

*Changes to legislation: There are currently no known outstanding effects for the Health Act 1999, Cross Heading: The 1978 Act. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 4

#### AMENDMENTS OF ENACTMENTS

##### Modifications etc. (not altering text)

- C1** Sch. 4: transfer of functions (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1 (as inserted (30.6.1999) by 1999 c. 8, ss. 66(4)(5)(c), 67(4))

##### *The 1978 Act*

- 42 The 1978 Act is amended as follows.

##### Commencement Information

- I1** Sch. 4 para. 42 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 43 In section 9 (local consultative committees)—
- (a) in subsection (5), for “on the provision of services under this Act” there is substituted “ and, where the Secretary of State so directs, an NHS trust on the provision of services under this Act or under a pilot scheme under section 1 of the <sup>M1</sup>National Health Service (Primary Care) Act 1997 ”,
  - (b) in subsection (7), after “Health Boards” there is inserted “ or, where the Secretary of State so directs, NHS trusts ” and for “may be prescribed” there is substituted “ the Secretary of State may direct ”.

##### Commencement Information

- I2** Sch. 4 para. 43 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

##### Marginal Citations

- M1** 1997 c.46.

- 44 In section 10(4) (Common Services Agency)—
- (a) after “Health Boards” in the first place where it appears there is inserted “ the NHS trusts ”,
  - (b) after “Health Boards” in the second place where it appears there is inserted “ or of the NHS trusts ”,
  - (c) after “Health Boards” in the third place where it appears there is inserted “ or NHS trusts ”.

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**Commencement Information**

**I3** Sch. 4 para. 44 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 45 In section 12A(5) (NHS trusts)—
  - (a) in paragraph (a), for “and directors” there is substituted “ , directors and trustees ”,
  - (b) in paragraph (b), after “directors” there is inserted “ , trustees, ”,
  - (c) in paragraph (c), after “directors” there is inserted “ and trustees ”,
  - (d) in paragraph (d), for the words from “director” where it first appears to the end of the paragraph there is substituted “ trustee, to be regarded as an executive director rather than as a trustee ”.

**Commencement Information**

**I4** Sch. 4 para. 45 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 46 In section 17A (NHS contracts)—
  - (a) in subsection (2)—
    - (i) after paragraph (a) there is inserted—  
“(aa) Special Health Boards”,
    - (ii) after paragraph (k) there is inserted—  
“(ka) Primary Care Trusts established under section 16A of the National Health Service Act 1977”,
    - (iii) paragraphs (d) and (j) are omitted,
  - (b) in subsection (3), paragraph (a) and the word “and” following it are omitted.

**Commencement Information**

**I5** Sch. 4 para. 46 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 47 In section 17E (personal medical and dental services: regulations), subsection (4) is omitted.

**Commencement Information**

**I6** Sch. 4 para. 47 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 48 **F1** .....

**Textual Amendments**

**F1** Sch. 4 para. 48 omitted (S.) (1.4.2004) by virtue of [The Primary Medical Services \(Scotland\) Act 2004 \(Modification of Enactments\) Order 2004 \(S.S.I. 2004/167\)](#), art. 2, [Sch. para. 5\(b\)](#)

- 49 **F2** .....

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### Textual Amendments

**F2** Sch. 4 para. 49 repealed (S.) (1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 42(2), 43, [Sch. 3](#); S.S.I. 2006/121, [art. 3\(b\)](#), Sch. 2 Table

50 Section 32 (regulations as to sections 29 to 31) is renumbered as subsection (1) of that section and—

- (a) in paragraph (c) after “disqualification” in both places where it occurs there is inserted “ or condition ”,
- (b) after that subsection there is inserted—

“(2) Regulations under subsection (1)(a) may in particular provide that, where (apart from the regulations) it would be the duty of the Tribunal to inquire into both an efficiency case and a fraud case in respect of the same person, they may inquire into one case before inquiring into the other and, after proceedings in the first case are finally disposed of, may if they think it appropriate adjourn the other case indefinitely.”

