



# National Health Service Act 1977

## 1977 CHAPTER 49

### PART II

#### GENERAL MEDICAL, GENERAL DENTAL, GENERAL OPHTHALMIC, AND PHARMACEUTICAL SERVICES

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

- C1 Pt. II modified by S.I. 1982/288, Sch. 2 para. 1 Table
- C2 Pt. II restricted (1.4.1998) by 1997 c. 46, s. 12; S.I. 1998/631, art. 2(a), Sch. 1
- C3 Pt. II power to modify conferred (1.4.1998) by 1997 c. 46, s. 15(2)(a); S.I. 1998/631, art. 2(1)(a), Sch. 1
- Pt. II power to apply conferred (1.4.1998) by 1997 c. 46, s. 15(2)(b); S.I. 1998/631, art. 2(1)(b), Sch. 1

#### *General medical services*

### 29 Arrangements and regulations for general medical services.

[<sup>F1</sup>(1) It is the duty of every [<sup>F2</sup>Health Authority], in accordance with regulations, to arrange as respects their [<sup>F3</sup>area] with medical practitioners to provide personal medical services for all persons in the [<sup>F3</sup>area] who wish to take advantage of the arrangements.

(1A) The services so provided are referred to in this Act as “general medical services”.]

(2) Regulations may provide for the definition of the personal medical services to be provided and for securing that the arrangements will be such that all persons availing themselves of those services will receive adequate personal care and attendance, and the regulations shall include provision—

(a) for the preparation and publication of lists of medical practitioners who undertake to provide general medical services;

<sup>F4</sup>(b) .....

<sup>F4</sup>(c) .....

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- (d) for the issue to patients or their personal representatives by medical practitioners providing those services of such certificates as may be prescribed being certificates reasonably required by them under or for the purposes of any enactment;
  - (e) for the removal from the list of medical practitioners undertaking to provide general medical services for persons in any [<sup>F5</sup>area] of the name of any one in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, such general medical services for persons in that [<sup>F5</sup>area].
  - [<sup>F6</sup>(f) for the making of arrangements for the temporary provision of general medical services [<sup>F7</sup>in the area of a Health Authority];
  - (g) for the circumstances in which a name added to the list by virtue of subsection (6) below may be removed from it.]
- (3) Regulations under subsection (2) above may provide for the personal medical services there mentioned to include the provision of, and services connected with, any such advice, examination and treatment as are mentioned in paragraph (b) of section 5(1) above.
- [<sup>F8</sup>(4) The remuneration to be paid under the arrangements mentioned in subsection (1) above to a practitioner who provides general medical services shall not, except in special circumstances, consist wholly or mainly of a fixed salary which has no reference to the number of patients for whom he has undertaken to provide such services.]
- [<sup>F9</sup>(5) Regulations shall—
- (a) include provision for the making to a medical practitioner providing general medical services of payments in respect of qualifying services provided by a spouse or other relative of his; and
  - (b) provide that the rates and conditions of payment and the qualifying services in respect of which the payments may be made shall be such as may be determined by the Secretary of State after consultation with such bodies as he may recognise as representing such medical practitioners.]

[<sup>F10</sup>(6) The persons with whom arrangements for the temporary provision of general medical services in [<sup>F11</sup>an area] may be made by virtue of regulations under subsection (2) above include medical practitioners who are not on the list of medical practitioners providing such services in [<sup>F12</sup>the area], and the power to prepare and publish lists of medical practitioners conferred by paragraph (a) of that subsection accordingly includes power to add the names of medical practitioners with whom such arrangements are made to the list.

(7) Regulations may provide that this Act and any regulations made under it shall apply in relation—

    - (a) to the making of arrangements for the temporary provision of general medical services; and
    - (b) to the provision of general medical services in pursuance of any such arrangements,

subject to such modifications as may be specified in the regulations.

(8) Where the registration of a medical practitioner in the register of medical practitioners is suspended—

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- (a) by a direction of the Health Committee of the General Medical Council under [F13]section 37(1) or (2) of the M1Medical Act 1983] (unfitness to practice by reason of physical or mental condition);
- (b) by an order of that Committee under [F13]section 38(1)] of that Act (order for immediate suspension); or
- (c) by an interim order [F14]under section 42]of that Act,

the suspension shall not terminate any arrangements made with him for the provision of general medical services, but he shall not provide such services in person during the suspension.]

[F15(9) Where the registration of a medical practitioner in the register of medical practitioners is suspended by a direction of the Committee on Professional Performance of the General Medical Council—

- (a) under section 36A of the Medical Act 1983 (professional performance),
- (b) under section 38(1) of that Act (order for immediate suspension), or
- (c) under rules made by virtue of paragraph 5A(3) of Schedule 4 to that Act (procedure of committees),

the suspension shall not, except in so far as is provided by or determined in accordance with regulations under subsection (2) above, terminate any arrangements made with him for the provision of general medical services; but he shall not provide such services in person during the suspension.]

#### Textual Amendments

- F1 S. 29(1)(1A) substituted for s. 29(1) by S.I. 1985/39, **art. 7(3)(a)**
- F2 Words in s. 29(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(a)(i)** (with Sch. 2 para. 6)
- F3 Words in s. 29(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(a)(ii)** (with Sch. 2 para. 6)
- F4 S. 29(2)(b)(c) repealed (1.4.1998) by 1997 c. 46, 41(10)(12), Sch. 2 Pt. I para. 8, Sch. 3 Pt. I; S.I. 1998/631, art. 2(1)(a), **Sch. 1** (with arts. 3-5)
- F5 Words in s. 29(2)(e) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(b)(i)** (with Sch. 2 para. 6)
- F6 S. 29(2)(f)(g) added by Health and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14, **Sch. 6 para. 2(1)**
- F7 Words in s. 29(2)(f) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(b)(ii)** (with Sch. 2 para. 6)
- F8 S. 29(4) ceased to have effect (*prosp.*) by National Health Service Act 1966 (c. 8, SIF 113:2), **s. 10(3)**, (as substituted (29.8.1977) by Sch. 15 para. 37(b) of this Act)
- F9 S. 29(5) added by Health Services Act 1980 (c. 53, SIF 113:2), **s. 7**
- F10 S. 29(6)–(8) inserted by Health and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 14, **Sch. 6 para. 2(2)**
- F11 Words in s. 29(6) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(c)(i)** (with Sch. 2 para. 6)
- F12 Words in s. 29(6) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 18(c)(ii)** (with Sch. 2 para. 6)
- F13 Words substituted by Medical Act 1983 (c. 54, SIF 83:1), s. 56(1), **Sch. 5 para. 16(a)**
- F14 Words in s. 29(8)(c) substituted (1.5.1996) by 1995 c. 51, s. 4, **Sch. para. 28(a)**; S.I. 1996/271, art. 2, **Sch.**
- F15 S. 29(9) added (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 28(b)**; S.I. 1997/1315, **art. 2**

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

- C4** S. 29 extended by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 17\(1\)](#)  
**C5** S. 29 restricted (28.11.1997) by [1997 c. 46, s. 1\(5\)\(a\)](#); [S.I. 1997/2620, art. 2\(2\)\(a\)](#)  
**C6** S. 29(4) modified by [S.I. 1974/160, reg. 19\(16\)\(a\)](#) (as substituted by [S.I. 1985/1053, reg. 3\(5\)](#))  
**C7** S. 29(4) continue to have effect (1.10.1999 for S. and otherwise *prosp.*) by [1999 c. 8, ss. 65, 67, Sch. 4 para. 2](#); [S.S.I. 1999/90, art. 2\(b\)](#)

#### Marginal Citations

- M1** [1983 c. 54\(83:1\)](#).

### [<sup>F16</sup>29A Medical lists.

- (1) A Health Authority may not, under section 29, arrange with a medical practitioner for him to provide general medical services for persons in the Authority's area unless his name is included in the Authority's medical list.
- (2) A medical practitioner is entitled to be included in a Health Authority's medical list only if—
  - (a) he is eligible for inclusion in the list; and
  - (b) he is nominated or approved, in accordance with regulations under section 29B, for appointment to fill a vacancy which relates (whether wholly or in part) to the area of the Authority.
- (3) [<sup>F17</sup>Subject to any provision made under section 43C] a medical practitioner is eligible for inclusion in a medical list if—
  - (a) he has not attained the age specified in regulations under section 8 of the <sup>M2</sup>Health and Medicines Act 1988 (retirement age for practitioners); and
  - (b) he is not disqualified, or treated as disqualified, from inclusion in the list by virtue of a direction of the Tribunal constituted under section 46 or any corresponding tribunal in Scotland or Northern Ireland.
- (4) Regulations may make provision in relation to delaying a person's inclusion in a medical list in prescribed circumstances.
- (5) This section is subject to section 29(6) (temporary provision of general medical services) and any provision of, or made under, an enactment relating to the right of a medical practitioner to transfer to a medical list.
- (6) In this Act "medical list", in relation to a Health Authority, means the list of medical practitioners undertaking to provide general medical services for persons in their area, kept by the Authority under regulations made under section 29(2)(a).]

#### Textual Amendments

- F16** S. 29A inserted (10.12.1998) by [1997 c. 46, s. 32\(1\)](#); [S.I. 1998/2840, art. 2\(3\)](#), [Sch.](#)  
**F17** Words in s. 29A inserted (1.4.2000) by [1999 c. 8, ss. 9\(2\)](#), 67; [S.I. 1999/2793, art. 2 \(3\)\(b\)](#); [S.I. 2000/1041, art. 2\(a\)](#)

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

- C8** S. 29A(2)(b) excluded (1.4.1998: subject to transitional provisions) by [1997 c. 46, s. 13\(9\)](#), [Sch. 1 para. 2\(2\)](#); [S.I. 1998/631, art. 2\(1\)\(a\)](#), [Sch. 1](#)

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### Marginal Citations

M2 1988 c. 49.

## [<sup>F18</sup>29B Vacancies for medical practitioners.

- (1) Regulations may make provision in relation to the filling of vacancies for medical practitioners to provide general medical services.
- (2) The regulations may, in particular, include provision for—
  - (a) references by a Health Authority to the Medical Practices Committee as to whether there is, or will be, a vacancy for a medical practitioner in a locality;
  - (b) the determination of such references by the Medical Practices Committee;
  - (c) the determination by the Medical Practices Committee of conditions of practice to be imposed on any medical practitioner who fills a particular vacancy;
  - (d) the determination by a Health Authority of whether a vacancy is to be filled by a member of a partnership or by a sole practitioner;
  - (e) the nomination by a Health Authority of a medical practitioner for appointment to fill a vacancy as a sole practitioner;
  - (f) the approval by a Health Authority of a medical practitioner for appointment to fill a vacancy as a member of a partnership.
- (3) The regulations may also make provision in relation to—
  - (a) criteria to be applied in making decisions under the regulations,
  - (b) the variation or revocation of such decisions (including appeals to the Secretary of State on points of law), or
  - (c) vacancies relating to the area of one Health Authority which also relate to the area of another Health Authority or a Health Board,
 and may contain such transitional provisions as the Secretary of State considers appropriate.
- (4) Regulations which make provision about vacancies which relate partly to the area of a Health Board may, in particular, provide that section 29A(2)(b) is to have effect in prescribed circumstances as if the reference to regulations under this section were a reference to regulations under section 19B of the <sup>M3</sup>National Health Service (Scotland) Act 1978.
- (5) In this section—
 

“conditions of practice” means conditions—

  - (a) specifying, by reference to one or more prescribed conditions relating to hours or the sharing of work, the provision of general medical services for which a person is entitled to be remunerated; and
  - (b) specifying the locality in which a person is entitled to provide general medical services;

“Health Board” has the same meaning as in the National Health Service (Scotland) Act 1978;

“locality”, in relation to a Health Authority, means the Authority’s area or a particular part of their area; and

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“sole practitioner” means a medical practitioner providing general medical services otherwise than in partnership with one or more other medical practitioners.

