# EXECUTIVE NOTE

## The Functions of Health Boards (Scotland) Amendment Order 2006 (S.S.I. 2006/132)

The above instrument is proposed to be made in exercise of the powers conferred by sections 2(1)(a) and 105(7) of the National Health Service (Scotland) Act 1978 ("the 1978 Act"). The instrument is subject to negative resolution procedure.

## Policy Objectives

This Order amends the Functions of Health Boards (Scotland) Order 1991 ("the 1991 Order") to confer on Health Boards the powers of the Scottish Ministers under the following sections of the 1978 Act.

### Section 17I (use of accommodation)

Article 2(2) of the Order amends the 1991 Order to confer on Health Boards the powers of the Scottish Ministers under section 17I of the 1978 Act (as amended by the Primary Medical Services (Scotland) Act 2004). These powers are being conferred on Health Boards so that Health Boards have the power to make accommodation available on such terms as they think fit to persons providing primary medical services.

### Section 38A (breastfeeding)

Article 2(3) of the Order amends the 1991 Order to confer on Health Boards the powers of the Scottish Ministers under section 38A of the 1978 Act (as inserted by the Breastfeeding etc. (Scotland) Act 2005). These powers are being conferred on Health Boards so that Health Boards have the power to make arrangements, to such extent as they consider necessary to meet all reasonable requirements, for the purpose of supporting and encouraging the breastfeeding of children by their mothers and to disseminate, by whatever means, information promoting and encouraging breastfeeding.

### Section 84B (joint ventures)

Article 2(4) of the Order amends the 1991 Order to confer on Health Boards the powers of the Scottish Ministers under section 84B of the 1978 Act (as inserted by the Smoking, Health and Social Care (Scotland) Act 2005). The powers of the Scottish Ministers under section 84B will be conferred on Health Boards so that Health Boards have the power to, in relation to joint ventures, (a) form or participate in forming companies for the provision of facilities or services for persons or groups under the 1978 Act; (b) participate in companies providing facilities and services for such persons; and (c) invest in companies and provide loans and guarantees and other financial provision to or in respect of them with a view to securing or facilitating the provision of companies of facilities or services for such persons. These powers are being conferred on Health Boards to provide the basis for the long term delivery of facilities that meet the needs of local communities, as well as encouraging more joint working, for example between the Health Boards, local authorities and the voluntary sector.

**Section 98 (charges to overseas visitors)**

Article 2(5) of the Order amends the 1991 Order to allow Scottish Ministers to recover charges from persons not ordinarily resident in Great Britain for services which are not provided directly by Health Boards. This will facilitate the extension of the current statutory provisions relating to the charging of overseas visitors to include eye examinations and dental examinations, which would otherwise be free with effect from 1 April 2006 in terms of the Smoking, Health and Social Care (Scotland) Act 2005.

## Consultation

No consultation has been conducted on the provision in article 2(2) of the Order which will amend the 1991 Order to confer on Health Boards the powers of the Scottish Ministers under section 17I of the 1978 Act. The Scottish General Practitioner's Committee has been advised.

In terms of article 2(3) of the Order which will amend the 1991 Order to confer on Health Boards the powers of the Scottish Ministers under section 38A of the 1978 Act, a National Strategy for Infant Feeding is currently under development which is planned to be out for public consultation in Spring 2006. This will set out explicitly what Scottish Ministers will expect from Health Boards in term of promotion and support for breastfeeding. Prior to the publication of the final National Strategy Health Boards will continue with their current activities on promoting breastfeeding.

In terms of article 2(4) of the Order which will amend the 1991 Order to confer on Health Boards the powers of the Scottish Ministers under section 84B of the 1978 Act, a full consultation was conducted between February and May 2004 on the basis and terms of the proposed primary legislation. The consultation was explicit with regard to the powers being sought.. The consultation summary report was published in September 2004 and can be accessed at: http://www.show.scot.nhs.uk/pfcu/PDFs/LIFTCnsltRpt.pdf

No consultation has been conducted on Article 2 (5) of the Order. Ministers have agreed that the provision of free eye examinations and dental examinations in terms of the Smoking, Health and Social Care (Scotland) Act 2005 is intended to benefit people who are permanently resident in the United Kingdom or otherwise entitled to free NHS care and should not be extended to overseas visitors to Scotland who are not so entitled .

## Financial Effects

The instrument has no financial effects on the Scottish Executive, Health Boards or on business.

HD: Health Improvement Strategy
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