### Commencement Information

**I7** Sch. 4 para. 50 wholly in force for S. at 4.3.2004: para. 50 not in force at Royal Assent see s. 67(1); para. 50 in force at 31.1.2004 for S. for certain purposes and wholly in force for S. at 4.3.2004 by [S.S.I. 2004/32](#), [art. 2\(1\)\(c\)\(2\)\(c\)](#)

51 In section 32A (applications for interim suspension)—

- (a) after subsection (1) there is inserted—

“(1A) A Health Board may, if they have requested a review of a conditional disqualification on the ground mentioned in section 30(3)(b) or (c), at any time before the review is concluded apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the review relates.”,

- (b) in subsection (2), for the words from “it” to “patients” there is substituted “ either of the conditions for doing so is satisfied ” and after “in question” there is inserted “ or the case to which the review in question ”,
- (c) after that subsection there is inserted—

“(2A) The conditions for giving such a direction are—

- (a) that it is necessary to do so in order to protect persons who are, or may be, provided with services under this Part to which the case in question, or the case to which the review in question, relates;
- (b) in, or in the case of a review relating to, a fraud case, that unless they do so there is a significant risk that—
  - (i) an act or omission within section 29(7)(a) will occur; or
  - (ii) the investigation of the case or the review will be prejudiced.”,

- (d) **F3** .....

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- (e) in subsection (4), after “case” there is inserted “ or review ”,
- (f) subsection (5) is omitted’
- (g) <sup>F3</sup> .....

**Textual Amendments**

**F3** Sch. 4 para. 51(d)(g) repealed (S.) (1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 42(2), 43, [Sch. 3](#); S.S.I. 2006/121, [art. 3\(b\)](#), Sch. 2 Table

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**Commencement Information**

**I8** Sch. 4 para. 51 wholly in force for S. at 4.3.2004, see s. 67(1) and [S.S.I. 2004/32](#), [art. 2\(2\)\(c\)](#)

- 52 In section 32B (continuation of suspension pending appeal)—
- (a) for subsection (1) and the preceding sidenote there is substituted—

**“32B Suspension pending appeal.**

(1) Where, on disposing of a case under section 29B, the Tribunal make a national disqualification, they may, if they consider that either of the conditions mentioned in section 32A(2A) is satisfied, direct that section 32A(3) shall apply or, if a direction has been given under section 32A(2), shall continue to apply to him as respects services of the kind to which the disqualification relates.”,

- (b) <sup>F4</sup> .....
- (c) <sup>F5</sup> .....
- (d) subsection (4) is omitted.

**Textual Amendments**

**F4** Sch. 4 para. 52(b) repealed (S.) (4.3.2004) by [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), ss. 25, 27(2), [Sch. 2 para. 4](#); S.S.I. 2004/33, [art. 2\(1\)\(c\)](#)

**F5** Sch. 4 para. 52(c) repealed (S.) (1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 42(2), 43, [Sch. 3](#); S.S.I. 2006/121, [art. 3\(b\)](#), Sch. 2 Table

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**Commencement Information**

**I9** Sch. 4 para. 52 wholly in force for S. (so far as unrepealed) at 4.3.2004: para. 52 not in force at Royal Assent see s. 67(1); para. 52(a)(c)(d) in force for S. at 4.3.2004 by [S.S.I. 2004/32](#) {art. 2}

- 53 <sup>F6</sup> .....

**Textual Amendments**

**F6** Sch. 4 para. 53 repealed (S.) (1.4.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 42(2), 43, [Sch. 3](#); S.S.I. 2006/121, [art. 3\(b\)](#), Sch. 2 Table

- 54 After section 35 there is inserted—

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### “35A Interpretation of Part II.

Where, under a direction by the Secretary of State, a Health Board has delegated any of its functions to an NHS trust, any reference in this Part to a Health Board in relation to such a delegated function shall, unless the context otherwise requires, include a reference to an NHS trust.”

#### Commencement Information

**I10** Sch. 4 para. 54 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 55 In section 85A (financial duties of certain bodies)—
- (a) in subsection (1), before “85(1)” in both places where it occurs there is inserted “ 85AA(1) or ” and for “85(2)(a)” there is substituted “ 85AA(3) ”,
  - (b) in subsection (2), for “Subsection (3) of section 85” there is substituted “ Subsection (9) of section 85AA ”,
  - (c) in subsection (3), before “85(1)” there is inserted “ 85AA(1) or ”,
  - (d) in subsection (6), in paragraph (c) before “85(1)” there is inserted “ 85AA(1) ” and for “85(2)(a)” there is substituted “ 85AA(3) ”.