(6) This section does not affect the power to make regulations under section 29.]

**Textual Amendments**

**F18** S. 29B inserted (10.12.1998) by 1997 c. 46, s. 32(1); S.I. 1998/2840, art. 2(3), Sch.

**Marginal Citations**

**M3** 1978 c. 29.

**F19**<sup>30</sup> .....

**Textual Amendments**

**F19** S. 30 repealed (10.12.1998) by 1997 c. 46, s. 32(2), 41(12), Sch. 3 Pt. I; S.I. 1998/2840, art. 2(3), Sch. (with art. 3)

**31 Requirement of suitable experience.**

[<sup>F20</sup>(1) Regulations under section 29B must secure that a medical practitioner is not nominated or approved by a Health Authority for appointment to fill a vacancy unless he is suitably experienced.]

(2) For the purposes of this section a medical practitioner is “suitably experienced” if, but only if, he either—

- (a) has acquired the prescribed medical experience, or
- (b) is by virtue of regulations made under section 32 below exempt from the need to have acquired that experience, and “medical experience” includes hospital experience in any specialty.

**Textual Amendments**

**F20** S. 31(1) substituted (10.12.1998) by 1997 c. 46, s. 32(3); S.I. 1998/2840, art. 2(3), Sch.

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

**C9** S. 31 applied (28.11.1997) by 1997 c. 46, s. 2(4); S.I. 1997/2620, art. 2(2)

**32 Regulations as to s. 31.**

(1) Regulations may for the purposes of section 31 above provide—

- (a) for prescribing the medical experience needed to satisfy paragraph (a) of section 31(2);
- (b) as to the documents which an applicant may or must produce as evidence that he is suitably experienced or has acquired medical experience of any particular kind;

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- (c) for requiring an applicant who claims to have acquired the prescribed experience to submit particulars of his experience to a prescribed body, and for requiring that body, if satisfied that he has acquired the prescribed experience, to issue him a certificate (a “certificate of prescribed experience”) to that effect;
- (d) for enabling an applicant without the prescribed experience who considers that the medical experience which he has acquired is, or ought to be regarded as, equivalent to the prescribed experience to submit particulars of that experience to a prescribed body, and for requiring or enabling that body, if satisfied that the applicant’s medical experience is so equivalent, to issue him a certificate (a “certificate of equivalent experience”) to that effect;
- (e) for treating an applicant who holds a certificate of equivalent experience as satisfying paragraph (a) of section 31(2);
- (f) as to the circumstances or conditions in or subject to which a medical practitioner is exempt from the need to have acquired the prescribed experience;
- (g) for conferring on an applicant who is refused a certificate of prescribed experience or a certificate of equivalent experience a right of appeal to a body constituted by the Secretary of State, and for any matter for which it appears to the Secretary of State to be requisite or expedient to provide in consequence of the conferring of that right;
- (h) for anything authorised or required by section 31 to be prescribed or otherwise provided for by regulations.

In this section—

[<sup>F21</sup>“applicant” means a medical practitioner who is seeking to be nominated or approved by a Health Authority in accordance with regulations under section 29B for appointment to fill a vacancy;]

“the prescribed experience” means the medical experience for the time being prescribed for the purposes of paragraph (a) of section 31(2).

- (2) Regulations under this section shall be framed so as to allow the prescribed experience to be acquired without undertaking whole-time employment.
- (3) Any power under this section to make regulations—
  - (a) may be exercised so as to make different provision for different [<sup>F22</sup>areas] or different periods of time or in relation to different cases or different circumstances;
  - (b) includes power to make such incidental or supplemental provision in the regulations as the Secretary of State considers appropriate.

#### Textual Amendments

**F21** Definition of “applicant” in s. 32(1) substituted (10.12.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 9**; S.I. 1998/2840, art. 2, **Sch.**

**F22** Word in s. 32(3)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 para. 21** (with **Sch. 2 para. 6**)

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

**C10** S. 32 applied (1.4.1998) by 1997 c. 46, s. 11(3); S.I. 1998/631, art. 2(1)(a), **Sch. 1** (with arts. 3-5)



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S. 32 applied (with modifications) (1.4.1998) by 1997 c. 46, s. 11(3)(4); S.I. 1998/631, art. 2(1)(a), Sch. 1 (with arts. 3-5)

**33 Distribution of general medical services.**

<sup>F23</sup>(1) . . . . .

[<sup>F24</sup>(1A) The Secretary of State may by order specify—

- (a) the maximum number of medical practitioners with whom, in any year, all the [<sup>F25</sup>Health Authorities for areas] in England, taken as a whole, may enter into arrangements under section 29 above for the provision of general medical services; and
- (b) the maximum number of medical practitioners with whom, in any year, all the [<sup>F26</sup>Health Authorities for areas] in Wales, taken as a whole, may enter into such arrangements.

(1B) An order under subsection (1A) above may contain such incidental and consequential provisions (including provisions amending this Part of this Act [<sup>F27</sup>or any regulations made under this Part of this Act]) as appear to the Secretary of State to be appropriate including, in particular, provisions as to the basis on which [<sup>F28</sup>references under regulations made under section 29B are to be determined] in order to secure that any maximum number specified in the order is not exceeded.]

[<sup>F29</sup>(1C) An order under subsection (1A) may, in particular, make provision as to the extent to which account is to be taken under the order of medical practitioners whose ability to carry out remunerated work is limited by virtue of conditions of practice which relate to remuneration and are determined under regulations made under section 29B.]

(2) . . . . .

<sup>F30</sup>(2A) . . . . .

<sup>F30</sup>(3) . . . . .

<sup>F30</sup>(4) . . . . .

<sup>F30</sup>(5) . . . . .

. . . . .

<sup>F30</sup>(6) . . . . .

(7) . . . . . <sup>F31</sup>

<sup>F30</sup>(8) . . . . .

**Textual Amendments**

**F23** S. 33(1) repealed (10.12.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 10(2), **Sch. 3 Pt. I**; S.I. 1998/2840, arts. 2(3), **Sch.** (with art. 3)

**F24** S. 33(1A)(1B) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 23(1)

**F25** Words in s. 33(1A)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 22(b)** (with Sch. 2 para. 6)



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- F26** Words in s. 33(1A)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 22(b)** (with Sch. 2 para. 6)
- F27** Words in s. 33(1B) inserted (10.12.1998) by 1997 c. 46, s. 41(10) **Sch. 2 Pt. I para. 10(3)(a)**; S.I. 1998/2840, art. 2(3), **Sch.** (with art. 3)
- F28** Words in s. 33(1B) substituted (10.12.1998) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 10(3)(b)**; S.I. 1998/2840, art. 2(3), **Sch.** (with art. 3)
- F29** S. 33(1C) inserted (10.12.1998) by 1997 c. 46, s. 41(10) **Sch. 2 Pt. I para. 10(4)**; S.I. 1998/2840, art. 2(3), **Sch.** (with art. 3)
- F30** S. 33(2)-(6)(8) repealed (10.12.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 10(5), **Sch. 3 Pt. I**; S.I. 1998/2840, arts. 2(3), **Sch.** (with art. 3)
- F31** S. 33(7) repealed (subject to transitional provisions in S.I. 1990/2511, **art. 4(2)**) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 23(5), 66(2), **Sch. 10**

### 34 Regulations for Medical Practices Committee.

[<sup>F32</sup>(1)] Regulations may make provisions for conferring or imposing on the Medical Practices Committee such additional functions in relation to arrangements for the provision of general medical services as may be prescribed; and regulations shall provide—

[<sup>F33</sup>(a) for requiring [<sup>F34</sup>Health Authorities] to make to the Medical Practices Committee, at such times and in such manner as may be prescribed, reports as to—

(i) the number of medical practitioners required to meet the reasonable needs of their [<sup>F35</sup>areas] and the different parts of those [<sup>F35</sup>areas];]

<sup>F36</sup>  
.....

#### Textual Amendments

- F32** S. 34: provisions of s. 34 preceding subsection (2) renumbered as s. 34(1) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 23(a)** (with Sch. 2 para. 6)
- F33** Words substituted by S.I. 1985/39, **art. 7(8)(a)**
- F34** Words in s. 34(1)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 23(b)(i)** (with Sch. 2 para. 6)
- F35** Words in s. 34(1)(a)(i) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 23(b)(ii)** (with Sch. 2 para. 6)
- F36** Words in s. 34 repealed (10.12.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 11, **Sch. 3 Pt. I**; S.I. 1998/2840, art. 2(3), **Sch.** (with art. 3)

#### General dental services

### 35 Arrangements for general dental services.

[<sup>F37</sup>(1) It is the duty of every [<sup>F38</sup>Health Authority], in accordance with regulations, to make as respects their [<sup>F39</sup>area] arrangements with dental practitioners under which any person in the [<sup>F39</sup>area] for whom a dental practitioner undertakes in accordance with the arrangements to provide dental treatment and appliances shall receive such treatment and appliances.

(1A) The services so provided are referred to in this Act as general dental services.]

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- (2) The remuneration to be paid under such arrangements to a dental practitioner who provides general dental services elsewhere than at a health centre shall not consist wholly or mainly of a fixed salary unless either—
- (a) the remuneration is paid in pursuance of arrangements made under section 56 below, or
  - (b) the services are provided in prescribed circumstances and the practitioner consents,
- and it shall be the Secretary of State's duty, before he prescribes any circumstances for the purposes of paragraph (b), to consult such organisations as appear to him to be representative of the dental profession.
- [<sup>F40</sup>(3) Where the registration of a dental practitioner in the dentists register is suspended—
- (a) by an order under [<sup>F41</sup>section 32 of the <sup>M4</sup>Dentists Act 1984] (interim suspension); or
  - (b) by a direction or [<sup>F42</sup>an order of the Health Committee under] that Act (health cases),
- the suspension shall not terminate any arrangements made with him for the provision of general dental services, but he shall not provide such services in person during the suspension.
- (4) Regulations may provide for the making of payments in consequence of suspension to a dental practitioner whose registration is so suspended.]

#### Textual Amendments

- F37** S. 34(1)(1A) substituted for s. 34(1) by S.I. 1985/39, art. 7(9)
- F38** Words in s. 35(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 24(a) (with Sch. 2 para. 6)
- F39** Words in s. 35(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 24(a) (with Sch. 2 para. 6)
- F40** S. 35(3)(4) added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 15(a)
- F41** Words substituted by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(1), Sch. 5 para. 8(a)
- F42** Words substituted by Dentists Act 1984 (c. 24, SIF 83:1), s. 54(1), Sch. 5 para. 8(b)

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

- C11** S. 35 restricted (28.11.1997) by 1997 c. 46, s. 1(5)(b); S.I. 1997/2620, art. 2(2)
- C12** S. 35(1) modified (*prosp.*) by 1997 c. 46, ss. 41(3)(11), Sch. 2 Pt. II para. 79

#### Marginal Citations

- M4** 1984 c. 24(83:1).

### 36 Regulations as to s. 35.

- [<sup>F43</sup>(1)] Regulations may provide as to the arrangements to be made under section 35 above, and shall include provision—
- (a) for the preparation and publication of lists of dental practitioners who undertake to provide general dental services;
  - (b) for conferring a right, subject to [<sup>F44</sup>[<sup>F45</sup>subsections (2) and (3)] below [<sup>F46</sup>to any provision made under section 43C below] and to] the provisions of this

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Part of this Act relating to the disqualification of practitioners [<sup>F47</sup>and to section 8 of the Health and Medicines Act 1988 and regulations under that section], on any dental practitioner, who wishes to be included in any such list, to be so included;

<sup>F48</sup>(c) .....

(d) for the removal from the list of dental practitioners undertaking to provide general dental services for persons in any [<sup>F49</sup>area] of the name of any one in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, such general dental services for persons in that [<sup>F49</sup>area].

