall have effect from 12 December 2005.

(2) In these Directions

“the 1978 Act” means the National Health Service (Scotland) Act 1978^b;

“the 1988 Act” means the Health and Medicines Act 1988;

“the Agency” means the Common Services Agency for the Scottish Health Service constituted under Section 10 of the 1978 Act; and

“Health Board” means a Health Board constituted under section 2(1) of the 1978 Act.

(3) These Directions extend to Scotland and in so far as they extend beyond Scotland, they do so only as a matter of Scots law.

Exercise of powers

2. – (1) Each Health Board and the Agency may exercise any of the powers of Scottish Ministers specified in section 7(2)(a) to (h) of the 1988 Act prior to the amendment of that section by section 37(2) of the Smoking, Health and Social Care (Scotland) Act 2005^(c).

(2) The powers referred to in paragraph (1) may be exercised outwith Scotland but only as a matter of Scots law.

(3) Each Health Board and the Agency shall, in exercising the powers referred to in paragraph (1), have regard to the existing work of voluntary bodies.

(4) Nothing in this Direction authorises a Health Board or the Agency to disregard any enactment or rule of law or to override any person’s contractual or proprietary rights.

Revocation

^(a) 1988 c.49. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

^(b) 1978 c.29.

^(c) 2005 asp 13.

3. The directions on income generation given under section 7 of the 1988 Act on 1 September 1989 are revoked.

P. S. Collings

A member of the staff of the Scottish Ministers

St Andrew's House
Edinburgh
12 December 2005