#### Commencement Information

**I11** Sch. 4 para. 55 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 56 In section 85B(2) (bodies in respect of which schemes for meeting losses and liabilities may be made)—
- (a) the “and” after paragraph (c) is omitted,
  - (b) after paragraph (d) there is inserted “and
  - (e) Special Health Boards”.

#### Commencement Information

**I12** Sch. 4 para. 56 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 57 In section 86 (accounts of Health Boards and the Agency), subsections (1A), (1C) and (5) are omitted.

#### Commencement Information

**I13** Sch. 4 para. 57 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 58 Section 87D (indicative amounts for doctors’ practices) is omitted.

#### Commencement Information

**I14** Sch. 4 para. 58 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 59 In section 102 (state hospitals), for paragraph (b) of subsection (4) there is substituted—

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- “(b) A Health Board, a Special Health Board, the Agency or an NHS trust to the extent that power to do so is delegated to the Board, Agency or trust by the Secretary of State.”

**Commencement Information**

**I15** Sch. 4 para. 59 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 60 In section 105(7) (orders, regulations and directions), for “incidental or supplemental” there is substituted “ supplementary, incidental, consequential, transitory, transitional or saving ”.

**Commencement Information**

**I16** Sch. 4 para. 60 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 61 In section 108(1) (interpretation)—
- (a) in the appropriate place there is inserted—
    - ““goods” includes accommodation”,
  - (b) for the definition of “state hospital” there is substituted—
    - ““state hospital” has the meaning indicated in section 102(2)”.

**Commencement Information**

**I17** Sch. 4 para. 61 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 62 In Schedule 7A (NHS trusts)—
- (a) for any reference to a non-executive director or to non-executive directors there is substituted a reference to a trustee or, as the case may be, to trustees,
  - (b) in paragraph 16(c), the words from “which purposes shall include” to the end are omitted,
  - (c) in paragraph 22, in sub-paragraph (1), in paragraph (c) the words from “or is within” to the end of the paragraph, and “or Health Authority” are omitted,
  - (d) paragraph 23 is omitted.

**Commencement Information**

**I18** Sch. 4 para. 62 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

- 63 (1) Schedule 7B (financial provisions relating to NHS trusts) is amended as follows.
- (2) In paragraph 6 (surplus funds)—
- (a) for “amount standing in the reserves of an NHS trust” there is substituted “ sum held by an NHS trust other than a sum held on trust under section 12G ”,
  - (b) for “that amount” there is substituted “ that sum ”.
- (3) For paragraph 7 of that Schedule (investment) there is substituted—
- “7 An NHS trust shall have power to invest money held by it in any investments, including investments which do not produce income,

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specified in directions made by the Secretary of State with the consent of the Treasury; but nothing in this paragraph applies in relation to money held on trust under section 12G.”

(4) After that paragraph there is inserted—

- “8 Any direction with respect to—
- (a) the power conferred on an NHS trust by paragraph 1; or
  - (b) the maximum amount which an NHS trust may invest in any investment or class of investment,
- may be given only with the consent of the Treasury.”

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**Commencement Information**

**I19** Sch. 4 para. 63 wholly in force for S. at 1.10.1999, see s. 67(1) and S.S.I 1999/90, art. 2(b)

64 In Schedule 8 (the Tribunal), in paragraph 8—

- (a) in sub-paragraph (2)(a), for “section 29” there is substituted “ sections 29 to 29C ”,
- (b) in sub-paragraph (2)(b), after “disqualification” there is inserted “ conditional disqualification or declaration of unfitness ”,
- (c) in sub-paragraph (2)(d), for the words from “the application” to the end there is substituted “ section 32A(3) may be made to apply or continue to apply ”.

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**Commencement Information**

**I20** Sch. 4 para. 64 wholly in force for S. at 4.3.2004, see s. 67(1) and [S.S.I. 2004/32](#), **art. 2(2)(c)**

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