[<sup>F50</sup>(2) No dental practitioner who is a national of a member State and is registered by virtue of a qualification granted in a member State shall be entitled to have his name included in the list kept by any [<sup>F51</sup>Health Authority] unless he satisfies [<sup>F51</sup>the Health Authority] that he has that knowledge of English which, in the interests of himself and his patients, is necessary for the provision of general dental services in the [<sup>F51</sup>Health Authority's area].]

[<sup>F52</sup>(3) Regulations may make the exercise of the right conferred by virtue of paragraph (b) of subsection (1) above subject to any provision made by or under the regulations, and, in such cases as may be prescribed, may confer a right of appeal to a prescribed body in respect of a refusal to include a dental practitioner on such a list as is referred to in paragraph (a) of that subsection.]

#### Textual Amendments

- F43** S. 36 renumbered s. 36(1) by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 5(4), **Sch. 3 para. 5(1)**
- F44** Words inserted by S.I. 1981/432, **art. 3(3)(a)**
- F45** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 24(2)**
- F46** Words in s. 36(1)(b) inserted (1.4.2000) by 1999 c. 8, **s. 9(3)**, 67; S.I. 1999/2793, **art. 2(3)(b)**; S.I. 2000/1041, **art. 2(a)**
- F47** Words inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), s. 25(1), **Sch. 2 para. 4**
- F48** S. 36(1)(c) repealed (1.10.1998) by 1997 c. 46, s. 41(10)(12), Sch. 2 Pt. I para. 12, **Sch. 3 Pt. I**; S.I. 1998/1998, **art. 2(2)(a)(b)**, **Schs. 1 2**
- F49** Words in s. 36(1)(d) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 25(a)**
- F50** S. 36(2) added by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 5(4), **Sch. 3 para. 5(2)**
- F51** Words in s. 36(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 25(b)(i)(ii)(iii)** (with Sch. 2 para. 6)
- F52** S. 36(3) added by National Health Service and Community Care Act 1990 (c.19, SIF 113:2), **s. 24(3)**

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

- C13** S. 36 extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 17(1)**

## 37 Dental Estimates Board.

[<sup>F53</sup>(1)] Regulations providing as to the arrangements to be made under section 35 above shall include provision—

(a) for constituting a Board, to be called the Dental Estimates Board, of whom the chairman and a majority of the members shall be dental practitioners, for

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the purpose of carrying out such duties as may be prescribed with respect to . . . <sup>F54</sup> dental treatment and appliances, and to the remuneration of dental practitioners providing general dental services;

- (b) for providing in relation to that Board for any of the matters for which, in relation to [<sup>F55</sup>a Health Authority], provision is or may be made by or under Part III of Schedule 5 to this Act.

[<sup>F56</sup>(1A) Regulations may empower the Dental Practice Board—

- (a) to direct a dental practitioner to submit to the Board, in relation to treatment which he has carried out or contemplates carrying out or to a description of such treatment specified in the direction, such estimates and information and such radiographs, models or other items as may be prescribed; and
- (b) to direct a dental practitioner not to carry out treatment, or a description of treatment specified in the direction, without first obtaining approval of an estimate from the Board.

(1B) If regulations include any such provision as is mentioned in subsection (1A)(b) above, regulations shall confer on a dental practitioner in whose case a direction such as is mentioned in that paragraph has been given a right of appeal against the direction to a prescribed person or body, but before making regulations conferring such a right the Secretary of State shall consult such organisations as appear to him to be representative of persons providing general dental services.

(1C) Regulations may be made authorising or requiring the Dental Practice Board to carry on any such additional activity relating to the provision of general dental services as may be prescribed and, without prejudice to the generality of this subsection, to conduct or commission surveys or other research relating to the provision of such services.]

#### Textual Amendments

**F53** S. 37 renumbered as s. 37(1) by [Health and Medicines Act 1988 \(c.49, SIF 113:2\)](#), **s. 12(2)**

**F54** Words repealed by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 25(2), **Sch. 3**

**F55** Words in s. 37(1)(b) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 26** (with Sch. 2 para. 6)

**F56** S. 37(1A)—(1C) inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), **s. 12(3)**

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

**C14** S. 37 extended (1.11.1999 for E. and 9.2.2001 for W.) by 1999 c. 8, **ss. 39(2)**, 67; S.I. 1999/2793, **art. 2(1)(a)**, **Sch. 1**; S.I. 2001/270, **art. 2(a)**

### *General ophthalmic services*

## 38 Arrangements for general ophthalmic services.

[<sup>F57</sup>(1)] [<sup>F58</sup>It is the duty of every [<sup>F59</sup>Health Authority], in accordance with regulations, to arrange as respects their [<sup>F60</sup>area]] with medical practitioners having the prescribed qualifications, [<sup>F61</sup>and ophthalmic opticians for securing the testing]] [<sup>F62</sup>by them of the sight—

- (a) of a child;

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- (b) of a person whose resources fall to be treated under the regulations as being less than his requirements or as being equal to his requirements; or
  - (c) of a person of such other description as may be prescribed.
- (2) In this section—
  - “child” means—
    - (a) a person who is under the age of 16 years; or
    - (b) a person who is under the age of 19 years and receiving qualifying full-time education; and
      - “qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Secretary of State, and for the purpose of this definition—
    - (a) “recognised educational establishment” means an establishment recognised by the Secretary of State as being, or as comparable to, a school, college or university; and
    - (b) regulations may prescribe the circumstances in which a person is or is not to be treated as receiving full-time instruction.
- (3) Regulations under this section may direct how a person’s resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—
  - (a) by a method set out in the regulations;
  - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
  - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
  - (d) by reference to the person’s being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (4) Descriptions of persons may be prescribed for the purposes of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
  - (a) their age;
  - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
  - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit; and
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.
- (5) Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
  - (a) as it has effect at the time when the regulations are made; or
  - (b) both as it has effect at that time and as amended subsequently.

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- (6) Regulations may provide that a person—
- (a) whose sight is tested by a person who provides general ophthalmic services; and
  - (b) who is shown during the testing or within a prescribed time after it to fall within subsection (1) above,
- shall be taken for the purposes of the testing to have so fallen immediately before his sight was tested; and the testing shall be treated—
- (i) for the purposes of any arrangements under this section;
  - (ii) for the purposes of remuneration in respect of the testing; and
  - (iii) for any such other purpose as may be prescribed,
- as a testing of sight under this Act.
- (7) Regulations shall define the services for the provision of which arrangements under this section are to be made and the services so defined are in this Act referred to as “general ophthalmic services”.]

#### Textual Amendments

- F57** The first paragraph of s. 38 renumbered as s. 38(1) by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 13\(1\)](#)
- F58** Words substituted by [S.I. 1985/39, art. 7\(11\)](#)
- F59** Words in s. 38(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 27\(a\)](#) (with [Sch. 2 paras. 6, 16](#))
- F60** Words in s. 38(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 27\(b\)](#) (with [Sch. 2 paras. 6, 16](#))
- F61** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), [s. 1\(3\)](#)
- F62** [S. 38\(1\)\(a\)–\(7\)](#) and the words “by them of the sight—” substituted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 13\(1\)](#)

### 39 Regulations as to s. 38.

Regulations may provide as to the arrangements to be made under section 38 above, and shall include provision—

- (a) for the preparation and publication of lists of medical practitioners, [<sup>F63</sup>and ophthalmic] opticians, respectively, who undertake to provide general ophthalmic services;
- (b) for conferring a right, subject [<sup>F64</sup>to any provision made under section 43C below and] to the provisions of this [<sup>F65</sup>Part of this] Act relating to the disqualification of practitioners, on any medical practitioner having the prescribed qualifications, [<sup>F66</sup>or ophthalmic] optician who wishes to be included in the appropriate list, to be so included;
- (c) for conferring on any person a right to choose in accordance with the prescribed procedure the medical practitioner or ophthalmic optician by whom his sight is to be tested, or from whom any prescription for the supply of optical appliances is to be obtained . . . <sup>F67</sup>;
- (d) for the removal from the list of medical practitioners, [<sup>F68</sup>or ophthalmic] opticians undertaking to provide general ophthalmic services for persons in any [<sup>F69</sup>area] of the name of any one in whose case it has been determined in



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such manner as may be prescribed that he has never provided, or has ceased to provide, such general ophthalmic services for persons in that [F69]area].

#### Textual Amendments

- F63** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(6), [Sch. 1 Pt. I para. 1\(a\)](#)
- F64** Words in s. 39(b) inserted (1.4.2000 for E. and 1.4.2000 for W.) by [1999 c. 8, ss. 9\(4\)](#); S.I. 1999/2793, [art. 2\(3\)\(b\)](#); S.I. 2000/1041, [art. 2\(a\)](#)
- F65** Words inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\)](#), [Sch. 1 para. 52](#)
- F66** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(6), [Sch. 1 Pt. I para. 1\(b\)](#)
- F67** Words repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), ss. 1(4), 24, [Sch. 8 Pt. I](#)
- F68** Words substituted by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 1(6), [Sch. 1 Pt. I para. 1\(c\)](#)
- F69** Words in s. 39(d) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by [1995 c. 17, ss. 2\(1\)\(3\), 8\(1\)](#), [Sch. 1 Pt. I para. 28](#) (with [Sch. 2 paras. 6, 16](#))

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

- C15** S. 39 extended by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), [s. 17\(1\)](#)

## 40 Medical practitioners with qualifications prescribed under s. 38.

The power conferred by section 38 above (in relation to general ophthalmic services) to prescribe the qualifications to be possessed by any medical practitioner includes a power—

- (a) to prescribe a requirement that the practitioner shall show to the satisfaction of a committee recognised by the Secretary of State for the purpose that he possesses such qualifications, including qualifications as to experience, as may be mentioned in the regulations; and
- (b) to confer on a person who is dissatisfied with the determination of such a committee, a right of appeal to a committee appointed by the Secretary of State, and to provide for any matter for which it appears to the Secretary of State to be requisite or expedient to provide in consequence of the conferring of that right.

### *Pharmaceutical services*

## 41 Arrangements for pharmaceutical services.

[F70]It is the duty of every [F71]Health Authority], in accordance with regulations, to arrange as respects their [F72]area] for the [F73]provision to persons who are in that [F72]area] of]]

- (a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony; . . . F74



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- [<sup>F75</sup>(b) proper and sufficient drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision [<sup>F76</sup>of dental services by a Health Authority, a Special Health Authority or an NHS trust]; . . . <sup>F77</sup>
- (c) listed drugs and medicines which are ordered for those persons by a dental practitioner in pursuance of the provision by him of general dental services.][<sup>F78</sup>and]
- [<sup>F79</sup>(cc) listed drugs and medicines and listed appliances which are ordered for those persons by a prescribed description of registered nurse, midwife or health visitor in pursuance of functions in the health service, the Scottish health service or the Northern Ireland health service or the armed forces of the Crown (excluding forces of a Commonwealth country and forces raised in a colony); and]
- [<sup>F80</sup>(d) such other services as may be prescribed.]

The services so provided are [<sup>F81</sup>, together with additional pharmaceutical services provided in accordance with a direction under section 41A, referred to in this Act] as “pharmaceutical services”.

In this section—

“listed” means included in a list for the time being approved by the Secretary for the purposes of this section; and

“the Scottish health service” and “the Northern Ireland health service” mean respectively the health service established in pursuance of section 1 of the <sup>M5</sup>National Health Service (Scotland) Act 1947 or any service provided in pursuance of Article 4(a) of the <sup>M6</sup>Health and Personal Social Services (Northern Ireland) Order 1972.

