



National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART II

PROVISION OF SERVICES

Supplementary provisions relating to Part II

33 Powers of Secretary of State where services are inadequate.

If the Secretary of State is satisfied, after such inquiry as he may think fit, as respects the area of any Health Board or part of any such area that the persons included in

- [^{F1}(a) the first part of any list prepared under section 25(2), being the part which is of dental practitioners and bodies corporate referred to in section 25(1) who undertake to provide general dental services;
- (b) the first part of any list prepared under section 26(2), being the part which is of medical practitioners and ophthalmic opticians who undertake to provide general ophthalmic services.]

are not such as to secure the adequate provision of the services 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, he may authorise the Health Board to make such other arrangements as he may approve, or may himself make other arrangements, and may dispense with any of the requirements of regulations made under this Part so far as appears to him to be necessary to meet exceptional circumstances and enable such arrangements to be made.

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Textual Amendments

- F1** Words in s. 33 substituted (2.7.2010 for certain purposes otherwise prosp.) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), ss. 42(1), 43(3), [Sch. 2 para. 2\(15\)](#); S.S.I. 2010/185, [art. 3\(b\)](#), Sch. 2

34 Exercise of choice of medical practitioner etc. in certain cases.

Regulations may provide that where a right to choose the person by whom services are to be provided under this Part is conferred by or under any provision of this Part, that right shall, in the case of such persons as may be specified in the regulations, be exercisable on their behalf by other persons so specified.

[^{F2}35 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 Executive Council or Health Board under the ^{M1}National Health Service (Scotland) Act 1947, the ^{M2}National Health Service (Scotland) Act 1972 or [^{F3}(prior to its repeal) section 19 of] this Act, or
- (b) provided or performed personal medical services in accordance with section 17C arrangements, [^{F4}(prior to the coming into force of section 2C)]^{F5} or
- (c) provided or performed primary medical services in accordance with section 17C arrangements or arrangements under section 2C(2) or under a general medical services contract—
 - (i) in prescribed circumstances; or
 - (ii) if regulations so provide, in all circumstances.]

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—

“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 Executive Council or Health Board by arrangement [^{F6}or contract] with whom a person has at any time [^{F7} provided or performed services as specified in subsection (1)]

(3) Schedule 9 supplements the provisions of this section.]

Textual Amendments

- F2** S. 35 substituted (1.4.1998) by 1997 c. 47, s. 34(2); S.I. 1998/631, art. 2(a), [Sch. 1](#)
- F3** Words in s. 35(1)(a) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. 8, 9(1)(2), [Sch. para. 1\(14\)\(a\)\(i\)](#); S.S.I. 2004/58, [art. 2](#), Sch.
- F4** Words in s. 35(1)(b) inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. 8, 9(1)(2), [Sch. para. 1\(14\)\(a\)\(ii\)](#); S.S.I. 2004/58, [art. 2](#), Sch.

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- F5** S. 35(1)(c) and word inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. 8, 9(1)(2), [Sch. para. 1\(14\)\(a\)\(iii\)](#); S.S.I. 2004/58, [art. 2](#), Sch.
- F6** S. 35(2): words in the "definition of relevant" inserted (13.2.2004 for certain purposes, otherwise 1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. 8, 9(1)(2), [Sch. para. 1\(14\)\(b\)\(i\)](#); S.S.I. 2004/58, [art. 2](#), Sch.
- F7** Words in s. 35(2) substituted (13.2.2004 for certain purposes, otherwise 1.4.2004) for s. 35(2)(a)(b) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), ss. 8, 9(1)(2), [Sch. para. 1\(14\)\(b\)\(ii\)](#); S.S.I. 2004/58, [art. 2](#), Sch.

Modifications etc. (not altering text)

- C1** S. 35(1)(c) modified (1.4.2004) by [The General Medical Services and Section 17C Agreements \(Transitional and other Ancillary Provisions\) \(Scotland\) Order 2004 \(S.S.I. 2004/163\)](#), [art. 96](#)

Marginal Citations

- M1** 1947 c. 27.
M2 1972 c. 58.

[^{F8}35A Interpretation of Part II.

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

Textual Amendments

- F8** S. 35A inserted (1.10.1999) by 1999 c. 8, s. 65(1), [Sch. 4 para. 55](#); S.S.I. 1999/90, [art. 2\(a\)\(b\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10C(3A) inserted by [2019 asp 6 s. 6\(3\)\(a\)](#)
- s. 10I(1)(b)(c) and word inserted by [2019 asp 6 s. 6\(4\)\(b\)](#)
- s. 16A(5) added by [2002 asp 5 Sch. 2 para. 2\(2\)](#)
- s. 19A(2)(b) words repealed by [2003 asp 4 sch. 4 para. 5\(4\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(a) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(b) substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(c) words substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 19B(2)(e) word substituted by [2003 asp 4 sch. 4 para. 5\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 5(4)-(9) omitted (1.4.2004) by virtue of S.S.I. 2004/167, Sch. para. 7)
- s. 70A inserted by [1997 c. 46 s. 26\(2\)](#)
- s. 70A(2) word substituted by [2005 asp 13 s. 14\(3\)](#)
- s. 85AB(7) inserted by [2005 asp 13 sch. 2 para. 2\(18\)\(b\)](#)
- Sch. 11 para. 2(1A) inserted by [2005 asp 13 s. 14\(6\)\(a\)](#)