#### Textual Amendments

- F70** Words substituted by S.I. 1985/39, art. 7(13)(a)
- F71** Words in s. 41 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 29(a) (with Sch. 2 paras. 6, 16)
- F72** Words in s. 41 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 29(b) (with Sch. 2 paras. 6, 16)
- F73** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(1)(a)
- F74** Word repealed by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 7
- F75** S. 41(b)(c) substituted for s. 41(b) by Health Services Act 1980 (c. 53, SIF 113:2), s. 20(1)
- F76** Words in s. 41 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 29(c) (with Sch. 2 paras. 6, 16)
- F77** Word repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1)(2), Sch. 9 para. 18(1)(b), Sch. 10
- F78** Word at the end of s. 41(c) (which was inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(c)) omitted (3.10.1994) by virtue of Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), s. 2; S.I. 1994/2408, art. 2
- F79** S. 41(cc) inserted (3.10.1994) by Medicinal Products: Prescription by Nurses etc. Act 1992 (c. 28), s. 2; S.I. 1994/2408, art. 2
- F80** S. 41(d) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), Sch. 9 para. 18(c).
- F81** Words in s. 41 substituted (15.8.1997) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 13; S.I. 1997/1780, art. 2, Sch.

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

**C16** S. 41 modified ( prosp. ) by 1997 c. 46, s. 41(3)(11), **Sch. 2 Pt. II para. 79**

#### Marginal Citations

**M5** 1947 c. 27.

**M6** 1972 S.I. 1972/1265 (N.I. 14).

### [<sup>F82</sup> 41A Arrangements for providing additional pharmaceutical services.

- (1) The Secretary of State may—
  - (a) give directions to a Health Authority requiring them to arrange for the provision to persons in their area of additional pharmaceutical services; or
  - (b) by giving directions to a Health Authority authorise them to arrange for such provision if they wish to do so.
- (2) Directions under this section may make different provision in relation to different services specified in the directions.
- (3) The Secretary of State must publish any directions under this section in the Drug Tariff or in such other manner as he thinks appropriate.
- (4) In this section—
 

“additional pharmaceutical services”, in relation to directions, means such services (of a kind that do not fall within section 41) as may be specified in the directions; and

“Drug Tariff” means the Drug Tariff published under regulation 18 of the <sup>M7</sup>National Health Service (Pharmaceutical Services) Regulations 1992 or under any corresponding provision replacing, or otherwise derived from, that regulation.]

#### Textual Amendments

**F82** S. 41A inserted (15.8.1997) by 1997 c. 46, s. 27(1); S.I. 1997/1780, art. 2, **Sch.**

#### Marginal Citations

**M7** S.I. 1992/662.

### [<sup>F83</sup> 41B Terms and conditions etc.

- (1) Directions under section 41A may require the Health Authority to whom they apply, when making arrangements—
  - (a) to include, in the terms on which the arrangements are made, such terms as may be specified in the directions;
  - (b) to impose, on any person providing a service in accordance with the arrangements, such conditions as may be so specified.
- (2) The arrangements must secure that any service to which they apply is provided only by a person whose name is included in a pharmaceutical list.
- (3) Different arrangements may be made with respect to—

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- (a) the provision of the same service by the same person but in different circumstances; or
  - (b) the provision of the same service by different persons.
- (4) A Health Authority must provide details of proposed arrangements (including the remuneration to be offered for the provision of services) to any person who asks for them.
- (5) After making any arrangements, a Health Authority must publish, in such manner as the Secretary of State may direct, such details of the arrangements as he may direct.
- (6) In this section, “pharmaceutical list” means, subject to any provision of the directions in question, a list—
- (a) published by the Health Authority concerned, or by any other Health Authority, in accordance with regulations made under section 42(2)(a) of this Act; or
  - (b) published by any body in accordance with regulations made under section 27(2)(a) of the <sup>M8</sup>National Health Service (Scotland) Act 1978 or Article 63(2A)(a) of the <sup>M9</sup>Health and Personal Social Services (Northern Ireland) Order 1972.]

#### Textual Amendments

**F83** S. 41B inserted (15.8.1997) by 1997 c. 46, s. 28(1); S.I. 1997/1780, art. 2, Sch.

#### Marginal Citations

**M8** 1978 c. 29.

**M9** S.I. 1972/1265 (N.I.14).

### [<sup>F84</sup>42 Regulations as to pharmaceutical services.

- (1) Regulations shall provide for securing that arrangements made by a [<sup>F85</sup>Health Authority] under section 41 above will enable persons in the [<sup>F85</sup>Health Authority’s area] for whom drugs, medicines or appliances mentioned in that section are ordered as there mentioned to receive them from persons with whom such arrangements have been made.
- (2) The regulations shall include provision—
- (a) for the preparation and publication by [<sup>F86</sup>a Health Authority] of one or more lists of persons, other than medical practitioners and dental practitioners, who undertake to provide pharmaceutical services from premises in the [<sup>F86</sup>Health Authority’s area];
  - (b) that an application to [<sup>F86</sup>a Health Authority] for inclusion in such a list shall be made in the prescribed manner and shall state—
    - (i) the services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances he will undertake to supply; and
    - (ii) the premises from which he will undertake to provide those services;
  - (c) that, except in prescribed cases—
    - (i) an application for inclusion in such a list by a person not already included; and

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- (ii) an application by a person already included in such a list for inclusion also in respect of services or premises other than those already listed in relation to him,

shall be granted only if the [<sup>F86</sup>Health Authority are] satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the services, or some of the services, specified in the application; and

- (d) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—
- (i) has never provided from those premises; or
  - (ii) has ceased to provide from them, the services, or any of the services, which he is listed as undertaken to provide from them.

(3) The regulations may include provision—

- (a) that an application to a [<sup>F87</sup>Health Authority] may be granted in respect of some only of the services specified in it;
- (b) that an application to a [<sup>F87</sup>Health Authority] relating to services of a prescribed description shall be granted only if it appears to the [<sup>F87</sup>Health Authority] that the applicant has satisfied such conditions with regard to the provision of those services as may be prescribed;

[<sup>F88</sup>(ba) that an application to a [<sup>F87</sup>Health Authority] by a person who qualified to have his name registered under the Pharmacy Act 1954 by virtue of section 4A of that Act (qualification by European diploma) shall not be granted unless the applicant satisfies the [<sup>F87</sup>Health Authority] that he has the knowledge of English which, in the interests of himself and persons making use of the services to which the application relates, is necessary for the provision of pharmaceutical services in the [<sup>F87</sup>Health Authority's area;]]

- (c) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;
- (d) that, where the premises from which an application states that the applicant will undertake to provide services are in an area of a prescribed description, the applicant shall not be included in the list unless his inclusion is approved by [<sup>F89</sup>reference to prescribed criteria by the [<sup>F87</sup>Health Authority in whose area] those premises are situated; and]
- (e) that [<sup>F87</sup>that Health Authority may give their] approval subject to conditions.

(4) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of this section.

(5) The regulations shall be so framed as to preclude—

- (a) a person included in a list published under subsection (2)(a) above ;and (b) an employee of such a person; from taking part in the decision whether an application such as is mentioned in subsection (2)(c) above should be granted or an appeal against such a decision brought by virtue of subsection (4) above should be allowed.]

#### Textual Amendments

**F84** S. 42 substituted by National Health Service (Amendment) Act 1986 (c. 66, SIF 113:2), s. 3

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- F85** Words in s. 42(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 30(a)** (with Sch. 2 paras. 6, 16)
- F86** Words in s. 42(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 30(b)** (with Sch. 2 paras. 6, 16)
- F87** Words in s. 42(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 30(c)** (with Sch. 2 paras. 6, 16)
- F88** S. 42(3)(ba) inserted by S.I. 1987/2202, **art. 4**
- F89** Words substituted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 12(3)(a)**

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

- C17** S. 42 extended by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 17(1)**

**43 Persons authorised to provide pharmaceutical services.**

- (1) No arrangements shall be made by [<sup>F90</sup>a Health Authority] (except as may be provided by [<sup>F91</sup>or under] regulations) with a medical practitioner or dental practitioner under which he is required or agrees to provide pharmaceutical services to any person to whom he is rendering general medical services or general dental services.
- (2) No arrangements for the dispensing of medicines shall be made (except as may be provided by [<sup>F91</sup>or under] regulations) with persons other than persons who are registered pharmacists, or are persons lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968 and who undertake that all medicines supplied by them under the arrangements made under this Part of this Act shall be dispensed either by or under the direct supervision of a registered pharmacist.
- [<sup>F92</sup>(2A) Regulations shall provide for the preparation and publication by a Health Authority of one or more lists of medical practitioners who undertake to provide drugs, medicines or listed appliances in the Authority's area.
- (2B) In subsection (2A) "listed" has the same meaning as in section 41.
- (2C) The regulations shall include provision for the removal of an entry from a list in prescribed circumstances.]
- [<sup>F93</sup>(3) No arrangements for the provision of pharmaceutical services falling within section 41(d) [<sup>F94</sup>, or additional pharmaceutical services provided in accordance with a direction under section 41A,] above shall be made with persons other than those who are registered pharmacists or are of a prescribed description.]

**Textual Amendments**

- F90** Words in s. 43(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 31** (with Sch. 2 paras. 6, 16)
- F91** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), **s. 21(2)**
- F92** S. 43(2A)-(2C) inserted (1.4.1998) by 1997 c. 46, **s. 29(1)**; S.I. 1998/631, art. 2(a), **Sch.**
- F93** S. 43(3) added by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(2)**
- F94** Words in s. 43(3) inserted (15.8.1997) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 14**; S.I. 1997/1780, art. 2, **Sch.**

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**[<sup>F95</sup>43ZAC] Conditional inclusion in medical, dental, ophthalmic and pharmaceutical lists**

- (1) The Secretary of State may by regulations provide—
  - (a) that if a person is to be included in a list referred to in subsection (3), he is to be subject, while he remains included in the list, to conditions determined by the Health Authority,
  - (b) for the Health Authority to vary that person's terms of service for the purpose of or in connection with the imposition of any such conditions,
  - (c) for the Health Authority to vary the conditions or impose different ones,
  - (d) for the consequences of failing to comply with a condition (including removal from the list), and
  - (e) for the review by the Health Authority of any decision made by virtue of the regulations.
- (2) The imposition of conditions must be with a view to—
  - (a) preventing any prejudice to the efficiency of the services in question, or
  - (b) preventing any acts or omissions within section 49F(3)(a) below.
- (3) The lists in question are—
  - (a) a list of persons undertaking to provide general medical services,
  - (b) a list of persons undertaking to provide general dental services,
  - (c) a list of persons undertaking to provide general ophthalmic services,
  - (d) a list of persons undertaking to provide pharmaceutical services.
- (4) If regulations provide for a practitioner's removal from the list for breach of condition—
  - (a) the regulations may provide that he may not withdraw from the list while the Health Authority are investigating whether there are grounds for exercising their power to remove him, or after the Health Authority have decided to remove him but before they have given effect to that decision; and
  - (b) the regulations must include provision—
    - (i) requiring the practitioner to be given notice of any allegation against him,
    - (ii) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his removal from the list, and
    - (iii) requiring him to be given notice of the Health Authority's decision and the reasons for it and of his right of appeal under subsection (5).
- (5) If regulations provide as mentioned in subsection (1), they must also provide for an appeal by the person in question to the FHSAA against the Health Authority's decision—
  - (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to vary his terms of service,
  - (d) on any review of an earlier such decision of theirs,
  - (e) to remove him from the list for breach of condition,



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and the appeal shall be by way of redetermination of the Health Authority's decision.

- (6) The regulations may provide for any such decision not to have effect until the determination by the FHSAA of any appeal against it, and must so provide in relation to a decision referred to in subsection (5)(e).
- (7) Regulations under this section may provide for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about persons whose inclusion in the lists referred to in subsection (3) is subject to conditions imposed under this section, and about the removal of such persons from such lists for breach of condition.]

#### Textual Amendments

**F95** S. 43ZA inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 21, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

[<sup>F96</sup> Indemnity cover]

#### Textual Amendments

**F96** S. 43C and cross-heading inserted (1.4.2000) by 1999 c. 8, ss. 9(1); S.I. 1999/2793, art. 2(3)(b); S.I. 2000/1041, art. 2(a)

#### <sup>F97</sup> 43C Indemnity cover.

- (1) Regulations may make provision for the purpose of securing that, in prescribed circumstances, prescribed Part II practitioners hold approved indemnity cover.
- (2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—
- (a) for securing that a person is not to be added to any list unless he holds approved indemnity cover;
  - (b) for the removal from a list prepared by a Health Authority of a Part II practitioner who does not within a prescribed period after the making of a request by the Health Authority in the prescribed manner satisfy the Health Authority that he holds approved indemnity cover.

- (3) For the purposes of this section—

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed;

“approved indemnity cover” means indemnity cover made—

- (a) on prescribed terms; and
- (b) with an approved body;

“indemnity cover”, in relation to a Part II practitioner (or person who proposes to provide Part II services), means a contract of insurance or other arrangement made for the purpose of indemnifying him and any person



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prescribed in relation to him to any prescribed extent against any liability which—

(a) arises out of the provision of Part II services in accordance with arrangements made by him with a Health Authority under this Part of this Act; and

(b) is incurred by him or any such person in respect of the death or personal injury of a person;

“list” has the same meaning as in section 46 below;

“Part II practitioner” means a person whose name is on a list;

“Part II services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services;

“personal injury” means any disease or impairment of a person’s physical or mental condition and includes the prolongation of any disease or such impairment;

and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.

(4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—

(a) in a form identified in accordance with the regulations in relation to persons of that description; and

(b) made with a person or persons so identified,

is to be treated as holding approved indemnity cover for the purposes of the regulations.

#### Textual Amendments

**F97** S. 43C and cross-heading inserted (1.4.2000) by 1999 c. 8, ss. 9(1); S.I. 1999/2793, art. 2(3)(b); S.I. 2000/1041, art. 2(a)

VALID FROM 22/11/2001

#### [<sup>F98</sup>43D Supplementary lists

(1) The Secretary of State may make regulations providing for the preparation and publication by each Health Authority of one or more lists of persons approved by the Health Authority for the purpose of assisting in the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services.

(2) Such a list is referred to in this section as a “supplementary list”.

(3) The regulations may, in particular, include provision as to—

(a) the Health Authority to which an application for inclusion in a supplementary list is to be made,

(b) the procedure for applying for inclusion, including any information to be supplied to the Health Authority (whether by the applicant or by arrangement with him),

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- (c) grounds on which the Health Authority may, or must, refuse a person's application for inclusion in a supplementary list (including his unsuitability for inclusion in such a list), or on which they may defer their decision on the application,
  - (d) requirements with which a person included in a supplementary list must comply (including the declaration of financial interests and of gifts and other benefits),
  - (e) grounds on which a Health Authority may, or must, suspend or remove a person from a supplementary list, the procedure for doing so, and the consequences of doing so,
  - (f) payments to or in respect of persons who are suspended from a supplementary list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),
  - (g) the supply to the Health Authority by an applicant for inclusion in a supplementary list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (h) circumstances in which a person included in a supplementary list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Health Authorities under the regulations,
  - (k) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a supplementary list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
- (a) a person's inclusion in a supplementary list to be subject to conditions determined by the Health Authority,
  - (b) the Health Authority to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Health Authority of their decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the supplementary list relates; or
  - (b) preventing any acts or omissions of the type described in section 49F(3)(a) below.
- (6) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 49F to 49N below.
- (7) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a supplementary list, they must include provision—
- (a) requiring him to be given notice of any allegation against him;

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- (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal under subsection (8) or (9).
- (8) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person’s application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.
- (9) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority’s decision—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the supplementary list for breach of condition,
  - (d) on any review of an earlier such decision of theirs.
- (10) Regulations may require a person (“A”) included in—
- (a) a medical list,
  - (b) a list referred to in section 36(1)(a),
  - (c) a list referred to in section 39(1)(a),
  - (d) a list referred to in section 42(2)(a), or
  - (e) a list referred to in section 43(2A),
- not to employ or engage a person (“B”) to assist him in the provision of the relevant service unless B is included in a list referred to in paragraphs (a) to (e), a supplementary list, a services list referred to in section 28DA above or section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46) or a list corresponding to a services list prepared by a Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001 (or, in any of those cases, such a list of a prescribed description).
- (11) If regulations do so require, they—
- (a) need not require both A and B to be included in lists prepared by the same Health Authority, but
  - (b) may, in particular, require that both A and B be included in lists prepared by Health Authorities in England, or in lists prepared by Health Authorities in Wales.]

#### Textual Amendments

**F98** S. 43D inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 24, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1) Sch. Pt. 1

#### *Local representative committees*

#### **44 Recognition of local representative committees.**

[<sup>F99</sup>(A1) A Health Authority may recognise a committee formed for their area which they are satisfied is representative of—

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- (a) the medical practitioners providing general medical services or general ophthalmic services in that area;
- (b) those medical practitioners and the deputy medical practitioners for that area; or
- (c) the medical practitioners mentioned in—
  - (i) paragraph (a) above; or
  - (ii) paragraph (b) above,
 and the section 28C medical practitioners for that area,

and any committee so recognised shall be called the Local Medical Committee for the area.

(B1) A Health Authority may recognise a committee formed for their area which they are satisfied is representative of—

- (a) the dental practitioners providing general dental services in that area;
- (b) those dental practitioners and the deputy dental practitioners for that area; or
- (c) the dental practitioners mentioned in—
  - (i) paragraph (a) above; or
  - (ii) paragraph (b) above,
 and the section 28C dental practitioners for that area,

and any committee so recognised shall be called the Local Dental Committee for the area.]

(1) Where [<sup>F100</sup>a [<sup>F101</sup>Health Authority are satisfied] that a committee formed for [<sup>F101</sup>their area] is representative]—

- [<sup>F102</sup>(a) . . . . .]
- (b) . . . . .]
- (c) of the ophthalmic opticians . . . [<sup>F103</sup> providing general ophthalmic services in that [<sup>F101</sup>area], or
- (d) of the persons providing pharmaceutical services in that [<sup>F101</sup>area],

[<sup>F104</sup>the Family Health Services Authority] may recognise that committee; and any committee so recognised shall be called [<sup>F105</sup>. . . the Local Optical Committee or the Local Pharmaceutical Committee, as the case may be, for the [<sup>F101</sup>area] concerned.

(2) Any such committee may with the [<sup>F106</sup>approval of the [<sup>F107</sup>Health Authority]] delegate any of their functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.

[<sup>F108</sup>(3) For the purposes of this section and section 45 below, a person who meets the condition in subsection (4) below—

- (a) is a deputy medical practitioner for the area of a Health Authority if he is a medical practitioner who assists a medical practitioner providing general medical services in that area in the provision of those services but is not himself on a list;
- (b) is a section 28C medical practitioner for the area of a Health Authority if he is a medical practitioner who provides or performs personal medical services in accordance with arrangements made under section 28C above by the Health Authority (whether with himself or another);

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- (c) is a deputy dental practitioner for the area of a Health Authority if he is a dental practitioner who assists a dental practitioner providing general dental services in that area in the provision of those services but is not himself on a list;
  - (d) is a section 28C dental practitioner for the area of a Health Authority if he is a dental practitioner who provides or performs personal dental services in accordance with arrangements made under section 28C above by the Health Authority (whether with himself or another).
- (4) The condition referred to in subsection (3) above is that the person concerned has notified the Health Authority that he wishes to be represented under this section by the appropriate committee for their area (and has not notified them that he wishes to cease to be so represented).
- (5) For the purposes of subsection (3) above—
- (a) a person is to be treated as assisting a medical practitioner or dental practitioner in the provision of services if he is employed by that practitioner for that purpose or if he acts as his deputy in providing those services; and
  - (b) “list” has the same meaning as in section 46 below.]

#### Textual Amendments

- F99** S. 44(A1)(B1) inserted (1.9.1999 for E. for specified purposes and 1.4.2000 for W. for specified purpose and otherwise prosp.) by 1999 c. 8, **ss. 11(2)**, 67(1); S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 2000/1026, art. 2(1), **Sch.**
- F100** Words commencing “a Family Health” to “locality is representative” substituted (1.10.1991) for words commencing “the Secretary of State” to “is representative” by **National Health Service and Community Care Act 1990 (c. 19, SIF 113:2)**, **s. 12(4)(a)**; S.I. 1990/2511, **art. 3**
- F101** Words in s. 44(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 32(a)** (with Sch. 2 paras. 6, 16)
- F102** S. 44(1)(a)(b) omitted (1.9.1999 for E. for specified purposes and 1.4.2000 for W. for specified purposes) by virtue of 1999 c. 8, **ss. 11(3)**; S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 2000/1026, art. 2(1), **Sch.** and repealed (1.4.2000 for E.W.) by 1999 c. 8, ss. 65(2), **Sch. 5**; S.I. 2000/1041, art. 2(c)(d), **Sch.**
- F103** Words repealed by **Health and Social Security Act 1984 (c. 48, SIF 113:1)**, s. 24, **Sch. 8 Pt. I**
- F104** Words commencing “the Family Health” substituted (1.10.1991) for the word “he” by **National Health Service and Community Care Act 1990 (c. 19, SIF 113:2)**, **s. 12(4)(b)**; S.I. 1991/2511, **art. 3**
- F105** Words in s. 44(1) omitted (1.9.1999 for E. for specified purposes and 1.4.2000 for W. for specified purposes) by virtue of 1999 c. 8, ss. 11(3); S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 2000/1026, art. 2(1), **Sch.** and repealed (1.4.2000 for E.W.) by 1999 c. 8, ss. 65(2), 67(1), **Sch. 5**; S.I. 2000/1041, **art. 2(d)**, **Sch.**
- F106** Words commencing “approval of the” substituted (1.10.1991) for “Secretary of State’s approval” by **National Health Service and Community Care Act 1990 (c. 19, SIF 113:2)**, **s. 12(4)**; S.I. 1991/2511, **art. 3**
- F107** Words in s. 44(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 32(b)** (with Sch. 2 paras. 6, 16)
- F108** S. 44(3)-(5) inserted (1.9.1999 for E. for specified purposes and 1.4.2000 for W. for specified purposes and otherwise prosp.) by 1999 c. 8, **ss. 11(4)**, 67(1); S.I. 1999/2342, art. 2(1), **Sch. 1**; S.I. 2000/1026, art. 2(1), **Sch.**

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

- C18** S. 44(1) amended by S.I. 1990/2511, **art. 5(1)**

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## 45 Functions of local representative committees.

- [<sup>F109</sup>(1) Regulations may require Health Authorities—
- (a) in the exercise of their functions under this Part of this Act to consult committees recognised by them under section 44 above,
  - (b) in the exercise of any of their functions which relate to arrangements under section 28C above to consult committees recognised by them under section 44(A1)(c) or (B1)(c) above,
- on such occasions and to such extent as may be prescribed.
- (1A) The power conferred by subsection (1) above is without prejudice to any other power to require a Health Authority to consult any committee recognised under section 44 above.
- (1B) Committees recognised under section 44 above shall exercise such other functions as may be prescribed.
- (1C) A committee recognised for an area under subsection (A1)(b) or (c) or (B1)(b) or (c) of section 44 above shall, in respect of each year, determine the amount of its administrative expenses for that year attributable —
- (a) in the case of a committee recognised under subsection (A1)(b) or (c)(ii) of that section, to the deputy medical practitioners for the area;
  - (b) in the case of a committee recognised under subsection (A1)(c) of that section, to the section 28C medical practitioners for the area;
  - (c) in the case of a committee recognised under subsection (B1)(b) or (c)(ii) of that section, to the deputy dental practitioners for the area;
  - (d) in the case of a committee recognised under subsection (B1)(c) of that section, to the section 28C dental practitioners for the area.]

(2) The [<sup>F110</sup>Health Authority] may, on the request of any committee recognised under section 44 for their [<sup>F110</sup>area], allot to that committee such sums for defraying the committee's administrative expenses [<sup>F111</sup>(including travelling and subsistence allowances payable to its members)] as may be determined by the [<sup>F110</sup>Health Authority] . . . <sup>F112</sup>

(3) Any sums so allotted shall be out of the moneys available to the [<sup>F110</sup>Health Authority] for the remuneration of persons of whom the committee so recognised is representative and who provide general medical services, general dental services, general ophthalmic services or pharmaceutical services, as the case may be, under this Part of this Act.

The amount of any such sums shall be deducted from the remuneration of those persons in such manner as may be determined by the [<sup>F110</sup>Health Authority] . . . <sup>F112</sup>

[<sup>F113</sup>(4) Where a committee has made a determination under subsection (1C) above, it shall apportion the amount so determined among the deputy medical practitioners, section 28C medical practitioners, deputy dental practitioners or section 28C dental practitioners, as the case may be, for the area and each such practitioner shall pay in accordance with the committee's directions the amount so apportioned to him.

(5) References in this section to administrative expenses of a committee include references to travelling and subsistence allowances payable to its members; but the reference in subsection (2) above to a committee's administrative expenses does not include so much of the committee's administrative expenses as are determined under subsection (1C) above to be attributable to any practitioners mentioned in that subsection.]

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### Textual Amendments

- F109** S. 45(1)-(1C) substituted (1.9.1999 for E. for specified purposes and 1.4.2000 for specified purposes and otherwise *prosp.*) for s. 45(1) by 1999 c. 8, **ss. 11(6)**, 67(1); S.I. 1999/2342, art. 2(1), **Sch. 1**; 2000/1026, art. 2(1), Sch.
- F110** Words in s. 45 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, **ss. 2(1)(3)**, 8(1), **Sch. 1 Pt. I para. 33** (with Sch. 2 paras. 6, 16)
- F111** Words in s. 45 omitted (1.9.1999 for E. for specified purposes and 1.4.2000 for specified purposes and otherwise *prosp.*) by virtue of 1999 c. 8, **ss. 11(7)**, 67(1); S.I. 1999/2342, art. 2(1), **Sch. 1**; 2000/1026, art. 2(1), Sch. and repealed (1.4.2000 for E.W.) by 1999 c. 8, **ss. 65(2)**, 67(1), **Sch. 5**; S.I. 2000/1041, art. 2(c)(d), **Sch.**
- F112** Words repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), **ss. 5(4)**, 24, Sch. 3 para. 7(b)(ii), **Sch. 8 Pt. I**
- F113** S. 45(4)(5) inserted (1.9.1999 for E. for specified purposes and 1.4.2000 for specified purposes and otherwise *prosp.*) by 1999 c. 8, **ss. 11(8)**, 67(1); S.I. 1999/2342, art. 2(1), **Sch. 1**; 2000/1026, art. 2(1), Sch.

### Modifications etc. (not altering text)

- C19** S. 45(1): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

## Provisions as to disqualification of practitioners

### 46 Disqualification of practitioners.

- (1) There shall be a tribunal (in this section and sections 47 to [F114]49C) below referred to as “the Tribunal”) which shall be constituted in accordance with Schedule 9 to this Act to inquire into cases where representations are made in the prescribed manner to the Tribunal by [F115]a Health Authority] or any other person that the continued inclusion of a person’s name in a list prepared under this Part of this Act—
- of medical practitioners undertaking to provide general medical services,
  - of medical practitioners undertaking to provide general ophthalmic services,
  - of dental practitioners undertaking to provide general dental services,
  - of ophthalmic opticians undertaking to provide general ophthalmic services,
  - [F116] . . . . .
  - of persons undertaking to provide pharmaceutical services,
- would be prejudicial to the efficiency of the services in question.

The supplementary provisions contained in Schedule 9 apply in relation to the Tribunal.

- (2) The Tribunal, on receiving representations from [F115]a Health Authority] shall, and in any other case may, inquire into the case, and, if they are of opinion that the continued inclusion of that person’s name in any list to which the representations relate would be prejudicial to the efficiency of those services—
- shall direct that his name be removed from that list; and
  - may also, if they think fit, direct that his name be removed from, or not be included in, any corresponding list kept by any [F115]other Health Authority] under this Part [F117], and



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- (c) where they make a direction under paragraph (b) above, may also, if they think fit, declare that he is not fit to be engaged in any capacity in the provision of those services.]

<sup>F118</sup>(3) . . . . .

[<sup>F119</sup>(4) Subject to subsection (5) below, where the Tribunal direct that the name of any person be removed from or not included in any list or lists, the Health Authority or Health Authorities concerned shall remove the name of the person concerned from the list or lists in question.

(5) Subsection (4) above shall not apply—

- (a) where no appeal is brought against the decision to make the direction, until the end of the period for bringing an appeal, and  
(b) where an appeal is brought against that decision, until the appeal process has been exhausted.]

#### Textual Amendments

- F114** Words in s. 46(1) substituted (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(2); S.I. 1995/3090, art. 2(1)(2), **Sch.** (subject to savings in art. 3); S.I. 1996/552, art. 2
- F115** Words in s. 46(1)(2) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. 1 para. 34(a)(b)** (with **Sch. 2** paras. 6, 16)
- F116** S. 46(1)(e) repealed by **Health and Social Security Act 1984** (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. 1**
- F117** S. 46(2)(c) and word inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 1; S.I. 1995/3090, art. 2(1)(2), **Sch.** (subject to savings in art. 3); S.I. 1996/552, art. 2
- F118** S. 46(3) repealed (21.12.1995) by 1995 c. 31, ss. 3(1), 14(2), **Sch.**; S.I. 1995/3090, art. 2(1), **Sch.** (subject to savings in art. 3)
- F119** S. 46(4)(5) substituted (21.12.1995) for s. 46(4) by 1995 c. 31, s. 3(2); S.I. 1995/3090, art. 2(1), **Sch. 1** (subject to savings in art. 3)

#### 47 Removal of disqualification.

- (1) Any person whose name has been removed by a direction under section 46 above from any list or lists shall be disqualified for inclusion in any list to which that direction relates until the Tribunal <sup>F120</sup>. . . direct under this section to the contrary.
- (2) For the purpose of deciding whether or not to issue a direction under this section (or under paragraph 8 of Schedule 14 to this Act), the Tribunal <sup>F121</sup>. . . may hold an inquiry.

#### Textual Amendments

- F120** Words in s. 47(1) repealed (21.12.1995) by 1995 c. 31, ss. 4(1), 14(2), **Sch.**; S.I. 1995/3090, art. 2(1), **Sch.** (subject to saving in art. 3)
- F121** Words in s. 47(2) repealed (21.12.1995) by 1995 c. 31, s. 14(2), **Sch.**; S.I. 1995/3090, art. 2(1), **Sch.** (subject to saving in art. 3)

#### 48 Disqualification provisions in Scotland or Northern Ireland.

Where—

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- (a) under any provisions in force in Scotland or Northern Ireland corresponding to the provisions of this Part of this Act a person is for the time being disqualified for inclusion in all lists prepared under those provisions of persons undertaking to provide services of one or more of the kinds specified in section 46(1) above, then
- (b) that person shall, so long as that disqualification is in force, be disqualified for inclusion in a list prepared under this Part of persons undertaking to provide services of those kinds, and the name of that person shall be removed from every such list in which his name is included.

#### 49 Regulations as to ss. 46 to 48.

Regulations shall provide—

- (a) for <sup>F122</sup> . . . inquiries <sup>F122</sup> . . . or the Secretary of State under sections 46 to 48 above [<sup>F123</sup>to be held in accordance with such procedure as may be prescribed by or determined under the regulations], and for the making and determining of appeals to the Secretary of State under that procedure, and, in particular for <sup>F122</sup> . . . any person who is the subject of such an inquiry [<sup>F124</sup>to have] an opportunity—
  - (i) of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before the Tribunal and, in the case of an inquiry by, or appeal to, the Secretary of State before a person appointed by the Secretary of State, and
  - (ii) of being heard by the Tribunal or the person so appointed and of calling witnesses and producing other evidence on his behalf,

and [<sup>F124c</sup>for the hearing], whether by the Tribunal or the person so appointed [<sup>F124</sup>to be] in public if the person who is the subject of the inquiry so requests;

- (b) for conferring on the Tribunal and on any person so appointed such powers as the Secretary of State considers necessary, and for that purpose to apply, with any necessary modifications, any of the provisions of section 250 of the <sup>M10</sup>Local Government Act 1972; and
- (c) for the publication of the decisions of the Tribunal and the Secretary of State under this section and of the imposition and removal of any disqualifications imposed under section 48 above.

#### Textual Amendments

**F122** Words in s. 49(a) omitted (E.W.) (21.12.1995) by virtue of 1995 c. 31, s. 5(2)(a); S.I. 1995/3090, art. 2(1), **Sch.** (subject to saving in art. 3)

**F123** Words in s. 49(a) inserted (E.W.) (21.12.1995) by 1995 c. 31, s. 5(2)(b); S.I. 1995/3090, art. 2(1), **Sch.** (subject to saving in art. 3)

**F124** Words in s. 49(a) substituted (E.W.) (21.12.1995) by 1995 c. 31, s. 5(2)(c); S.I. 1995/3090, art. 2(1), **Sch.** (subject to saving in art. 3)

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

**C20** S. 49 extended (E.W.) (21.12.1995) by 1995 c. 31, s. 5(1); S.I. 1995/3090, art. 2(1), **Sch.** (subject to saving in art. 3)

#### Marginal Citations

**M10** 1972 c. 70(81:1).

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### [<sup>F125</sup>49A Applications for interim suspension.

- (1) A Health Authority who have made representations under section 46 above may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the case relates.
- (2) If, on an application under this section, the Tribunal are satisfied that it is necessary to do so in order to protect patients, they shall direct that subsection (3) below shall apply to the person concerned as respects services of the kind to which the case in question relates.
- (3) A person to whom this subsection applies shall—
  - (a) be deemed to have been removed from any relevant list in which his name is included,
  - (b) be disqualified for inclusion in any relevant list in which his name is not included, and
  - (c) be deemed to be a person in relation to whom there is in force a declaration under section 46(2)(c) above concerning his fitness to be engaged in the provision of services of the relevant kind.
- (4) A direction under subsection (2) above shall cease to have effect on the Tribunal's disposing of the case in connection with which it is made.
- (5) In subsection (2) above, the reference to patients is to persons to whom services of the kind to which the case in question relates are, or may be, provided under this Part of this Act.
- (6) In the application of subsection (3) above to any person—
  - (a) “relevant list” means a list prepared under this Part of this Act of persons undertaking to provide services of the kind to which the direction applying the subsection to him relates, and
  - (b) “services of the relevant kind” means services of the kind to which that direction relates.]

#### Textual Amendments

**F125** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

### [<sup>F126</sup>49B Continuation of suspension pending appeal.

- (1) Where—
  - (a) on disposing of a case under section 46 above, the Tribunal make a direction under subsection (2)(b) of that section, and
  - (b) the person to whom the direction relates is a person to whom section 49A(3) above would, apart from this section, cease to apply on the disposal of the case, the Tribunal may, if they consider it necessary to do so in order to protect patients, direct that that provision shall continue to apply to him as respects services of the kind to which the direction under section 46(2)(b) above relates.
- (2) A direction under subsection (1) above shall cease to have effect—

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- (a) where no appeal against the direction under section 46(2)(b) above is brought, at the end of the period for bringing an appeal, and
  - (b) where an appeal against that direction is brought, when the appeal process has been exhausted.
- (3) Where the power conferred by subsection (1) above is exercisable by virtue of a direction which is not coupled with a declaration under section 46(2)(c) above, section 49(A)(3) above shall have effect, in relation to the exercise of that power, with the omission of paragraph (c).
- (4) In subsection (1) above, the reference to patients is to persons to whom services of the kind to which the direction under section 46(2)(b) above relates are, or may be, provided under this Part of this Act.]

#### Textual Amendments

**F126** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

#### [<sup>F127</sup>49C Sections 49A and 49B: procedure etc.

- (1) Before making a direction under section 49A(2) or 49B(1) above in relation to any person, the Tribunal shall give him an opportunity—
- (a) to appear before them, either in person or by counsel or solicitor or such other representative as may be prescribed, and
  - (b) to be heard and to call witnesses and produce other evidence.
- (2) Regulations may—
- (a) make provision for, or for the determination of, procedure in relation to determining applications under section 49A above or the exercise of the power conferred by section 49B(1) above, and
  - (b) provide for the functions of the Tribunal under section 49A or 49B above to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.]

#### Textual Amendments

**F127** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

#### [<sup>F128</sup>49D Suspension provisions in Scotland or Northern Ireland.

- (1) This section applies where, under any provisions in force in Scotland or Northern Ireland corresponding to section 49A or 49B above, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of this Part of this Act of persons undertaking to provide services of one or more of the kinds specified in section 46(1) above, other than those in which his name is included.
- (2) The practitioner shall, while he is so disqualified—

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- (a) be disqualified for inclusion in any list prepared under this Part of this Act of persons undertaking to provide services of the same kinds (“relevant list”) in which his name is not included, and
- (b) be deemed to have been removed from any relevant list in which his name is included.]

#### Textual Amendments

**F128** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

#### [<sup>F129</sup>49E Payments in consequence of suspension.

- (1) Regulations may provide for the making to persons to whom section 49A(3) or 49D(2) above applies of payments in consequence of the application of that provision.
- (2) Regulations under subsection (1) above may provide for the determination by the Secretary of State in a prescribed manner of anything for which provision may be made by regulations under that subsection.]

#### Textual Amendments

**F129** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

VALID FROM 22/11/2001

#### [<sup>F130</sup>49F Disqualification of practitioners

- (1) If it appears to a Health Authority that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in any of the following prepared by them—
  - (a) a list of medical practitioners undertaking to provide general medical services,
  - (b) a list of medical practitioners undertaking to provide general ophthalmic services,
  - (c) a list of dental practitioners and dental corporations undertaking to provide general dental services,
  - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services, or
  - (e) a list of persons undertaking to provide pharmaceutical services,
 (such a person being referred to in this group of sections as a “practitioner”), they may (or, in cases falling within subsection (6), must) decide to remove him from that list.
- (2) The first condition is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is referred to in this group of sections as an “efficiency case”).

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- (3) The second condition is that the person concerned—
- (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and
  - (b) knew that he or (as the case may be) the other was not entitled to the benefit, (and such a case is referred to in this group of sections as a “fraud case”).
- (4) The third condition is that the person concerned is unsuitable to be included in the list (and such a case is referred to in this group of sections as an “unsuitability case”).
- (5) “This group of sections” means this section and sections 49G to 49R below.
- (6) In unsuitability cases, the Health Authority must remove the practitioner from the list in prescribed circumstances.
- (7) The Health Authority must state which condition (or conditions) they are relying on when removing a practitioner from a list.
- (8) In subsection (3), “health scheme” means—
- (a) any of the health services under section 1(1) above or any corresponding enactment extending to Scotland or Northern Ireland, and
  - (b) any prescribed scheme,
- and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.
- (9) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.]

#### Textual Amendments

**F130** S. 49F inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

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

**C21** S. 49F(8): definition extended (W.) (26.8.2002) by National Health Service (General Ophthalmic Services) Regulations 1986 (S.I. 1986/975), reg. 9A (as inserted (26.8.2002) by National Health Service (General Ophthalmic Services) (Amendment) (Wales) Regulations 2002 (S.I. 2002/1883), reg. 6)

VALID FROM 14/12/2001

#### [<sup>F131</sup>49G Contingent removal

- (1) In an efficiency case or a fraud case, the Health Authority may, instead of deciding to remove a practitioner from their list, decide to remove him contingently.

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- (2) If they so decide, they must impose such conditions as they may decide on his inclusion in the list with a view to—
  - (a) removing any prejudice to the efficiency of the services in question (in an efficiency case), or
  - (b) preventing further acts or omissions within section 49F(3)(a) above (in a fraud case).
- (3) If the Health Authority determine that the practitioner has failed to comply with a condition, they may decide to—
  - (a) vary the conditions, or impose different conditions, or
  - (b) remove him from their list.
- (4) The Health Authority may decide to vary the terms of service of the person concerned for the purpose of or in connection with the imposition of any conditions by virtue of this section.]

#### Textual Amendments

**F131** S. 49G inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 14/12/2001

#### <sup>F132</sup>49H Fraud and unsuitability cases: supplementary

- (1) Where the practitioner is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second or third condition referred to in section 49F(3) and (4) above—
  - (a) in the case of an ophthalmic optician not referred to in paragraph (b) or a dental corporation, if any director meets that condition (whether or not he first did so when he was a director), and
  - (b) in the case of a body corporate carrying on a retail pharmacy business or an ophthalmic optician which is a limited liability partnership, if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person).
- (2) A practitioner is to be treated for the purposes of this group of sections as meeting the condition referred to in section 49F(3) above if—
  - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 49F(1) above on the practitioner's behalf, meets that condition; and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 49F(3)(a) above occurring in the course of the provision of those services on his behalf.]



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### Textual Amendments

**F132** S. 49H inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 22/11/2001

### <sup>F133</sup> 49I Suspension

- (1) If the Health Authority are satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, they may suspend a practitioner from their list—
  - (a) while they decide whether or not to exercise their powers under section 49F or 49G (other than in circumstances falling within paragraph (b)), or
  - (b) while they wait for a decision affecting the practitioner of a court or of a body which regulates—
    - (i) the practitioner’s profession,
    - (ii) the profession of a person providing any of the services mentioned in section 49F(1) on the practitioner’s behalf, or
    - (iii) if the practitioner is a body corporate, the profession of one of its directors or, as the case may be, one of the body of persons controlling it or (if it is a limited liability partnership) one of its members,
 or one of that regulatory body’s committees.
- (2) The references in subsection (1)(b) to a court or regulatory body are to a court or such a body anywhere in the world.
- (3) In a case falling within subsection (1)(a), the Health Authority must specify how long the period of suspension is to be.
- (4) In a case falling within subsection (1)(b), the Health Authority may specify that the practitioner shall remain suspended after the decision referred to there for an additional period which the Health Authority must specify.
- (5) In either case—
  - (a) before that period expires they may extend, or further extend, the suspension for a further specified period, or
  - (b) if that period has expired, they may impose a further suspension, for a period which they must specify.
- (6) The period of suspension (in a subsection (1)(a) case) or the additional period (in a subsection (1)(b) case), including in both cases the period of any further suspension imposed under subsection (5)(b), may not exceed six months in aggregate, except—
  - (a) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period),
  - (b) if, on the application of the Health Authority, the FHSAA orders accordingly before the expiry of the period of suspension, or

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- (c) if the Health Authority have applied under paragraph (b) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA has made an order.
- (7) If the FHSAA does so order, it shall specify—
  - (a) the date on which the period of suspension is to end, or
  - (b) an event beyond which it is not to continue.
- (8) The FHSAA may, on the application of the Health Authority, make a further order (complying with subsection (7)) at any time while the period of suspension pursuant to the earlier order is still continuing.
- (9) The Secretary of State may make regulations providing for payments to practitioners who are suspended.
- (10) Those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.]

#### Textual Amendments

**F133** S. 49I inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), **Sch. 1 Pt. II**; S.I. 2002/1475, art. 2(1), **Sch. Pt. 1**

VALID FROM 14/12/2001

#### <sup>F134</sup> 49J Suspension pending appeal

- (1) This section applies if the Health Authority decide to remove a practitioner from a list under section 49F.
- (2) In such a case they may also decide to suspend the practitioner from the list pending any appeal by him, if they are satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.
- (3) If they do suspend the practitioner under this section, the suspension has effect from the date when the Health Authority gave him notice of the suspension.
- (4) The suspension has effect until its revocation under subsection (5) or (6) or, if later, until the expiry of the period of 28 days referred to in section 49M(1) below, or, if the practitioner appeals under section 49M, until the FHSAA has disposed of the appeal.
- (5) The Health Authority may revoke a suspension imposed under this section.
- (6) If the practitioner appeals under section 49M against the Health Authority's decision to remove him from the list, the FHSAA may also revoke a suspension imposed on him under this section.
- (7) Subsections (9) and (10) of section 49I above apply for the purposes of this section as they apply for the purposes of that.]

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### Textual Amendments

**F134** S. 49J inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 14/12/2001

### [<sup>F135</sup> 49K Effect of suspension

While a practitioner is suspended (whether under section 49I or under section 49J above) he is to be treated as not being included in the list from which he has been suspended even though his name appears in it.]

### Textual Amendments

**F135** S. 49K inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 22/11/2001

### [<sup>F136</sup> 49L Review of decisions

- (1) The Health Authority may, and (except in prescribed cases) if requested in writing to do so by the practitioner must, review a contingent removal or a suspension (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the FHSAA, or a suspension imposed under section 49J above).
- (2) The practitioner may not request a review before the expiry of the period of—
  - (a) three months beginning with the date of the Health Authority's decision to suspend or contingently remove him, or (as appropriate),
  - (b) six months beginning with the date of their decision on the previous review.
- (3) On such a review, the Health Authority may—
  - (a) confirm the contingent removal or the suspension,
  - (b) in the case of a suspension, terminate it,
  - (c) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list.]

### Textual Amendments

**F136** S. 49L inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by

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2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

### **[<sup>F137</sup>49M Appeals**

- (1) A practitioner may appeal to the FHSAA against a decision of a Health Authority mentioned in subsection (2) by giving notice in writing to the FHSAA within the period of 28 days beginning with the date on which the Health Authority gave him notice of the decision.
- (2) The Health Authority decisions in question are—
  - (a) to remove the practitioner from a list (under section 49F or 49G(3) or under subsection (5)(b) of this section),
  - (b) to remove him contingently (under section 49G),
  - (c) to impose any particular condition under section 49G, or to vary any condition or to impose any different condition under that section,
  - (d) to vary his terms of service (under section 49G(4)),
  - (e) any decision on a review of a contingent removal under section 49L.
- (3) The appeal shall be by way of redetermination of the Health Authority's decision.
- (4) On an appeal, the FHSAA may make any decision which the Health Authority could have made.
- (5) If the FHSAA decides to remove the practitioner contingently—
  - (a) the Health Authority and the practitioner may each apply to the FHSAA for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked, and
  - (b) the Health Authority may remove him from their list if they determine that he has failed to comply with a condition.
- (6) The Health Authority shall not remove a person from a list, or impose a contingent removal—
  - (a) until the expiry of the period of 28 days referred to in subsection (1), or
  - (b) if the practitioner appeals within that period, until the FHSAA has disposed of the appeal.
- (7) Regulations may provide for payments by Health Authorities to practitioners who are removed from lists pursuant to decisions of the FHSAA under this section, but whose appeals against those decisions are successful.]

#### **Textual Amendments**

**F137** S. 49M inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1)

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VALID FROM 22/11/2001

### **[<sup>F138</sup>49N National disqualification**

- (1) If the FHSAA removes the practitioner from a list, it may also decide to disqualify him from inclusion in—
  - (a) all lists referred to in section 49F(1)(a) to (e) prepared by all Health Authorities,
  - (b) all supplementary lists prepared by all Health Authorities, and
  - (c) all services lists prepared by all Health Authorities under section 28DA above or under section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46), or any list corresponding to a services list prepared by any Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001,or only from inclusion in one or more descriptions of such lists prepared by all Health Authorities, the description being specified by the FHSAA in its decision.
- (2) A decision by the FHSAA to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.
- (3) The FHSAA may also impose a national disqualification on a practitioner if it dismisses an appeal by him against a Health Authority's refusal to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).
- (4) The Health Authority may apply to the FHSAA for a national disqualification to be imposed on a person after they have—
  - (a) removed him from a list of theirs of any of the kinds referred to in subsection (1)(a) to (c), or
  - (b) refused to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).
- (5) Any such application must be made before the end of the period of three months beginning with the date of the removal or of their refusal.
- (6) If the FHSAA imposes a national disqualification on a person—
  - (a) no Health Authority may include him in a list of any of the kinds from which he has been disqualified from inclusion prepared by them, and
  - (b) if he is included in such a list, each Health Authority in whose list he is included must remove him from it.
- (7) The FHSAA may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it.
- (8) Subject to subsection (9), the person may not request such a review before the end of the period of—
  - (a) two years beginning with the date on which the national disqualification was imposed, or
  - (b) one year beginning with the date of the FHSAA's decision on the last such review.

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(9) The Secretary of State may provide in regulations for subsection (8) to have effect in prescribed circumstances as if the reference there to “two years” or “one year” were a reference to a different period specified in the regulations.]

#### Textual Amendments

**F138** S. 49N inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1) Sch. Pt. 1

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

**C22** S. 49N(8) modified (W.) (26.8.2002) by S.I. 1992/635, reg. 7H (as inserted (26.8.2002) by The National Health Service (General Medical Services) (Amendment) (Wales) (No. 2) Regulations 2002 (S.I. 2002/1896), reg. 5)

VALID FROM 22/11/2001

#### <sup>F139</sup>49O Notification of decisions

Regulations may require a Health Authority to notify prescribed persons, or persons of prescribed descriptions, of any decision they make under this group of sections, and of any information relevant to the decision which they consider it appropriate to include in the notification.]

#### Textual Amendments

**F139** S. 49O inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

#### <sup>F140</sup>49P Withdrawal from lists

Regulations may provide for circumstances in which a practitioner—

- (a) whom a Health Authority are investigating in order to see whether there are grounds for exercising their powers under section 49F, 49G or 49I,
  - (b) whom a Health Authority have decided to remove from a list under section 49F or 49G, or contingently remove under section 49G, but who has not yet been removed or contingently removed, or
  - (c) who has been suspended under section 49I,
- may not withdraw from a list in which he is included.]

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### Textual Amendments

**F140** S. 49P inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

### [<sup>F141</sup>49Q Regulations

- (1) Any decision by a Health Authority referred to in this group of sections shall be reached in accordance with regulations made by the Secretary of State about such decisions.
- (2) The regulations shall include provision—
  - (a) requiring the practitioner to be given notice of any allegation against him,
  - (b) giving him the opportunity of putting his case at a hearing before a Health Authority make any decision affecting him under this group of sections,
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal which he may have.
- (3) The regulations may, in particular, make provision as to criteria which the Health Authority must apply when making decisions in unsuitability cases.]

### Textual Amendments

**F141** S. 49Q inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

### [<sup>F142</sup>49R Corresponding provision in Scotland and Northern Ireland

- (1) This section applies where it appears to the Secretary of State that there is provision in Scotland or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under this group of sections.
- (2) A decision in Scotland or Northern Ireland to deal with such a person in such a way is referred to in this section as a “corresponding decision”.
- (3) If this section applies, the Secretary of State may make regulations providing for the effect to be given in England and Wales to a corresponding decision.
- (4) That effect need not be the same as the effect of the decision in the place where it was made.
- (5) The regulations may not provide for a corresponding decision to be reviewed or revoked in England and Wales.]



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### Textual Amendments

**F142** S. 49R inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 01/10/2001

### <sup>F143</sup> *The Family Health Services Appeal Authority*

#### Textual Amendments

**F143** S. 49S and cross-heading inserted (1.10.2001 for certain purposes for E., 1.12.2001 for all other purposes for E. and 26.8.2002 for W.) by 2001 c. 15, ss. 27(1), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3294, art. 4, Sch. Pt. I (subject to transitional provisions in Sch. Pt. II); S.I. 2002/1919, art. 3 (subject to art. 3(2))

### <sup>F144</sup> **49S The Family Health Services Appeal Authority**

- (1) There shall be a body to be known as the Family Health Services Appeal Authority (“FHSAA”).
- (2) The FHSAA shall be constituted in accordance with Schedule 9A to this Act, which also makes other provision in relation to the FHSAA.
- (3) The FHSAA shall have such functions as are conferred on it by this Act or by any other enactment.
- (4) The Secretary of State may direct the FHSAA to exercise any of his functions relating to the determination of appeals to him which are specified in the directions.
- (5) Directions under subsection (4) shall be given by regulations or by an instrument in writing.
- (6) The Secretary of State may make available to the FHSAA any facilities (including the use of any premises) provided by him or by a Special Health Authority or NHS trust for any service under this Act, and the services of persons employed by the Secretary of State or by a Special Health Authority or NHS trust.
- (7) Subsections (1) to (3) of section 27 above apply in relation to the services of persons employed by a Special Health Authority and made available under subsection (6) as they apply in relation to the services of officers of Special Health Authorities to be made available under section 26 above.
- (8) For the purposes of subsection (6)—
  - (a) the Secretary of State may give directions to an NHS trust requiring it to make facilities or the services of persons available as mentioned there; but
  - (b) subsections (1) and (2) of section 27 above apply in relation to the services of such persons as they apply in relation to the services of officers to be made available by virtue of section 26 above by a Health Authority, Special Health Authority or Primary Care Trust.]

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### Textual Amendments

**F144** S. 49S inserted (1.10.2001 for certain purposes for E., 1.12.2001 for all other purposes for E. and 26.8.2002 for W.) by 2001 c. 15, ss. 27(1), 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3294, art. 4, Sch. Pt. I (subject to transitional provisions in Sch. Pt. II); S.I. 2002/1919, {art. 3 } (subject to art. 3(2))

### Other provisions supplementary to Part II

## 50 Exercise of choice of practitioner in certain cases.

Regulations may provide that, where a right to choose the person by whom [<sup>F145</sup>general ophthalmic] services are to be provided under this Part of this Act is conferred by or under this Part, that right shall, in the case of such persons as may be specified in the regulations, be exercised on their behalf by other persons so specified.

### Textual Amendments

**F145** Words in s. 50 inserted (1.10.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 15; S.I. 1998/1998, art. 2(2)(b), Sch. 2

## 51 University clinical teaching and research.

[<sup>F146</sup>(1)] It is the Secretary of State's duty to [<sup>F147</sup>exercise his functions under this Act and Part I of the <sup>M11</sup>National Health Service and Community Care Act 1990 so as to secure that there are made available] such facilities as he considers are reasonably required by any university which has a medical or dental school, in connection with clinical teaching and with research connected with clinical medicine or, as the case may be, clinical dentistry.

[<sup>F148</sup>(2) Regulations may provide for any functions exercisable by a Health Authority [<sup>F149</sup>Special Health Authority or Primary Care Trust] in relation to the provision of facilities such as are mentioned in subsection (1) above to be exercisable by the Health Authority [<sup>F149</sup>Special Health Authority or Primary Care Trust] jointly with one or more other relevant health service bodies.

(3) For the purposes of subsection (2) above the following are relevant health service bodies—

- (a) Health Authorities;
- (b) Special Health Authorities;
- [ Primary Care Trusts]; and
- <sup>F150</sup>(bb)
- (c) NHS trusts.]

### Textual Amendments

**F146** S. 51 re-numbered as s. 51(1) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 35 (with Sch. 2 paras. 6, 16)

**F147** Words in s. 51(1) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), Sch. 1 Pt. I para. 35(a) (with Sch. 2 paras. 6, 16)

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- F148** S. 51(2)(3) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. 1 para. 35(b)** (with Sch. 2 paras. 6, 16)
- F149** Words in s. 51(2) substituted (4.1.2000 for E. amd otherwise prosp.) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 23(a)**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**
- F150** S. 51(3)(bb) inserted (4.1.2000 for E. and otherwise *prosp.*) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 23(b)**; S.I. 1999/2342, art. 2(3)(a), **Sch. 2**

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

- C23** S. 51(1): functions of local authority not to be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(a), **Sch. 1**  
S. 51(1) restricted (1.4.2000) by S.I. 2000/695, **reg. 6**
- C24** S. 51(1): functions of Health Authorities modified (E.) (1.4.2001) by S.I. 2001/747, **regs. 5(6), 6(5)**  
S. 51(1): transfer of functions (E.) (1.4.2001) by S.I. 2001/747, **regs. 2(1), 3, 4, Sch. 1**

**Marginal Citations**

- M11** 1990 c. 19.

**52 Use of accommodation.**

If the Secretary of State considers that any accommodation provided by him by virtue of this Act is suitable for use in connection with the provision of general medical services, general dental services, general ophthalmic services or pharmaceutical services he may make the accommodation available on such terms as he thinks fit to persons providing any of those services.

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

- C25** S. 52: transfer of functions (E.) (1.4.2001) by S.I. 2001/747, **regs. 2(1), 3, 4, Sch. 1**

**53 Immunisation.**

Where the Secretary of State arranges with medical practitioners for the vaccination or immunisation of persons against disease, he shall so far as reasonably practicable give every medical practitioner providing general medical services an opportunity to participate in the arrangements.

**[<sup>F151</sup>54 Sale of medical practices.**

- (1) It is unlawful to sell the goodwill of the medical practice of a person who has at any time—
- (a) provided general medical services under arrangements made with any Council, Committee or Authority under the <sup>M12</sup>National Health Service Act 1946, the <sup>M13</sup>National Health Service Reorganisation Act 1973 or this Act, or
  - (b) provided or performed personal medical services in accordance with section 28C arrangements,
- unless that person no longer provides or performs such services and has never carried on the practice in a relevant area.
- (2) In this section—

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“goodwill” includes any part of goodwill and, in relation to a person practising in partnership, means his share of the goodwill of the partnership practice;

“medical practice” includes any part of a medical practice; and

“relevant area”, in relation to any Council, Committee or Authority by arrangement with whom a person has at any time—

- (a) provided general medical services, or
- (b) provided or performed personal medical services in accordance with section 28C arrangements,

means the area, district or locality of that Council, Committee or Authority (at that time).

(3) Schedule 10 supplements the provisions of this section.]

#### Textual Amendments

**F151** S. 54 substituted (1.4.1998) by 1997 c. 46, 34(1); S.I. 1998/631, art. 2(1)(a), Sch. 1

#### Marginal Citations

**M12** 1946 c. 81.

**M13** 1973 c. 32.

55 ..... **F152**

#### Textual Amendments

**F152** S. 55 repealed by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), ss. 12(5), 66(2), Sch. 10

## 56 Inadequate services.

If the Secretary of State is satisfied, after such inquiry as he may think fit, as respects [<sup>F153</sup>the area, or part of the area, of a Health Authority] that the persons whose names are included in any list prepared under this Part of this Act—

- (a) of medical practitioners undertaking to provide general medical services,
- (b) of dental practitioners undertaking to provide general dental services,
- (c) of persons undertaking to provide general ophthalmic services, or
- (d) of persons undertaking to provide pharmaceutical services,

are not such as to secure the adequate provision of the services [<sup>F154</sup>in question in that area or part, or that for any other reason any considerable number of persons in any such area or part are not] receiving satisfactory services under the arrangements in force under this Part, then—

- [<sup>F155</sup>(i) he may authorise [<sup>F156</sup>the Health Authority] to make such other arrangements as he may approve, or may himself make such other arrangements, and]
- (ii) he may dispense with any of the requirements of regulations made under this Part so far as appears to him necessary to meet exceptional circumstances and enable such arrangements to be made.

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### Textual Amendments

- F153** Words in s. 56 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 37(a)** (with Sch. 2 paras. 6, 16)
- F154** Words in s. 56 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 37(b)** (with Sch. 2 paras. 6, 16)
- F155** S. 56(i) substituted by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 5(4), **Sch. 3 para. 8**
- F156** Words in s. 56 substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8(1), **Sch. 1 Pt. I para. 37(c)** (with Sch. 2 paras. 6, 16)

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